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ABSTRACT

Documents pertaining to the legislative history of Public Law 101-336, the Americans with Disabilities Act, are compiled. The compilation begins with the text of the law (which is designed to prohibit discrimination on the basis of disability) including its five titles (employment, public services, public accommodations and services operated by private entities, telecommunications, and miscellaneous provisions). The compilation also includes: (1) House of Representatives Report 101-596, the Conference Committee report; (2) Senate Report 101-116 in which the Committee on Labor and Human Resources recommend passage of the bill as amended; (3) House of Representatives Report 101-485 (Parts 1-4) in which the Committee on Public Works and Transportation, Committee on Education and Labor, Committee on the Judiciary, and Committee on Energy and Commerce recommend passage of the bill as amended, together with dissenting views; (4) selected floor debate transcripts from the Congressional Record; (5) regulations, statutes, and court cases cited in the House and Senate reports; (6) rules and regulations concerning nondiscrimination on basis of disability in programs and activities receiving federal financial assistance, reprinted from the Federal Register (May 4, 1977); (7) effective dates of statutory provisions; and (8) disablity-related tax provisions related to businesses. Transcripts of six hearings pertaining to Public Law 101-336 are compiled in volume 2 dating from September 27-October 6, 1988. The hearings contain prepared statements and testimony from members of Congress; representatives of government agencies, voluntary agencies, higher education institutions, and businesses; and concerned citizens. Volume 3, is a compilation of seven hearings on Public Law 101-336 dating from August 3-September 26, 1989. The hearings contain: the text of the bill; opening statements and prepared statements from members of Congress; witnesses' testimony; and prepared statements and letters from government officials, representatives of voluntary agencies and businesses, lawyers, and others. (JDD)

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LEGISLATIVE HISTORY

OF

Public Law 101-336

THE AMERICANS WITH DISABILITIES ACT

VOLUME 1 OF 3

PREPARED FOR THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS
SECOND SESSION

DECEMBER 1990

Serial No. 102-A

Printed for the use of the Committee on Education and Labor
AUGUSTUS F. HAWKINS, *Chairman*

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EXPLANATORY STATEMENT

This Committee Print is a compilation of the documents pertaining to the legislative history of Public Law 101-336, the Americans With Disabilities Act. This major piece of civil rights legislation, passed overwhelmingly by the Congress, is designed finally to extend full rights to a significant segment of our population who have been denied equal access for too long. It is good for persons with disabilities and good for America.

In order to facilitate implementation of the Act, and an understanding of its many provisions and their interaction, the Committee on Education and Labor has compiled these documents. It is our hope that by distributing the reports and legislative history which accompanied this landmark legislation, we will be providing a service to all Americans.

Sincerely,

AUGUSTUS F. HAWKINS

PUBLIC LAW 101-336

Public Law 101-336
101st Congress

An Act

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

July 26, 1990
[S. 933]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Americans with Disabilities Act of 1990.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

42 USC 12101 note.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
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Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Enforcement.
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TITLE V—MISCELLANEOUS PROVISIONS

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Sec. 503. Prohibition against retaliation and coercion.
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Sec. 506. Technical assistance.
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Coverage of Congress and the agencies of the legislative branch.
Sec. 510. Illegal use of drugs.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Alternative means of dispute resolution.
Sec. 514. Severability.

42 USC 12101

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies,

failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS. 42 USC 12102

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) **State.**—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

42 USC 12111.

SEC. 101. DEFINITIONS.

As used in this title:

(1) **Commission.**—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) **Covered entity.**—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) **Direct threat.**—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) **Employee.**—The term "employee" means an individual employed by an employer.

(5) **Employer.**—

(A) **In general.**—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) **Exceptions.**—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) **Illegal use of drugs.**—

(A) **In general.**—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) **Drugs.**—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) Person, etc.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship.—

(A) In general.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

42 USC 12112.

(a) General Rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Medical Examinations and Inquiries.—

(1) In general.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment.—

(A) Prohibited examination or inquiry.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) Examination and inquiry.—

(A) Prohibited examinations and inquiries.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

42 USC 12113.

(a) In General.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity,

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and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) Qualification Standards.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious Entities.—

(1) In general.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of Infectious and Communicable Diseases.—

(1) In general.—The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

Public information.

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability to the general public.

Such list shall be updated annually.

(2) Applications.—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction.—Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability published by the Secretary of Health and Human Services.

42 USC 12114.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) Qualified Individual With a Disability.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of Construction.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of Covered Entity.—A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug Testing.—

(1) In general.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation Employees.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

42 USC 12115

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

42 USC 12116.

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

42 USC 12117

SEC. 107. ENFORCEMENT.

(a) Powers, Remedies, and Procedures.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) Coordination.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and

Regulations.

part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE. 42 USC 12111 note.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SEC. 201. DEFINITION. 42 USC 12131.

As used in this title:

(1) Public entity.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202. DISCRIMINATION. 42 USC 12132.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT. 42 USC 12133.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS. 42 USC 12134.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) **Relationship to Other Regulations.**—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) **Standards.**—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

42 USC 12131 note

SEC. 205. EFFECTIVE DATE.

(a) **General Rule.**—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) **Exception.**—Section 204 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

42 USC 12141

SEC. 221. DEFINITIONS.

As used in this part:

(1) **Demand responsive system.**—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) **Designated public transportation.**—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) **Fixed route system.**—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) **Operates.**—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary.—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

42 USC 12142.

(a) Purchase and Lease of New Vehicles.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and Lease of Used Vehicles.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured Vehicles.—

(1) General rule.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles.—

(A) General rule.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph

(1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

42 USC 12143.

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying

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the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) **Other provisions**.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) **Review of Plan**.—

(1) **General rule**.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) **Disapproval**.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) **Modification of disapproved plan**.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) **Discrimination Defined**.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) **Statutory Construction**.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

42 USC 12144

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

42 USC 12145.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES.

42 USC 12146.

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES.

42 USC 12147.

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special Rule for Stations.—

(1) General rule.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations.—

(A) Accessibility.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) Extension for extraordinarily expensive structural changes.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

42 USC 12148.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) Public Transportation Programs and Activities in Existing Facilities.—

(1) In general.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) Utilization.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One Car Per Train Rule.—

(1) General rule.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS. 42 USC 12149.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) Standards.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS. 42 USC 12150.

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

42 USC 12141 note.

SEC. 231. EFFECTIVE DATE.

(a) General Rule.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) Exception.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

42 USC 12161.

SEC. 241. DEFINITIONS.

As used in this part:

(1) Commuter authority.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8)).

(2) Commuter rail transportation.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9)).

(3) Intercity rail transportation.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

42 USC 12162.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

42 USC 12163

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

42 USC 12164

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

42 USC 12165

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail Passenger Cars.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242 (a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

42 USC 12161 note.

(a) General Rule.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) Exception.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

42 USC 12181.

As used in this title:

(1) Commerce.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) PUBLIC ACCOMMODATION.—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) RAIL AND RAILROAD.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) READILY ACHIEVABLE.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation.—The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

42 USC 12182.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.—

(1) General prohibition.—

(A) Activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.—For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) DEMAND RESPONSIVE SYSTEM.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily

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accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

42 USC 12183

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and

scope (as determined under criteria established by the Attorney General).

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES. 42 USC 12184.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following

the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or Antiquated Cars.—

(1) Exception.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

42 USC 12185

SEC. 305. STUDY.

(a) Purposes.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

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(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

42 USC 12186.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections

302(b)(2) (B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS.—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) Consistency With ATBCB Guidelines.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

(d) Interim Accessibility Standards.—

(1) Facilities.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

42 USC 12187

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

42 USC 12188

(a) In General.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of

section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title, or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

42 USC 12189

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

42 USC 12181 note

(a) General Rule.—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) Civil Actions.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

(c) Exception.—Sections 302(a) for purposes of section 302(b)(2) (B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) Telecommunications.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

State and local governments.
47 USC 225.

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) Definitions.—As used in this section—

"(1) Common carrier or carrier.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) Telecommunications relay services.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) Availability of Telecommunications Relay Services.—

"(1) In general.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) Use of General Authority and Remedies.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) Provision of Services.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) Enforcement.—

"(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) Certification.—

"(1) State documentation.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) Complaint.—

"(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows: 47 USC 611

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

42 USC 12201

(a) IN GENERAL.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms

of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) Accommodations and Services.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

42 USC 12202

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

42 USC 12203

SEC. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) Retaliation.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, Coercion, or Intimidation.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedures.—The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

42 USC 12204

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) Issuance of Guidelines.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) Contents of Guidelines.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified Historic Properties.—

(1) In general.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for

alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7 (1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEY'S FEES.

42 USC 12205.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

42 USC 12206.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) TITLE II.—

(i) SUBTITLE A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) SUBTITLE B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) TECHNICAL ASSISTANCE MANUALS.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

42 USC 12207.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) SPECIFIC WILDERNESS ACCESS.—

(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

SEC. 508. TRANSVESTITES. 42 USC 12208.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH. 42 USC 12209.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent

practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) Matters Other Than Employment.—

(A) In General.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) Remedies.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Proposed remedies and procedures.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) Exercise of rulemaking power.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) Coverage of the House of Representatives.—

(1) In general.—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) Employment in the house.—

(A) Application.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) Administration.—

(i) In general.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) Resolution.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) Exercise of rulemaking power.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) Matters other than employment.—

(A) In general.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) Remedies.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Approval.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) Instrumentalities of Congress.—

(1) In general.—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) Report to congress.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) Construction.—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS. 42 USC 12210.

(a) In General.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of Construction.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and Other Services.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) Definition of Illegal use of drugs.—

(1) In general.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

42 USC 12211

SEC. 511. DEFINITIONS.

(a) Homosexuality and Bisexuality.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) Certain Conditions.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) Definition of Handicapped Individual.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

"(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

"(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

42 USC 12212.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials,

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and arbitration, is encouraged to resolve disputes arising under this Act.

42 USC 12213

SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

Approved July 26, 1990.

LEGISLATIVE HISTORY—S. 933 (H.R. 2273):

HOUSE REPORTS: No. 101-485, Pt. 1 (Comm. on Public Works and Transportation), Pt. 2 (Comm. on Education and Labor), Pt. 3 (Comm. on the Judiciary), and Pt. 4 (Comm. on Energy and Commerce) all accompanying H.R. 2273; and No. 101-558 and No. 101-569 both from (Comm. of Conference).
SENATE REPORTS: No. 101-116 (Comm. on Labor and Human Resources).
CONGRESSIONAL RECORD:
Vol. 135 (1989): Sept. 7, considered and passed Senate.
Vol. 136 (1990): May 17, 22, H.R. 2273 considered and passed House; S. 933 passed in lieu.
July 11, Senate recommitted conference report.
July 12, House agreed to conference report.
July 13, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):
July 26, Presidential remarks and statement.

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HOUSE CONFERENCE REPORT 101-596

101st Congress
2d Session
HOUSE OF REPRESENTATIVES
Report
101-596

AMERICANS WITH DISABILITIES ACT OF 1990

July 12, 1990.—Ordered to be printed

Mr. Hawkins, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 933]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933), to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—*This Act may be cited as the "Americans with Disabilities Act of 1990".*

(b) Table of Contents.—*The table of contents is as follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal use of drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Augustus F. Hawkins,
Major R. Owens,
Matthew G. Martinez,
Steve Bartlett,
H.W. Fawell,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

John D. Dingell,
Edward J. Markey,
Tom Luken,
Norman F. Lent,
Bob Whittaker,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

Matthew Rinaldo,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Glenn M. Anderson,
Robert A. Roe,
Norman Y. Mineta,
John Paul Hammerschmidt,

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Jack Brooks,
Don Edwards,
Robert W. Kastenmeier,
Hamilton Fish, Jr.,
F. James Sensenbrenner, Jr. (except for amendment to sec. 103(d)),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Steny H. Hoyer,
Managers on the Part of the House.

Edward M. Kennedy,
Tom Harkin,
Howard M. Metzenbaum,
Paul Simon,
Orrin G. Hatch,
Dave Durenberger,
James M. Jeffords,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
JOHN C. DANFORTH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Short title

The Senate bill titles the Act the Americans with Disabilities Act of 1989. The House amendment changes the date to 1990.

The Senate recedes.

1A. Findings and purposes

The House amendment, but not the Senate bill, includes the term "color" in its list of factors which have been the basis of discrimination for which there is legal recourse to redress such discrimination.

The Senate recedes.

TITLE I OF THE ADA (EMPLOYMENT)

2. Definition of the term "direct threat"

The House amendment, but not the Senate bill, defines the term "direct threat" to mean a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

The Senate recedes.

3. Definitions of terms "illegal use of drugs" and "drugs"

The Senate bill uses the phrase "illegal drug" and explains that the term means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act, the possession or distribution of which is unlawful under such Act and does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act.

The House amendment uses the phrase "illegal use of drugs" and defines the term to mean the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act and does not mean the use of controlled substances taken under supervision by a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law. The House amendment defines the term "drugs" to mean a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

The Senate recedes.

4. *Essential functions of the job*

The Senate bill defines a qualified individual with a disability as a person who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

The House amendment adds that consideration shall be given to the employer's judgment as to what functions of a job are essential and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

The Senate recedes.

5. *Definition of the term "undue hardship"*

(a) The Senate bill defines an "undue hardship" to mean an action requiring significant difficulty or expense and then list the factors that must be considered in determining whether an accommodation would impose an undue hardship.

The House amendment specifies that the term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors listed in the statute.

The Senate recedes.

(b) In determining whether accommodating a qualified applicant or employee with a disability imposes an "undue hardship," the Senate bill requires that the following factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity; and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the accommodation needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

6. Discrimination

The Senate bill and the House amendment use the same terms but in a different order.

The Senate recedes.

7. Contract liability

The Senate bill specifies that covered entities cannot discriminate directly or indirectly through contracts with other parties.

The House amendment clarifies that a covered entity is only liable in contractual arrangements for discrimination against its own applicants or employees.

The Senate recedes.

8. Reasonable accommodation

The Senate bill specifies that it is discriminatory for a covered entity to deny an employment opportunity to a qualified job applicant or employee with a disability if such denial is based on the need of the covered entity to make reasonable accommodations. In a separate section, the Senate bill specifies that reasonable accommodations need not be provided if they would result in an undue hardship.

The House amendment clarifies the relationship between the obligation not to deny a job to an individual with a disability who needs a reasonable accommodation and the undue hardship limitation governing the covered entity's obligation to provide the reasonable accommodation by including these provisions under the same paragraph.

The Senate recedes.

9. Employment tests

The House amendment adds the term "qualification standards" to the phrase "employment tests or other selection criteria."

The Senate recedes.

10. Preemployment inquiries

The House amendment deletes the word "employee" from the preemployment inquiry provision.

The Senate recedes. The conferees note that in certain industries, such as air transportation, applicants for security and safety related positions are normally chosen on the basis of many competitive factors, some of which are identified as a result of post-offer pre-employment medical examinations. Thus, after the employer receives the results of the post-offer medical examination for applicants for safety or security sensitive positions, only those applicants who meet the employer's criteria for the job must receive confirmed offers of employment, so long as the employer does not use those results of the exam to screen out qualified individuals with disabilities on the basis of disability. The conferees do not intend for this Act to override any legitimate medical standards or requirements established by Federal, state or local law, or by employers for applicants for safety or security sensitive positions, if the medical standards are consistent with this Act.

11. Postemployment medical examinations

The Senate bill specifies that an employer shall not conduct or require a medical examination of an employer unless such examination or inquiry is shown to be job-related and consistent with business necessity.

The House amendment deletes the term "conduct" and adds that a covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site so long as the information obtained regarding the medical condition or history of any employee are kept confidential and are not used to discriminate against qualified individuals with disabilities.

The Senate recedes.

12. Defenses, in general

The Senate amendment includes a reference to "reasonable accommodations." The House adds the following phrase "as required under this title."

The Senate recedes.

13. Health and safety

The Senate bill includes as a defense that a covered entity may fire or refuse to hire a person with a contagious disease if the individual poses a direct threat to the health and safety of other individuals in the workplace.

The House amendment makes this specific defense applicable to all applicants and employees, not just to those with contagious diseases.

The Senate recedes. The conferees intend that the term "qualification standard" as uses in section 103(b) permits a requirement that an individual with a disability not pose a direct threat to the health or safety of other individuals in the workplace if reasonable accommodation will not eliminate the direct threat. In addition, the conferees concur with the House provision that defines "direct threat" to mean "significant risk" (section 101(3). The qualification standard in section 103(b) and the definition in section 101(3) clearly spell out the right of the employer to take action to protect the rights of its employees and other individuals in the workplace. Such employer action would include not assigning an individual to a job if such an assignment would pose a direct threat to individuals in the workplace and such a threat could not be eliminated by reasonable accommodation. The conferees incorporate by reference the explanations of the term "direct threat" set out in Senate Report No. 101-116. Consistent with this explanation, in determining what constitutes a significant risk, the conferees intend that the employer may take into consideration such factors as the magnitude, severity, or likelihood of risk to other individuals in the workplace and that the burden would be on the employer to show the relevance of such factors in relying on the qualification standard.

14. Religious tenet exemption

The Senate bill specifies that a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

The House amendment deletes the phrase "as a qualification standard to employment."

The Senate recedes.

15. Food handlers

The House amendment, but not the Senate bill, specifies that it shall not be a violation of this Act for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance to a job involving food handling, provided that the employer shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic damage.

The House recedes to the Senate with an amendment. The amendment states:

"(d) LIST OF INFECTIOUS AND COMMUNICABLE DISEASES.—

"(1) IN GENERAL.—The Secretary of Health and Human Services, not later than 6 months after enactment of this Act, shall—

"(A) review all infectious and communicable diseases which may be transmitted through handling food supply;

"(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

"(C) publish the methods by which such diseases are transmitted; and

"(D) widely disseminate such information regarding the list of diseases and their modes of transmissability to the general public. Such list shall be updated annually.

"(2) APPLICATIONS.—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food that is included on the list developed by the Secretary of Health and Human Services under (a) and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

"(3) CONSTRUCTION.—Nothing in this Act shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.".

The basic underlying goal of this provision is to ensure that accurate information is conveyed to the general public regarding those infections and communicable diseases which are transmitted through the handling of food.

The purpose of this provision is to assure the American public that the Secretary of Health and Human Services through the Public Health Service will review all infections and communicable diseases that may be transmitted through the handling of food and will then determine, based on valid scientific and medical analysis and using accepted public health methodologies and statistical practices regarding risk of transmission, whether such diseases are transmitted through the handling of food. This will reassure the American public that the Secretary has carefully analyzed this issue and has published a list of infectious and communicable diseases that are transmitted through the handling of food.

The list required under this provision must be updated annually by the Secretary. This requirement is included to reassure the American public that, on an annual basis, the Secretary will review the relevant scientific and medical evidence regarding the transmissibility of all diseases and will determine, based on that evidence, whether any of these diseases are transmitted through the handling of food.

The amendment further provides that the Secretary shall widely disseminate information regarding the list of diseases that are transmissible through food handling and the modes by which such diseases are transmitted through the handling of food. This is a critical component of the amendment. The conferees believe that the lack of awareness of the American public regarding which diseases are and are not transmitted through the handling of food has contributed to false perceptions in this area. Instead of allowing false perceptions to determine whether individuals may remain in food handling jobs, this provision requires the Secretary to use valid scientific evidence to determine which diseases are transmitted through the handling of food and then to ensure that the American public is well-educated regarding these facts in order to allay any unnecessary fears.

The amendment further provides that, in any case in which an individual has an infectious or communicable disease that can be transmitted to others through the handling of food, which disease is included on the list developed by the Secretary, and in which the risk of the disease being transmitted in the particular job cannot be eliminated by reasonable accommodation, a covered entity under this title may refuse to assign or continue to assign such individual to a job involving food handling.

This provision is consistent with the underlying requirements of the ADA. If an individual has an infectious or communicable disease which is transmitted through the handling of food, then an employer or other covered entity under this title has the right under the ADA to, for example, reassign that employee to a job involving food handling. The underlying requirement of the ADA is simply that a reasonable accommodation must be made if such accommodation will eliminate the risk of the disease being transmitted in the particular job. For example, if an individual has an infectious disease that can be eliminated by taking medication for a specified period of time, the employer must offer the employee the reasonable accommodation of allowing the individual time off to take such medication. Of course, this accommodation would be subject to the same "undue hardship" limitation which applies to all accommodations under this title.

In addition, the placement of a disease on the list developed by the Secretary does not, of itself, define the disease as a disability for purposes of the requirements of this Act. Rather, whether a person is an "individual with a disability" is determined pursuant to section 3(2).

Finally, this amendment includes an anti-preemption provision. This provision is an explanation of the general anti-preemption provision of section 501(b) of the Act, but is designed specifically with regard to laws regarding food handling. The point of this provision is to clarify that legitimate state and local public health laws and regulations regarding food handling are not preempted by the ADA. State and local public health departments are, many times, at the front lines of protecting the public health. Such legitimate laws and regulations designed to protect the public health, therefore, are not preempted by the ADA.

This provision, however, in amplifying Section 501(b) more clearly defines certain types of existing and prospective state and local public health laws that are not preempted by the ADA. First, the laws must be designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which risk cannot be eliminated by reasonable accommodation. This is consistent with the definition of "direct threat" under this title. Second, because this provision is designed to apply specifically to laws regarding food handling, such laws must pertain to the list of infectious and communicable diseases published by the Secretary as transmitted through food handling and be consistent with the determinations made by the Secretary regarding the modes of transmissability. This provision ensures that such legitimate state and local laws, ordinances, and regulations, which deal with disease transmission through food handling, as defined by the Secretary, are not preempted by the ADA.

This amendment appropriately carries out both the letter and the spirit of the underlying requirements of the ADA. Instead of allowing false perceptions to determine whether an employee may remain in a particular job, this provision ensures that valid public health guidelines, rather than false perceptions, will determine the protections afforded under this title. In addition, and of critical importance, this provision should reassure the American public by requiring the Secretary to evaluate this area carefully by reviewing all communicable diseases and by publishing a list of diseases that are transmitted through food handling and by ensuring that the American public will be educated regarding those diseases which are transmitted through the handling of food.

16. Illegal use of drugs and use of alcohol

(a) The Senate bill specifies that the term "qualified individual with a disability" does not include employees or applicants who are current users of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of the Act if such individual also uses or is addicted to drugs.

The House amendment specifies that "qualified person with a disability" does not include any applicant or employee who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes. The provision excluding an individual who engages in the illegal use of drugs from protection is intended to ensure that employers may discharge or deny employment to persons who illegally use drugs on that basis, without fear of being held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the definition of the term "qualified individual with a disability": (1) an individual who has successfully completed a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) an individual who is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) an individual who is erroneously regarded as engaging in such use but is not engaging in such use.

The Senate recedes. Section 104(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both inpatient and outpatient programs, as well as appropriate employee assistance programs that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment, but not the Senate bill, specifies that it is not a violation of title I of the Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual involved in rehabilitation programs is no longer engaging in the illegal use of drugs.

The Senate recedes. Conferees note that, for purposes of this title, an individual covered by the regulations described in section 104(c)(5) who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 104(b)(3). The conferees do not intend to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 104(b)(3). The ADA itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances, employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(d) The Senate bill specifies that the covered entity may require that employees behave in conformance with the requirements of the Drug-Free Workplace Act of 1988 and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol.

The House amendment also includes reference to positions defined by the Department of Defense and the Nuclear Regulatory Commission.

The Senate recedes.

(e) The House amendment adds that nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by railroads of authority to: (1) test railroad employees in, and applicants for, positions involving safety-sensitive duties, as determined by the Secretary of Transportation, for the illegal use of drugs and for on-duty impairment by alcohol; and (2) remove such persons who test positive from safety-sensitive duties.

The Senate recedes with an amendment. The amendment substitutes the phrase "entities subject to the jurisdiction of the Department of Transportation" for the word "railroad" in the House amendment; substitutes the phrase "employees of such entities" for the term "railroad employees" in the House amendment; deletes the phrase "as determined by the Secretary of Transportation" in subsection (e)(1) of the House amendment; and adds the phrase "for illegal use of drugs and on duty impairment by alcohol" after the word "positive" in subsection (e)(2) of the House amendment. The conferees agree that, separate and apart from Department of Transportation regulations, nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise (e.g., as a result of collective bargaining agreements) by entities subject to the jurisdiction of DOT of authority to test employees of such entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on duty impairment by alcohol, and to remove such persons who test positive from safety sensitive duties. The conferees intend that the authority for transportation entities to remove persons who test positive includes authority for dismissal or disqualification, consistent with the provisions of this title. The conferees do not intent to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act, from challenging a positive drug test by invoking the protection of section 104(b)(3). The ADA itself, does not provide any standard by which the accuracy or validity of a drug test result is to be determined.

The conferees note that there was a typographical error in part 2 (Education and Labor Committee) of the House Report No. 101-485. The language in the last paragraph on page 81 should have appeared as follows: "The Act is not intended to disturb the legitimate and reasonable disciplinary rules and procedures established and enforced by professional sports leagues; nor is it intended to disturb collectively bargained policies that have been entered into between league management and its players association that are not inconsistent with this Act."

17. Enforcement

(a) The House amendment adds "powers" to the phrase "remedies and procedures" to conform the ADA to title VII.

The Senate recedes.

(b) The House amendment adds to the enforcement section a reference to section 705 of title VII of the Civil Rights Act of 1964 (authority of the Equal Employment Opportunity Commission).

The Senate recedes.

(c) The House amendment adds a reference to "the Attorney General."

The Senate recedes.

(d) The House amendment substitutes the term "person," which is used and defined in title VII of the Civil Rights Act of 1964 for the term "individual" included in the Senate bill.

The Senate recedes.

(e) The Senate bill includes the phrase any individual "who believes he or she is being subjected to discrimination." The House amendment substitutes "any person alleging discrimination."

The Senate recedes.

18. Relationship with the Rehabilitation Act of 1973

The House amendment, but not the Senate bill, directs administrative agencies to develop procedures and coordinating mechanisms to ensure that ADA and Rehabilitation Act of 1973 administrative complaints are handled without duplication or inconsistent, conflicting standards. Further, agencies must establish the coordinating mechanisms in their regulations.

The Senate recedes with an amendment. The amendment specifies that "The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and the Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act."

TITLE II OF THE ADA (PUBLIC SERVICES)

19. Structure of title II

The Senate bill includes one set of standards applicable to all public entities providing public services, including entities providing public transportation.

The House amendment includes subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions and subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory. Two parts are included under subtitle B: part I covers public transportation other than by aircraft or certain rail operations (intercity and commuter rail) and part II covers public transportation by intercity and commuter rail.

The Senate recedes.

SUBTITLE A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

20. Definition of public entities

The Senate bill specifics that the public entities subject to the provisions of title II include: any state or local government or any department, agency, special purpose district, or other instrumentality of a State or local government. The accompanying report makes it clear that AMTRAK and commuter authorites are considered public entities.

The House amendment defines the term "public entity" to mean any state or local government or any department, agency, special purpose district, or other instrumentality of a state or states or local government; a commuter authority (as defined in section 103(8) of the Rail Passenger Service Act); and the National Railroad Passenger Corporation (AMTRAK).

The Senate recedes.

21. Qualified individual with a disability

The House amendment uses the term "public entity" in lieu of the list of entities covered by subtitle A.

The Senate recedes.

22. Discrimination, in general

The Senate bill specifies the general and specific prohibitions against discrimination by public entities.

The House amendment retains the general prohibition and clarifies that this general prohibition is subject to the other more specific provisions in title II. The House amendment also includes grammatical changes.

The Senate recedes. Questions have been raised regarding the obligations under this legislation of local and state governments to make 911 telephone emergency services available to hearing impaired and speech impaired persons. It is the intent of the conferees that the telephone emergency services operated by local and state governments be accessible to such individuals. This means that such telephone emergency systems must be equipped with technology that gives these individuals direct access to emergency services. For the present, this would require that local emergency systems provide a direct telephone line for individuals who rely on telecommunications devices for the deaf (the Baudot format) and computer modems (the ASCII format) to make telephone calls. In the future, new technology, such as speech-to-text services, may require other forms of direct access for such individuals. With this title II mandate, individuals with hearing and speech impairments will finally join the rest of us in having immediate access to assistance from police, fire, and ambulance services.

23. Enforcement

The Senate bill specifies that the remedies, procedures, and rights set out in section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204 concerning public services.

The House amendment provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

The Senate recedes.

24. Regulations and standards

The Senate bill specifies that the Attorney General shall issue regulations implementing title II with the exception of section 203 pertaining to public transportation provided by public entities.

The House amendment, consistent with the revised structure used by the House, specifies that the Attorney General shall promulgate regulations that implement subtitle A. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223 (paratransit), section 229 (regulations relating to part I of subtitle B), and section 244 (regulations relating to part II of subtitle B).

The House amendment also specifies that regulations shall include standards applicable to facilities and vehicles covered by subtitle A, other than facilities stations, rail passenger cars, and vehicles covered by subtitle B.

The Senate recedes.

SUBTITLE B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

25. Definitions

The Senate bill uses the following phrases: "demand responsive system," "fixed route system," "operates," and "public transportation."

The House amendment adds definitions for the terms "demand responsive system," "fixed route system" and "operates." The House amendment also substitutes the phrase "designated public transportation" for the phrase "public transportation" and includes the following definition: transportation (other than public school transportation) by bus, rail, or by other conveyance (other than transportation by aircraft, or intercity or commuter rail) that provides the general public with general or special service (including charter service) on a regular and continuing basis. The House amendment also includes a definition for the term "public school transportation.

The Senate recedes.

26. Purchase or lease of new and used fixed route vehicles

With slightly different wording, the Senate bill and the House amendment required that all new vehicles purchased or leased by a public entity which operates a fixed route system be accessible and required such public entity to make demonstrated good faith efforts to purchase or lease used vehicles that are accessible.

The Senate recedes.

27. Remanufactured and historic vehicles

The Senate bill specifies that if a public entity remanufactures a vehicle or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more, the vehicle must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

With slightly different phrasing, the House amendment includes the policy in the Senate version applicable to remanufactured vehicles and adds a specific provision in the legislation for historic vehicles. Under the provision, if making a vehicle of historic character (which is used solely on any segment of a fixed route system that is included on the National Register of Historic Places) readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or purchase or lease a remanufactured vehicle with) those modifications which do not significantly alter the historic character of such vehicle.

The Senate recedes.

28. Paratransit

The Senate bill specifies that if a public entity operates a fixed route system, it is discrimination for public transit authority to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using the fixed route transportation to individuals with disabilities who cannot otherwise use fixed route transportation and individuals associated with such individuals with disabilities unless the public transit authority can demonstrate that the provision of paratransit or other transportation services would impose an undue financial burden on the public transit entity. If the provision of comparable paratransit services would impose an undue financial burden on the public entity, such entity must provide such service to the extent that provision of such services would not impose an undue funancial burden on such entity. The Senate version specifies that the definition of undue financial burden may include reference to a flexible numerical formula that incorporates appropriate local characteristics such as population.

The House amendment includes the following changes:

(a) The House amendment clarifies that a public entity that only provides commuter bus service need not provide paratransit.

The Senate recedes.

(b) The House amendment specifies that comparable level of service must be provided but in the case of response time, it must be comparable, to the extent practicable.

The Senate recedes.

(c) Under the House amendment, paratransit and other special transportation services must be provided to three categories of individuals with disabilities:

> To any individual with a disability who is unable as a result of a physical or mental impairment (including a vision impairment) without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device) to board, ride, or disembark from any vehicle on the system which is accessible;
>
> To any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is accessible if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such an accessible vehicle is not being used to provide designated public transportation on the route; and
>
> To any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

For purposes of the first two categories of individuals with disabilities, boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

The Senate recedes.

(d) The House amendment clarifies that paratransit and special transportation services need only be provided in the service area of each public entity that operates a fixed route system and not in any portion of the service area in which the public entity solely provides commuter bus service.

The Senate recedes.

(e) The House amendment deletes the permissive reference to flexible numerical formula.

The Senate recedes.

(f) The House amendment requires that paratransit be available to one other person accompanying the individual with a disability.

The House recedes with an amendment. The amendment provides that in addition to the one individual specified in the House amendment, paratransit services must be available to other indivduals accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individual will not result in a denial of service to individuals with disabilities. Throughout this section, the conferees intend that individuals accompanying the individual with a disability travel between the same boarding and disembarking locations as the individual with a disability.

(g) The House amendment specifies that each public entity must submit plans for operating paratransit services to the Secretary. The plan must include, among other things, the identity of any other public entity or person providing paratransit service and provide that the public entity does not have to provide directly under the plan the identified paratransit services being provided to others.

The Senate recedes.

(h) The House amendment includes a statutory construction provision that makes it clear that nothing in the ADA should be construed as preventing a public entity from providing paratransit services at a level which is greater than the level required by the ADA, from providing paratransit services in addition to those services required by the ADA, or from providing such services to individuals in addition to those individuals to whom such services are required to be provided by the ADA.

The Senate recedes.

29. Demand responsive systems operated by a public entity

With slightly different wording, the Senate bill and the House amendment specify rules for public entities operating demand responsive systems.

The Senate recedes.

30. New facilities

The House amendment substitutes the phrase "designated public transportation services" for the phrase "public transportation services" used in the Senate bill.

The Senate recedes.

31. Alterations to existing facilities

(a) The House amendment adds a reference to "designated public transportation."

The Senate recedes.

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations as determined under criteria established by the Attorney General.

The Senate recedes.

32. Key stations in rapid and light rail systems

(a) The Senate bill provides an extension of up to 20 years for making key stations in rapid rail or light rail systems accessible where extraordinary expensive structural changes are required.

The House amendment permits 30 years where extraordinary expensive structural changes are required except that by the last day of the 20th year at least two-thirds of such key stations must be readily accessible.

The Senate recedes.

(b) With slightly different wording, both the Senate bill and the House amendment require the development of plans and milestones.

The Senate recedes.

33. Access to non-key stations

With slightly different phrasing, the Senate bill and the House amendment specify rules governing non-key existing stations.

The Senate recedes with an amendment. In section 228(a), strike out paragraph (2) and insert in lieu thereof the following new paragraphs:

"(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) and section 227(b) (relating to key stations).

"(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.".

34. One car per train rule applicable to rapid rail and light rail systems

The Senate bill provides that as soon as practicable, but in any event in no less than 5 years, rail systems must have at least one car per train that is accessible to individuals with disabilities.

The House amendment specifies that the one car per train rule only applies with respect to trains that have two or more vehicles and includes a special provision applicable to historic trains.

The Senate recedes.

35. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary.

The Senate recedes.

36. *Effective date*

The Senate bill specifies that the section in title II pertaining to new fixed route vehicles shall become effective on the date of enactment.

The House amendment specifies that sections concerning fixed route vehicles, demand responsive, stations, one car per train and regulations become effective on the date of enactment.

The Senate recedes.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

37. *Definitions*

The House amendment but not the Senate bill includes definitions of the following terms: "commuter authority," "commuter rail transportation," "intercity rail transportation," "rail passenger car," "responsible persons," and "station."

The Senate recedes.

38. *One car per train rule for intercity rail transportation*

With slightly different wording, the Senate bill and the House amendment specify a one car per train rule for intercity rail transportation.

The Senate recedes.

39. *New intercity cars*

The Senate bill provides that all new intercity vehicles must be readily accessible to and unable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment includes a general obligation to make new intercity cars accessible that is identical to the provision in the Senate bill but includes special rules of accessibility applicable to people who use wheelchairs for specific categories of passenger car.

The Senate recedes.

40. *One car per train rule and new commuter rail cars*

(a) With slightly different wording, the Senate bill and the House amendment specify the one car per train rule for persons providing commuter rail transportation.

The Senate recedes.

(b) The Senate bill provides that all new commuter rail cars must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment adopts the same standard and specifies that the term "readily accessible to and usable by" shall not be construed to require: a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger; space to store and fold a wheelchair; or a seat to which a passenger who uses a wheelchair can transfer.

The Senate recedes.

41. *Used and remanufactured rail cars*

The Senate bill includes special rules for the purchase of all types of used and remanufactured vehicles.

The House amendment includes special provisions applicable to the purchase of used rail cars and remanufactured rail cars similar to the provisions included in the Senate bill applicable to all vehicles (the time period for remanufacture is 10 years for rail cars instead of 5 years for other vehicles).

The Senate recedes.

42. New and existing stations

(a) With respect to commuter rail, the Senate bill specifies that existing key stations must be made accessible as soon as practicable but in no event later than 3 years after the effective date, except that the time limit may be extended to 20 years after the date of enactment in a case where extraordinarily expensive structural changes are necessary to attain accessibility.

The House amendment provides that the extension to 20 years applies where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

The Senate recedes.

(b) The Senate report explains the criteria used to determine which stations are considered "key." The House amendment places these criteria in the legislation. The factors that must be taken into consideration, after consultation with individuals with disabilities and organizations representing such individuals include: high ridership and whether such station serves as a transfer or feeder station.

The Senate recedes.

43. Alterations of existing facilities

(a) The Senate bill specifies that a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility must be altered in such a way that it is readily accessible to and usable by individuals with disabilities.

The House amendment adopts the same standard but substitutes for the phrase "public entity" the phrase "responsible person, owner, or person in control of the station."

The Senate recedes.

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes.

(c) The House amendment also specifies that it is considered discrimination for an owner or person in control of a station to fail to provide reasonable cooperation to a responsible person with respect to such station in the responsible person's efforts to provide accessibility. An owner, or person in control of a station is liable to a responsible person for any failure to provide reasonable cooperation. The House amendment also makes it clear, however, that failure to receive reasonable cooperation shall not be a defense to a claim of discrimination by an individual with a disability.

The Senate recedes.

44. Interim accessibility standards

The House amendment, but not the Senate bill, specifies the standards that would apply to stations and rail passenger cars during an interim period between the effective date and the date regulations are issued in final form.

The Senate recedes.

TITLE III OF THE ADA

45. Definitions

(a) The Senate bill includes the term "potential places of employment" to describe facilities subject to the new construction requirements.

The House amendment substitutes the term "commercial facilities" for the phrase "potential places of employment." The House amendment also specifies that the term does not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under title III, or railroad rights-of-way.

The Senate recedes.

(b) The House amendment, but not the Senate bill, includes definitions for the following terms: "demand responsive system," "fixed route system," and "over-the-road bus."

The Senate recedes.

(c) The House amendment, but not the Senate bill, defines the term "private entity" to mean any entity other than a public entity, as defined in title II.

The Senate recedes.

(d) The Senate bill lists a number of specific types of entities that are considered public accommodations and then includes the following catch-all phrase "and other similar places."

The House amendment deletes the term "similar." In addition, the House amendment makes several technical changes to the categories.

The Senate recedes.

(e) The House amendment, but not the Senate bill, defines the term "rail" and "railroad."

The Senate recedes.

(f) In determining whether making changes to existing facilities are "readily achievable," the Senate bill requires that the followng factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity; and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the action needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility; (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and (4) the type of operation or operations of the covered entity, including the compositiion, structure, and functions of the workforce of such entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

(g) The House amendment substitutes the term "specified public transportation" for the term "public transportation" with no change in the definition.

The Senate recedes.

(h) The House amendment, but not the Senate bill, defines the term "vehicle" as not including a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under title III.

The Senate recedes.

46. Entities subject to the prohibitions against discrimination

The Senate bill specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

The House amendment clarifies that this prohibition applies to any person who owns, leases (or leases to), or operates a place of public accommodation.

The Senate recedes.

47. Contract liability

The Senate bill specifies that covered entities cannot engage in discrimination indirectly through contracts with other parties.

The House amendment specifies that covered entities are only liable in contractual arrangements for discrimination against the entity's own customers and clients and not the contractor's customers and clients.

The Senate recedes.

48. Readily achievable changes to existing barriers

The House amendment adds rail passenger cars used by an establishment for transporting individuals to the list of vehicles from which barriers must be removed.

The Senate recedes.

49. Fixed route and demand responsive systems

With slightly different wording, the Senate bill and the House amendment specify standards for fixed route and demand responsive systems operated by private entities.

The Senate recedes.

50. Health and safety

The House amendment, but not the Senate bill, specifies that nothing in title III requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

The Senate recedes.

51. New construction and alterations to existing facilities

(a) The Senate bill includes in separate sections the requirements that alterations and new construction be readily accessible to and usable by individuals with disabilities.

The House amendment places these two requirements in the same section.

The Senate recedes. Section 3030(b) of the Act provides that discrimination as set forth in section 303(a) concerning new construction and alterations in public accommodations and commercial facilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities. The exception does not affect the requirement that every newly constructed facility subject to the Act shall have at least one ground story that is readily accessible to and usable by individuals with disabilities. Accessibility requirements shall not be evaded by constructing facilities in such a way that no story constitutes a "ground floor", for example, by constructing a building whose main entrance leads only to stairways or escalators that connect with upper or lower floors; at least one accessible ground story must be provided.

(b) The Senate bill specifies that when major structural alterations are made to public accommodations operated by private entities, the alterations as well as the path of travel and facilities must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function," for the Senate language, "major structural alteration," and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes. The conferees note that in part 2 (Education and Labor Committee) of the House Report No. 101-485, language following the word "alteration" at the end of the third line of the second full paragraph on page 113 was inadvertently omitted. This language specifies that the parameters of the concept of disproportionality of section 303(a)(2) of the bill will be set forth in the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board and in the regulations promulgated by the Attorney General. The conferees wish to indicate their understanding that the requirement of an accessible path of travel, accessible restrooms, drinking fountains, and telephones serving the altered area would be disproportionate if the inclusion of such features would be so large an undertaking, in expense or scope of work, as to be disproportionate to the remainder of the contemplated alteration project.

52. Discrimination and construction

With slightly different wording, the Senate bill and the House amendment specify the general prohibition of discrimination and specific constructions of such discrimination.

The Senate recedes.

53. New vehicles other than new rail passenger cars

The Senate bill specifies that new vehicles other than automobiles purchased by a private entity in the principal business of transporting people must be readily accessible to and usable by individuals with disabilities.

The House amendment includes a special rule for vans with a seating capacity of less than 8 passengers. Such vans need not be accessible if the van is to be used solely in a demand responsive system and if the private entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

The Senate recedes.

54. New rail passenger cars

The Senate bill specifies that all new vehicles purchased by a private entity in the principal business of transporting people must be readily accessible.

The House amendment includes a separate provision applicable to new rail passenger cars purchased by such entities and includes the same standard set out in the Senate bill.

The senate recedes.

55. Remanufactured rail passenger cars

The House amendment, but not the Senate bill, specifies that the remanufacture of a rail passenger car so as to extend its usable life for 10 years or more must be remanufactured in a manner to make it readily accessible "to the maximum extent feasible."

The Senate recedes.

56. Historical or antiquated rail passenger cars and stations serving such cars

The House amendment, but not the Senate bill, specifies that historical or antiquated vehicles that are currently in use or are remanufactured by private entities need not be made accessible to the extent that compliance would significantly alter the historic or antiquated character of such a car or rail station served exclusively by such cars or would result in violation of safety rules issued by the Secretary of Transportation.

The Senate recedes.

57. Over-the-road buses

The Senate bill specifies that over-the-road buses must be readily accessible to and usable by individuals with disabilities within 7 years for small providers and 6 years for other providers. Further, the Senate bill specifies that the Office of Technology Assessment must conduct a study to determine the access needs of individuals with disabilities and the most cost effective methods of making such buses readily accessible to and usable by individuals with disabilities.

The House amendment deletes the specific obligation to make each bus "readily accessible to and usable by" individuals with disabilities at the end of the 6 or 7 year period, whichever is applicable. Instead, the House amendment specifies that the purchase of new over-the-road buses must be made in accordance with regulations issued by the Secretary of Transportation. In issuing final regulations, the Secretary must take into account the purposes of the study and any recommendations resulting from the study. The obligations set out in the final regulations go into effect in 7 years for small providers and 6 years for others. The final regulations may not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

In the interim, regulations issued by the Secretary may not require any structural changes to over-the-road buses in order to provide access to individuals who use wheelchairs and may not require the purchase of boarding assistance devices to provide access.

With respect to the study, the purpose of the study is revised to include a determination of the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service and the most cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options. The study must analyze, among other things, the effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

The Senate recedes.

58. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary. The House amendment also includes interim policies applicable to vehicles and rail passenger cars.

The Senate recedes.

59. Enforcement in general

(a) The Senate bill makes reference to the remedies available to an "individual" under title II of the Civil Rights Act of 1964.

The House amendment substitutes the term "person" for the term "individual" since "person" is used in title II.

The Senate recedes.

(b) The Senate bill specifies that remedies and procedures of the 1964 Civil Rights Act will be available to any individual who is or is about to be subjected to discrimination on the basis of disability.

The House amendment specifies that the remedies and procedures of title II of the 1964 Civil Rights Act shall be the powers, remedies, and procedures title III provides to any person who is being subject to discrimination on the basis of disability in violation of title III or any person who has "reasonable grounds" for believing that he or she is about to be subjected to discrimination with respect to the construction of new or the alteration of existing facilities in an inaccessible manner.

The Senate recedes.

(c) The House amendment, but not the Senate bill, includes in the legislation the following policy set out in the Senate report: nothing in the enforcement section shall require an individual with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that state and local governments can apply to the Attorney General to certify that state or local building codes meet or exceed the minimum accessibility requirements of the ADA. In ruling on such applications from state or local governments, the Attorney General will consult with the Architectural and Transportation Barriers Compliance Board and consider the testimony of individuals with disabilities at public hearings about the state or local building code application.

The Senate recedes.

(e) The Senate bill specifies that the courts may assess civil penalties against an entity not to exceed $50,000 for the first violation and $100,000 for any subsequent public accommodation discrimination violation.

The House amendment specifies that when there are multiple violations that make up a pattern or practice suit brought by the Attorney General, all violations count as a first violation for the purpose of assessing the maximum civil penalty of $50,000. The maximum penalty of $100,000 for a subsequent violation can be applied only in a subsequent case.

The Senate recedes.

(f) The Senate bill specifies that the Attorney General may seek "monetary damages" on behalf of an aggrieved party in Title III public accommodation civil actions.

The House amendment clarifies that "monetary damages" and other relief available to aggrieved persons under Title III public accommodation suits brought by the Attorney General do not include punitive damages.

The Senate recedes.

(g) The Senate bill specifies that the courts may give consideration to an entity's "good faith" efforts to comply with the ADA in considering the amount of civil penalty.

The House version elaborates on the issue of good faith by requiring that the court consider whether an entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the particular needs of an individual with a disability.

The Senate recedes.

60. Examinations and courses

The House amendment, but not the Senate bill, specifies that any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

The Senate recedes.

61. Effective date

(a) The House amendment, but not the Senate bill, precludes suits against small businesses for 6 months or 12 months (depending on the size of the business and its gross receipts) after the effective date of title III of the Act (18 months after date of enactment) for all violations except those relating to new construction and alterations.

The Senate recedes with an amendment. The amendment deletes the introductory phrase in section 310(b) and substitutes in lieu thereof the following: "Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—". The purpose of the amendment is to make it clear that in order for an individual with a disability to bring a civil action against a small business meeting the criteria set out in the provision, the discriminatory act must occur after the applicable period has expired. The conferees note that this section gives small businesses additional time to learn the requirements of the ADA and to come into compliance with the Act before they will be subject to a civil action. The conferees fully expect that businesses will, however, make good faith efforts to comply with the Act during this additional phase-in period.

(b) With slightly different wording, the Senate bill and the House amendment provide that certain provisions of title III go into effect on the date of enactment.

The Senate recedes.

TITLE IV OF THE ADA (TELECOMMUNICATION RELAY SERVICES)

62. Definition of "Common Carrier" or "Carrier"

The House amendment deletes the phrase "and any common carrier engaged in both interstate and intrastate communication."

The Senate recedes.

63. General authority and remedies

The Senate bill specifies that the same remedies, procedures, rights, and obligations applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication.

The House amendment clarifies, without changing the meaning or intent of the Senate language.

The Senate recedes.

64. Provision of telecommunication services

The Senate bill specifies that each common carrier providing telephone voice transmission services shall provide telecommunication relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment.

The House amendment makes several clarifying changes.

(a) The House amendment specifies that a common carrier must only provide relay services "within the area in which it offers service" to ensure that a common carrier on one side of the country is not held responsible to provide services for consumers in a state on the other side of the country.

The Senate recedes with an amendment. The amendment deletes the word "within" and substitutes in lieu thereof the term "throughout."

(b) The House amendment specifies that common carriers may provide relay services "through a competitively selected vendor" in addition to providing such services through designees or in concert with other carriers.

The Senate recedes.

(c) The House amendment specifies that a common carrier is considered in compliance with FCC regulations if the common carrier is either in direct compliance itself with those regulations, or if the "entity through which [it] is providing such relay services" is in compliance with the Commission's regulations. Further, the common carrier is considered in compliance with the FCC's regulations with respect to intrastate relay services when they or their designees are in compliance with a state certified program.

The Senate recedes.

65. Regulations

The Senate bill directs the FCC to issue regulations covering, among other things, minimum standards for the relay systems, conduct by relay operators, separation of costs, and delay in the implementation date.

The House amendment includes two clarifying changes.

(a) The Senate bill requires the FCC to establish minimum standards that would be met "by common carriers" in providing relay services. The House amendment deletes the language in quotes.

The Senate recedes.

(b) With respect to the conduct of relay operators, the House amendment specifies that a relay operator is subject to the same standards of conduct that other operators are subject to under the Communications Act of 1934.

The Senate recedes.

66. Technology

The House amendment adds a reference to section 7(a) of the Communications Act of 1934.

The Senate recedes.

67. Recovery of costs

The House amendment includes the following changes applicable to recovery of costs.

(a) The House amendment specifies that costs caused by interstate relay services will be recovered from all subscribers for every interstate service, thereby ensuring that even those businesses that have private telecommunications systems will contribute to the cost of providing interstate relay services.

The Senate recedes.

(b) The House amendment authorizes State commissions to permit recovery by common carriers of costs incurred in providing intrastate relay services in states that are certified.

The Senate recedes.

(c) The Senate bill prohibits the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate relay services.

The House amendment deletes this provision.

The Senate recedes.

(d) The Senate bill extends the implementation period to three years for all common carriers and includes authority to extend it one additional year if a common carrier can demonstrate undue burden. The House amendment deletes the undue burden provision.

The Senate recedes.

68. Requirements for state certification

The Senate bill specifies that each State may submit documentation to the FCC that describes the program of such state for implementing intrastate relay services.

The House amendment specifies that such documentation must also include the procedures and remedies available for enforcing any requirements imposed by the State program. The House amendment also provides that in certifying the program the FCC must determine that the program makes available adequate procedures and remedies for enforcing the requirements of the State program. The House amendment also specifies that in a State whose program has been suspended or revoked, the Commission must take such steps as may be necessary to ensure continuity of telecommunications relay services.

The Senate recedes.

69. Closed-captioning of public service announcements

The House amendment, but not the Senate bill, adds a provision requiring the closed-captioning of all television public service announcements produced or funded by the Federal government.

The Senate recedes.

TITLE V OF THE ADA (MISCELLANEOUS PROVISIONS)

70. Construction

(a) The House amendment adds the phrase "except as otherwise provided in this Act" as a qualification to the provision construing the interpretation of the ADA.

The Senate recedes.

(b) With slightly different wording, the Senate bill and the House amendment specify the relationship between the ADA and other Federal laws (including the Rehabilitation Act) and state laws. The House amendment also specifies that nothing in the ADA shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment, in transportation provided by public and private entities, and places of public accommodations.

The Senate recedes. In light of the concerns raised by some conferees with regard to individuals with contagious diseases of public health significance who work in food handling jobs, the conferees note certain points with regard to this section. First, if a state or locality has a disease control law, or any other public health law, which places certain requirements on certain employees, employers or businesses, but which does not discriminate against people with disabilities, such laws would not be affected by or preempted in any way by the ADA. For example, if a state disease control law requires certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA. In addition, if a state or locality has a disease control law or any other public health law, which applies to certain people with disabilities (for example, if a state has a law which required people with certain contagious diseases, such as tuberculosis, to take certain precautions), that law would also not be preempted by the ADA as long as the requirements of that state or local law were designed to protect against individuals who pose a direct threat to the health or safety of others. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in a public accommodation (as "direct threat" is defined in the statute), a state public health law that similarly guarded against such threats would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

(c) The section in the Senate bill concerning insurance includes the proviso "Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III." The House amendment includes the following phrase "Paragraphs (1), (2), and

(3) shall not be used as a subterfuge to evade the purposes of titles I and III."

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that nothing in the Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

The Senate recedes.

71. State immunity

The House amendment adds states courts of competent jurisdiction to the reference to federal courts included in the Senate bill.

The Senate recedes.

72. Prohibition against retaliation and coercion

With slightly different wording, the Senate bill and the House amendment include prohibitions against retaliation and coercion.

The Senate recedes.

73. Guidelines by the ATBCB

The Senate bill provides 6 months for the issuance of guidelines. The House amendment provides 9 months.

74. Historic buildings

The House amendment, but not the Senate bill, includes specific provisions applicable to historic buildings.

The Senate recedes.

75. Technical assistance manuals

(a) The Senate bill, but not the House amendment, includes, among others, the National Council on Disability, as an agency responsible for the development of a technical assistance plan.

The Senate recedes. The conferees intend to recognize the National Council on Disability as the impetus, force, and originator of the initial legislation for the Americans with Disabilities Act, reflected in the Council's report, "Towards Independence," published in February, 1986. Therefore, the conferees agree that the National Council on Disability should be one of the federal agencies with which the Attorney General consults in developing a plan to assist entities covered under this Act. The experience, expertise, and commitment of the Council will ensure that the technical assistance activities mandated under section 506 will be comprehensive, focused, and timely.

(b) With slightly different wording, the Senate bill and the House amendment provide for the implementation of the technical assistance plan.

The Senate recedes.

(c) With slightly different wording, the Senate bill and the House amendment authorize the entering into of grants and contracts.

The Senate recedes.

(d) The Senate bill includes a section requiring agencies to provide technical assistance to covered individuals and entities.

The House amendment makes several technical and conforming changes and adds a requirement that appropriate departments and agencies develop and disseminate technical assistance manuals to those who have rights and responsibilities under the ADA no later than six months after ADA regulations are published. However, a covered entity is not excused from complying with the ADA because of any failure to receive technical assistance, including any failure in the development or dissemination of a technical assistance manual.

The Senate recedes.

76. Wilderness areas

The Senate bill specifies that the National Council on Disability shall conduct a study regarding the effect of wilderness designations on access for people with disabilities.

The House amendment adds that the Wilderness Act is not to be construed as prohibiting use of a wheelchair in a wilderness area by an individual whose disability requires the use of a wheelchair but no modifications of land are required.

The Senate recedes with an amendment. The new subsection reads:

> "(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act shall be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act, no agency shall be required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.
>
> "(2) DEFINITION.—For purposes of paragraph (1), the term 'wheelchair' means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.".

Consistent with this section and the Wilderness Act of 1964, the conferees intend that, where appropriate and consistent with the management objectives and maintenance of the wilderness character of the area, the land management agencies charged with the management responsibilities for wilderness areas designated under the authority of the Wilderness Act of 1964 should, when constructing or reconstructuring a trail, bridge or facility, comply with the intent of this Act. In cases where the Agencies have delegated or subcontracted their responsibilities, the intent of this section shall apply to the designee or contractor.

77. Congressional coverage

The Senate bill makes the provisions of the legislation applicable to Congress and the instrumentalities of Congress.

The House amendment also covers Congress and the instrumentalities of Congress but delegates to the House and the instrumentalities of Congress the responsibility to develop applicable remedies and procedures.

The House recedes to the Senate on coverage of the Senate with an amendment. The Senate recedes to the House on coverage of the House. The Senate recedes to the House on coverage of instrumentalities of the Congress. The conferees add the following construction clause: "Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act."

78. Illegal use of drugs

The Senate bill specifies that an individual with a disability does not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs. The Senate bill also makes it clear that an individual who uses illegal drugs may not be denied the benefits of medical services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

The House amendment includes clarifying and conforming changes to make this provision consistent with other provisions in the legislation concerning the treatment of users of illegal drugs:

(a) The House amendment specifies that an individual with a disability does not include an individual who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes. The provision excluding an individual who engages in the illegal use of drugs from protection (other than an individual described in section 510(c) is intended to ensure that covered entities may deny services to or take other actions against persons who illegally use drugs on that basis, without fear of being held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the term "individual with a disability"—an individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; an individual who is participating in a supervised rehabilitation program and is no longer engaged in such use; or a person who is erroneously regarded as engaging in such use, but is not engaging in such use.

The Senate recedes. Section 510(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Covered entities are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both in-patient and outpatient programs that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment specifies that it shall not be a violation for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual is no longer illegally using drugs; however nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

The Senate recedes.

(d) The House amendment specifies that an individual shall not be denied health services or other services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

The Senate recedes.

(e) The House amendment includes the same definition of "illegal use of drugs" and "drugs" set out in title I of the Act.

The Senate recedes.

79. Exclusions from the term "disability"

The Senate bill restates current policy under section 504 of the Rehabilitation Act of 1973 that the term "disability" does not include homosexuality and bisexuality. The Senate bill also excludes from the term "disability" the following mental impairments: transvestism, pedophilia, transsexualism, exhibitionism, voyeurism, compulsive gambling, kleptomania, or pyromania, gender identity disorders, current psychoactive substance-induced organic mental disorders (as defined by DSM-III-R which are not the result of medical treatment), or other sexual behavior disorders.

The House amendment lists the various exclusions by category. The first category specifies that homosexuality and bisexuality are not impairments and as such are not disabilities under the ADA. The second category includes transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. The third category includes compulsive gambling, kleptomania, or pyromania. The final category includes psychoactive substance use disorders resulting from current use of illegal drugs.

The Senate recedes.

80. Amendments to the definition of the term "handicapped individual" under the Rehabilitation Act of 1973

(a) The Senate bill includes amendments to the definition of the term "handicapped individual" used in the Rehabilitation Act of 1973 to exclude current users of illegal drugs which are consistent with the changes made to the definition of the term "individual with a disability" used in the ADA. The Senate bill also specifies that the exclusion does not apply to medical services for which the individual is otherwise entitled. The Senate bill also states that the term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the controlled Substances Act or other provisions of Federal law.

The House amendment includes the same type of conforming changes to the Rehabilitation Act which are made to the ADA (see above). However, with respect to the provision that specifies that an individual shall not be excluded from medical services on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services, the category is limited to health services and services provided under titles I, II, and III of the Rehabilitation Act of 1973.

The Senate recedes. The conferees incorporate by reference the statement of intent set out in item 16. Conferees note that, for purposes of this title, an individual covered by Executive Order 12564 who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 7(8)(C)(ii)(III) of the Rehabilitation Act. The conferees do not intend to prevent individuals covered by Executive Order 12564 or any other individuals covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 7(8)(C)(ii)(III). The Rehabilitation Act itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances, employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(b) The House amendment specifies that the term "drugs" and the phrase "current illegal use of drugs" have the same meanings as such terms have under the ADA.

The Senate recedes.

81. Alternative means of dispute resolutions

The House amendment, but not the Senate bill, provides that where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the ADA.

The Senate recedes. It is the intent of the conferees that the use of these alternative dispute resolution procedures is completely voluntary. Under no condition would an arbitration clause in a collective bargaining agreement or employment contract prevent an individual from pursuing their rights under the ADA. The conferees adopt by reference the statement of the House Judiciary Report regarding this provision.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Augustus F. Hawkins,
Major R. Owens,
Matthew G. Martinez,
Steve Bartlett,
H.W. Fawell,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications commtted to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

John D. Dingell,
Edward J. Markey,
Tom Luken,
Norman F. Lent,
Bob Whittaker,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

Matthew Rinaldo,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Glenn M. Anderson,
Robert A. Roe,
Norman Y. Mineta,
John Paul Hammerschmidt,

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Jack Brooks,
Don Edwards,
Robert W. Kastenmeier,
Hamilton Fish, Jr.,
F. James Sensenbrenner, Jr.
(except for amendment to sec. 103(d)),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Steny H. Hoyer,
Managers on the Part of the House.

Edward M. Kennedy,
Tom Harkin,
Howard M. Metzenbaum,
Paul Simon,
Orrin G. Hatch,
Dave Durenberger,
James M. Jeffords,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

Ernest F. Hollings,
Daniel K. Inouye,
John C. Danforth,
Managers on the Part of the Senate.

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Report
101-116

THE AMERICANS WITH DISABILITIES ACT OF 1989

August 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. Kennedy, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. Introduction

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16–0, ordered favorably reported S. 933, the

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Americans with Disabilities Act of 1989 (the ADA), with an amendment in the nature of a substitute.

The bill is sponsored by Senator Tom Harkin, chairman of the Subcommittee on the Handicapped, and cosponsored by Senators Kennedy, Durenberger, Simon, Jeffords, Cranston, McCain, Mitchell, Chafee, Leahy, Stevens, Inouye, Cohen, Gore, Packwood, Riegle, Boschwitz, Graham, Pell, Dodd, Adams, Mikulski, Metzenbaum, Matsunaga, Wirth, Bingaman, Conrad, Burdick, Levin, Lieberman, Moynihan, Kerry, Sarbanes, Heinz, Glenn, Shelby, Pressler, Hollings, Sanford, Wilson, Sasser, Dixon, Kerrey, Robb, Fowler, Rockefeller, Biden, Bentsen, Specter, DeConcini, Kohl, Lautenberg, D'Amato, Dole, Hatch, Warner, Pryor, and Bradley.

II. SUMMARY OF THE LEGISLATION

The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.

Title I of the ADA specifies that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the business.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 (including injunctive relief and back pay). Title I goes into effect two years after the date of enactment. For the first two years after the effective date, employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered.

Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government. In addition to a general prohibition against discrimination, title II includes specific requirements applicable to public transportation provided by public transit authorities. Finally, title II incorporates by reference the enforcement provisions in section 505 of the Rehabilitation Act of 1973.

With respect to public transportation, all new fixed route buses must be made accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A pubilc transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on a transit authority.

Title II takes effect 18 months after the date of enactment, with the exception of the obligation to ensure that new public buses are accessible, which takes effect for solicitations made 30 days after the date of enactment.

Title III of the ADA specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of a disability. Public accommodations include: restaurants, hotels, doctor's offices, pharmacies, grocery stores, shopping centers, and other similar establishments.

Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden. New construction and major renovations must be designed and constructed to be readily accessible to and usable by people with disabilities. Elevators need not be installed if the building has less than three stories or has less than 3,000 square feet per floor except if the building is a shopping center, shopping mall, or offices for health care providers or if the Attorney General decides that other categories of buildings require the installation of elevators.

Title III also includes specific prohibitions on discrimination in public transportation services provided by private entities, including the failure to make new over-the-road buses accessible five years from the date of enactment for large providers and six years for small providers.

The provisions of title III becomes effective 18 months after the date of enactment. Title III incorporates enforcement provisions in private actions comparable to the applicable enforcement provisions in title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the Attorney General, including authority to seek monetary damages and civil penalties.

Title IV of the ADA specifies that telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities (such as deaf persons) with opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.

Title V of the ADA includes miscellaneous provisions, including a construction clause explaining the relationship between the provisions in the ADA and the provisions in other Federal and State laws; a construction clause explaining that the ADA does not disrupt the current nature of insurance underwriting; a prohibition against retaliation; a clear statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

III. Hearings

Hearings were held before the Labor and Human Resources Committee and the Labor and Human Resources' Subcommittee on the Handicapped on legislation to establish a clear and comprehensive prohibition of discrimination on the basis of disability on September 27, 1988, May 9, May 10, May 16 and June 22, 1989.

On September 27, 1988, a joint hearing was held before the Subcommittee on the Handicapped and the House of Representatives' Subcommittee on Select Education on S. 2345, the Americans with Disabilities Act of 1988. Among the witnesses testifying were: Sandra Parrino, Chairperson, National Council on the Handicapped; Admiral James Watkins, Chairperson, President's Commission on the Human Immunodeficiency Virus Epidemic; Mary Linden of Morton Grove, Illinois who lived in an institution; Dan Piper, an 18-year old with Down Syndrome and Sylvia Piper of Ankeny, Iowa; Jade Calegory, a 12-year old movie actor with Spina Bifida from Corona Del Mar, California; and Lakisha Griffin from Talladega, Alabama, who attends the Alabama School for the Blind.

Also testifying were: Judith Heumann, World Institute on Disability, Berkeley, California; Gregory Hlibok, student-body president of Gallaudet University, Washington, DC; Belinda Mason from Tobinsport, Indiana who has AIDS; and W. Mitchell from Denver, Colorado, who uses a wheelchair and who was severely burned.

David Saks, on behalf of the Organization for Use of the Telephone, Baltimore, Maryland, also provided testimony.

On May 9, 1989, the Committee on Labor and Human Resources held a hearing on S. 933, the Americans with Disabilities Act of 1989. Among the witnesses were: Tony Coelho, the Majority Whip of the House of Representatives; I. King Jordan, President of Gallaudet University, Washington, DC; Justin Dart, chairperson, the Task Force on the Rights and Empowerment of Americans with Disabilities, Washington, DC.

Also testifying were: Ms. Mary DeSapio, a cancer survivor; Joseph Danowsky, an attorney who is blind; Amy Dimsdale, a college graduate who is quadriplegic and who after 5 years of looking for work remains unemployed; Harold Russell, chairman, President's Committee on Employment of People with Disabilities, Washington, DC; Zachery Fasman, U.S. Chamber of Commerce, Washington, DC; Lawrence Lorber, American Society of Personnel Administrators, Washington, DC; and Arlene Mayerson, Disability Rights Education and Defense Fund, Berkeley, California.

Others providing testimony were: Barbara Hoffman, Vice President of the National Coalition for Cancer Survivorship; Robert McGlotten, Director, Department of Legislation, AFL-CIO; the Associated General Contractors of America; and the National Organizations Responding to AIDS.

On May 10, the Subcommittee on the Handicapped heard testimony from Senator Bob Dole, Senator from Kansas and Senate Minority Leader; Perry Tillman, Paralyzed Veterans of America, New Orleans, Louisiana; Ken Tice, Advocating Change Together, Minneapolis, Minnesota; Lisa Carl who has cerebral palsy and her mother, Vickie Franke, Tacoma, Washington.

Also testifying were: the Honorable Neil Hartigan, Attorney General of the State of Illinois; Ron Mace, Barrier Free Environments, Raleigh, North Carolina; William Ball, Association of Christian Schools International, Harrisburg, Pennsylvania; Sally Douglas, National Federation of Independent Business, Washington, D.C.; Malcolm Green, National Association of Theater Owners, Boston Massachusetts; and Robert Burgdorf Jr., National Easter Seal Society, Washington, D.C.; Betty and Emory Corey, Baltimore, Maryland; and Ilene Foster, Baltimore, Maryland.

In addition, the Subcommittee heard testimony from Paul Taylor, National Technical Institute for the Deaf, Rochester, New York; Robert Yaeger, Minnesota Relay Service, Minneapolis, Minnesota; and Gerald Hines, AT&T, Basking Ridge, New Jersey.

Others providing testimony included: Chai Feldblum, Tony Califa, Nan Hunter, and Morton Halperin of the American Civil Liberties Union; Peter Bradford, chairman of the State of New York Public Service Commission; and Paul Rodgers and Caroline Chambers on behalf of the National Association of Regulatory Utility Commissioners.

On May 16, the Subcommittee on the Handicapped heard testimony from: Michael McIntyre, Queens Independent Living Center, Jamaica, New York; Mark Johnson, ADAPT, Alpharetta, Georgia; Laura Oftedahl, Columbia Lighthouse for the Blind, Washington, D.C.; and Dr. Mary Lynn Fletcher, Director, Disability Services, Loudon County, Tennessee.

Also testifying were: J. Roderick Burfield, Virginia Association of Public Transit Officials; Harold Jenkins, Cambria County Transit Authority, Johnstown, Pennsylvania; Dennis Louwerse, American Public Transit Association, Reading, Pennsylvania; Charles Webb, American Bus Association, Washington, D.C.; James Weisman, Eastern Paralyzed Veterans of America, New York, New York, and Tim Cook, National Disability Action Center, Washington, D.C.

Others providing testimony were: the Virginia Council for Independent Living; Wayne Smith, Executive Director of the United Bus Owners of America; and Theodore Knappen, Senior Vice President of Greyhound Lines, Inc.

On June 22, the Labor and Human Resources Committee heard testimony from Richard L. Thornburgh, Attorney General of the United States, and Senator Lowell P. Weicker, Jr., chief sponsor of the Americans with Disabilities Act of 1988.

IV. Need for the Legislation

The Committee, after extensive review and analysis over a number of Congresses, concludes that there exists a compelling need to establish a clear and comprehensive Federal prohibition of discrimination on the basis of disability in the areas of employment in the private sector, public accommodations, public services, transportation, and telecommunications.

NATURE AND EXTENT OF DISCRIMINATION ON THE BASIS OF DISABILITY

In general

Testimony presented to the Committee and the Subcommittee, two recent reports by the National Council on Disability ("Toward Independence" (1986) and "On the Threshold of Independence" (1988)), a report by the Civil Rights Commission ("Accommodating the Spectrum of Individual Abilities" (1983)), polls taken by Louis Harris and Associates ("The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream" (March, 1986)) and "The ICD Survey II: Employing Disabled Americans" (1987)), a report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic (1988)), and the report by the Task Force on the Rights and Empowerment of Americans with Disabilities all reach the same fundamental conclusions:

(1) Historically, individuals with disabilities have been isolated and subjected to discrimination and such isolation and discrimination is still pervasive in our society;

(2) Discrimination still persists in such critical areas as employment in the private sector, public accommodations, public services, transportation, and telecommunications;

(3) Current Federal and State laws are inadequate to address the discrimination faced by people with disabilities in these critical areas;

(4) People with disabilities as a group occupy an inferior status socially, economically, vocationally, and educationally; and

(5) Discrimination denies people with disabilities the opportunity to compete on an equal basis and costs the United States, State and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

One of the most debilitating forms of discrimination is segregation imposed by others. Timothy Cook of the National Disability Action Center testified:

> As Rosa Parks taught us, and as the Supreme Court ruled thirty-five years ago in *Brown* v. *Board of Education*, segregation "affects one's heart and mind in ways that may never be undone. Separate but equal is inherently unequal."

Discrimination also includes exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others.

Discrimination results from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also includes harms resulting from the construction of transportation, architectural, and communication barriers and the adoption or application of standards and criteria and practices and procedures based on thoughtlessness or indifference—of benign neglect.

The testimony presented by Judith Heumann, World Institute on Disability, illustrates several of these forms of discrimination:

> When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. I was forced to go into home instruction, receiving one hour of education trice a week for 3½ years. My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.
>
> When I was 19, the house mother of my college dormitory refused me admission into the form because I was in a wheelchair and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time, I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was "because of." So it was obviously because of my disability that I was discriminated against.
>
> At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forceably remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

Discrimination also includes harms affecting individuals with a history of disability, and those regarded by others as having a disability as well as persons associated with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and pernicious mythologies.

Discrimination also includes the effects a person's disability may have on others. For example, in March, 1988 the Washington Post reported the story of a New Jersey zoo keeper who refused to admit children with Downs Syndrome because he feared they would upset the chimpanzees. The Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985) cited as an example of improper discrimination on the basis of handicap a case in which "a court ruled that a cerebral palsied child, who was not a physical threat and was academically competitive, should be excluded from public school, because his teacher claimed his physical appearance 'produced a nauseating effect' on his classmates." 117 Cong Rec. 45974 (1971).

The Supreme Court in *School Board of Nassau County* v. *Arline*, 107 S. Ct. 1123 (1987) cited remarks of Senator Mondale describing a case in which a woman "crippled by arthritis" was denied a job *not* because she could not do the work but because "college trustees [thought] 'normal students shouldn't see her.'" 118 Cong Rec. 36761 (1972).

The Committee heard testimony about a woman from Kentucky who was fired from the job she had held for a number of years because the employer found out that her son, who had become ill with AIDS, had moved into her house so she could care for him. The Committee also heard testimony about former cancer victims, persons with epilepsy, a person with cerebral palsy, and others who had been subjected to similar types of discrimination.

With respect to the pervasiveness of discrimination in our Nation, the National Council explained:

> A major obstacle to achieving the societal goals of equal opportunity and full participation of individuals with disabilities is the problem of discrimination * * * The severity and pervasiveness of discrimination against people with disabilities is well documented.

The U.S. Commission on Civil Rights recently concluded that:

> Despite some improvements * * * [discrimination] persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation.

The Commission further observed that "discriminatory treatment of handicapped persons can occur in almost every aspect of their lives."

The Lou Harris polls found that:

> By almost any definition, Americans with disabilities are uniquely underprivileged and disadvantaged. They are much poorer, much less well educated and have much less social life, have fewer amenities and have a lower level of self-satisfaction than other Americans.

Admiral James Watkins, former chairperson of the President's Commission on the Human Immunodeficiency Virus Epidemic, testified that after 45 days of public hearings and site visits, the Commission concluded that discrimination against individuals with HIV infection is widespread and has serious repercussions for both the individual who experiences it and for this Nation's efforts to control the epidemic. The Report concludes:

> as long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination * * * will undermine our efforts to contain the HIV epidemic and will leave HIV-infected individuals isolated and alone.

Justin Dart, the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, testified that after 63 public forums held in every state, there is overwhelming evidence that:

> Although America has recorded great progress in the area of disability during the past few decades, our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully

> human and therefore are not fully eligible for the opportunities, services, and support systems which are available to other people as a matter of right. The result is massive, society-wide discrimination.

The U.S. Attorney General, Dick Thornburgh, on behalf of President Bush, testified that:

> Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence.

Employment

Individuals with disabilities experience staggering levels of unemployment and poverty. According to a recent Lou Harris poll not working is perhaps the truest definition of what it means to be disabled in America. Two-thirds of all disabled Americans between the age of 16 and 64 are not working at all; yet, a large majority of those not working say that they want to work. Sixty-six percent of working-age disabled persons, who are not working, say that they would like to have a job. Translated into absolute terms, this means that about 8.2 million people with disabilities want to work but cannot find a job.

Forty percent of all adults with disabilities did not finish high school—three times more than non-disabled individuals. In 1984, fifty percent of all adults with disabilities had household incomes of $15,000 or less. Among non-disabled persons, only twenty-five percent had household incomes in this wage bracket.

President Bush has stated: "The statistics consistently demonstrate that disabled people are the poorest, least educated and largest minority in America."

According to the Lou Harris poll, the majority of those individuals with disabilities not working and out of the labor force, must depend on insurance payments or government benefits for support. Eighty-two percent of people with disabilities said they would give up their government benefits in favor of a full-time job.

Lou Harris' poll also found that large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people.

According to testimony presented to the Committee by Arlene Mayerson of the Disabilities Rights Education and Defense Fund, the major categories of job discrimination faced by people with disabilties include: use of standards and criteria that have the effect of denying opportunities; failure to provide or make available reasonable accommodations; refusal to hire based on presumptions, stereotypes and myths about job performance, safety, insurance costs, absenteeism, and acceptance by co-workers; placement into dead-end jobs; under-employment and lack of promotion opportunities; and use of application forms and other pre-employment inquiries that inquire about the existence of a disability rather than about the ability to perform the essential functions of a job.

Several witnesses also explained that title I of the ADA (employment discrimination) is modeled after regulations implementing the Rehabilitation Act of 1973, which prohibits discrimination by recipients of Federal assistance and requires affirmative action by Federal contractors and that compliance with these laws has been "no big deal."

Harold Russell, the chairperson of the President's Committee on Employment of People With Disabilities, testified that for a majority of employees, for example, no reasonable accommodation is required; for many others the costs can be less than $50. According to the President's Committee which operates the Job Accommodation Network, typical accommodations provided for under $50 include:

> A timer costing $26.95 with an indicator light allowed a medical technician who was deaf to perform the laboratory tests required for her job;
>
> A receptionist who was visually impaired was provided with a light probe, costing $45, which allowed her to determine which lines on a telephone were ringing, on hold, or in use of her company;
>
> Obtaining a headset for a phone costing $49.95 allowed an insurance salesperson with cerebral palsy to write while talking.

Witnesses also explained that there will also be a need for more expensive accommodations, including readers for blind persons and interpreters for deaf persons. But even costs for these accommodations are frequently exaggerated. Dr. I. King Jordan, President of Gallaudet University, explained to the Committee:

> Often, interpreters can be hired to do other things as well as interpret—administrative secretaries or professional staff, even, who interpret on an only-as-needed basis. Most of the time, people who are hired who are deaf function without an interpreter except when they are in a meeting or except when they are attending a workshop or except when there is a very essential need for one-to-one communication. But, I think it needs to be made clear to people that the accommodations are not nearly as large as some people would lead us to believe.

In sum, testimony indicates that the provision of all types of reasonable accommodations is essential to accomplishing the critical goal of this legislation—to allow individuals with disabilities to be part of the economic mainstream of our society.

Public accommodations

Based on testimony presented at the hearings and recent national surveys and reports, it is clear that an overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation.

The National Council on Disability summarized the findings of a recent Lou Harris poll:

> The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue * * * The extent of non-participation of individuals with disabilities in social and recreational activities in alarming.

Several witnesses addressed the obvious question "Why don't people with disabilities frequent places of public accommodations and stores as often as other Americans?" Three major reasons were given by witnesses. The first reason is that people with disabilities do not feel that they are welcome and can participate safely in such places. The second reason is fear and self-consciousness about their disability stemming from degrading experiences they or their friends with disabilities have experienced. The third reason is architectural, communication, and transportation barriers.

Former Senator Weicker testified that people with disabilities spend a lifetime "overcoming not what God wrought but what man imposed by custom and law."

Witnesses also testified about the need to define places of public accommodations to include all places open to the public, not simply restaurants, hotels, and places of entertainment (which are the types of establishments covered by title II of the Civil Rights Act of 1964) because discrimination against people with disabilities is not limited to specific categories of public accommodations. The Attorney General stated that we must bring Americans with disabilities into the mainstream of society "in other words, full participation in and access to all aspects of society."

Robert Burgdorf, Jr., currently a Professor of Law at the District of Columbia School of Law, testifying on behalf of the National Easter Seal Society, stated:

> * * * it makes no sense to bar discrimination against people with disabilities in theaters, restaurants, or places of entertainment but not in regard to such important things as doctors' offices. It makes no sense for a law to say that people with disabilities cannot be discriminated against if they want to buy a pastrami sandwich at the local deli but that they can be discriminated against next door at the pharmacy where they need to fill a prescription. There is no sense to that distinction.

Witnesses identified the major areas of discrimination that need to be addressed. The first is lack of physical access to facilities. Witnesses recognized that it is probably not feasible to require that existing facilities be completely retrofitted to be made accessible. However, it is appropriate to require modest changes. Ron Mace, an architect, described numerous inexpensive changes that could be made to make a facility accessible, including installing a permanent or portable ramp over an entrance step; installing offset hinges to widen a doorway; relocating a vending machine to clear an accessible path; and installing signage to indicate accessible routes and features within facilities.

Several witnesses also recognized that when renovations are made that affect or could affect usability, the renovations should enhance accessibility and that newly constructed buildings should be fully accessible because the additional costs for making new facilities accessible are often "negligible." According to Ron Mace, there is absolutely no reason why new buildings constructed in America cannot be barrier-free since additional cost is not the factor. He testified that the problem is that "there is right now no training provided for designers in our country on how to design for children, older people and disabled people."

Additional areas of discrimination that witnesses identified include: the imposition or application of standards or criteria that limit or exclude people with disabilities; the failure to make reasonable modifications in policies to allow participation, and a failure to provide auxiliary aids and services.

For example, Greg Hlibok and Frank Bowe testified about the need for places of public accommodations to take steps to enhance safety for persons with hearing impairments. Laura Oftedahl testified about the lack of access and unnecessary dangers visually impaired people face because of lack of simple, inexpensive auxiliary aids.

Public services

Currently, Federal law prohibits recipients of Federal assistance from discriminating against individuals with disabilities. Many agencies of State and local government receive Federal aid and thus are currently prohibited from engaging in discrimination on the basis of disability. Witnesses testified about the inequity of limiting protection based on the receipt of Federal funding. For example, Neil Hartigan, the Attorney General from Illinois, testified that:

> Under the current Federal law, the Rehabilitation Act's nondiscrimination requirements are tied to the receipt of Federal financial assistance. Unfortunately, what this translates to is total confusion for the disabled community and the inability to expect consistent treatment. Where there is no state law prohibiting discriminatory practices, two programs that are exactly alike, except for funding sources, can treat people with disabilities completely differently than others who don't have disabilities.

Mr. Hartigan also focused on the need to ensure access to polling places: "You cannot exercise one of your most basic rights as an American if the polling places are not accessible." The Committee heard about people with disabilities who were forced to vote by absentee ballot before key debates by the candidates were held.

Dr. Mary Lynn Fletcher testified that access to all public services is particularly critical in rural areas, because State and local government activities are frequently the major activities in such small towns. Since Federal aid frequently does not reach small rural towns, current law thus does not protect people with disabilities in such areas from discrimination.

Transportation

Transportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society. Timothy Cook testified that "access to transportation is the key to opening up education, employment, recreation; and other provisions of the [ADA] are meaningless unless we put together an accessible public transportation system in this country." The National Council on Disability has declared that "accessible transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities."

Harold Russell, testifying for the President's Committee on Employment of People with Disabilities made the same point when he stated:

> To have less than adequate accessible public transportation services for an individual who is protected from discrimination in employment, or who has received other numerous federally funded services, is analogous to throwing an 11-foot rope to a drowning man 20 feet offshore and then proclaiming you are going more than halfway.

Witnesses also testified about the need to pursue a multi-modal approach to ensuring access for people with disabilities which provides that all new buses used for fixed routes are accessible and paratransit is made available for those who cannot use the fixed route accessible buses.

For some people with disabilities who lead or would like to lead spontaneous, independent lives integrated into the community, paratransit is often inadequate or inappropriate for the following reasons, among others: the need to make reservations in advance often conflicts with one's work schedule or interests in going out to restaurants and the like; the cost of rides when used frequently is often exorbitant; limitations on time of day and the number of days that the paratransit operates; waiting time; restrictions on use by guests and nondisabled companions who are excluded from accompanying the person with a disability; the expense to the public agency; and restrictions on eligibility placed on use by social service agencies.

However, witnesses also stressed that there are some people with disabilities who are so severely disabled that they cannot use accessible mainline transit and thus there is a need to have a paratransit system for these people.

Witnesses also addressed common myths about making mainline buses accessible. Harold Jenkins, the General Manager of the Cambria County Transit Authority in Johnstown, Pennsylvania, testified that his system is 100% accessible and operates without problem, notwithstanding hilly terrain and inclement weather, including snow, flooding, and significant extremes in temperature.

He also explained that when the decision was initially made to make the fleet 100% accessible there was fear and reluctance on the part of the disability community, the drivers, and the general public. That fear and reluctance has now disappeared. Jenkins concluded that mainline access works in his community because of the commitment by everyone to make it work. Thus, there is a need to train and educate top management, drivers, and the general public as well as the disability community.

The Committee also heard and received written testimony that the new generation of lifts are not having the maintenance problems experienced in the past and they can operate in inclement weather. The Architectural Transportation Barriers Compliance Board has reported that currently most problems with lift operation are the direct result of driver error and that lift maintenance is but one facet of a good maintenance program. Thus, transit authorities reporting problems with lifts are generally those that also report problems with general maintenance.

With respect to intercity transportation, the Committee learned about reasonably priced lifts that can be installed on buses which will enable people using wheelchairs to have access to these buses. This is particularly critical in rural areas where these buses are often the only mode of transportation that is available.

Telecommunications

Dr. I. King Jordan, President of Gallaudet University, noted to the Committee that more than 100 years ago Alexander Graham Bell invented the telephone in the hope that he could close the communication gap between deaf and hearing people. According to Dr. Jordan: "Not only did the telephone not help close the gap, but in many ways it widened it and has become one more barrier in the lives of deaf people."

Several witnesses testified about the critical need to establish relay systems which will enable hearing impaired and communication impaired persons who use telecommunication devices for the deaf (TDDs) to make calls to and receive calls from individuals using voice telephones. Dr. Jordan explained:

> The simplest task often becomes a major burden when we do not have access to the telephone: the person who wants to call a doctor for an appointment or the person who has to call his boss and tell him he cannot show up for work that day, someone at home who needs to call a plumber to fix a leak, or maybe a theatergoer who wants to make reservations or go to dinner.

Robert Yeager, who operates the Minnesota Relay Service, explained the importance of the relay this way:

> As a former relay operator myself, I have seen the difference these services can make in people's lives * * * A woman calls an ambulance when her husband has a heart attack; someone sets up a job interview and gets a job; a teenager gets their first date * * *

Dr. Jordan summed up the need for a national relay system by stating:

> The phone is a necessity, and it is a necessity for all of us, not just people who can hear * * * By requiring nationwide telephone relay service for everyone, it will help deaf people achieve a level of independence in employment

and public accommodations that is sought by other parts of the ADA.

Enforcement

Several witnesses emphasized that the rights guaranteed by the ADA are meaningless without effective enforcement provisions. Illinois Attorney General Neil Hartigan explained that:

> The whole trick is to make it more expensive to break the law than it is to keep the law. The vast majority of businesspeople want to keep the law. They just have got a bottom line they have got to meet. They can't have somebody else having an unfair competitive advantage by getting away with a discriminatory practice. That is why we need teeth in the law. That is why we put the penalties in the law and the damages in the law.

Mr. Hartigan explained that the inclusion of penalties and damages in the driving force that facilitates voluntary compliance:

> When you don't have the penalties, there is no enforcement possibilities. Right now * * * we can have traditional as well as punitive damages. We can have injunctive activity. We have got a range of weapons we can use if we have to use them. But, the fact that you've got it, the fact they know you are serious about it, keeps you from having to use it. We have 3,000 cases where we haven't had to go to court.

Summary

In sum, the unfortunate truth is that individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the ability of such individuals to participate in and contribute to society.

THE EFFECTS OF DISCRIMINATION ON INDIVIDUALS WITH DISABILITIES

Discrimination has many different effects on individuals with disabilities. Arlene Mayerson of the Disabilities Rights Education and Defense Fund testified about the nature of discrimination against people with disabilities:

> The discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured by the unchallenged equation of disability with incapacity and by the gloss of "good intentions." The innate biological and physical "inferiority" of disabled people is considered self-evident. This "self-evident" proposition has served to justify the exclusion and segregation of disabled people from all aspects of life. The social consequences that have attached to being disabled often bear no relationship to the physical or mental limitations imposed by the disability. For example, being paralyzed has meant far more than

> being unable to walk—it has meant being excluded from public schools, being denied employment opportunities and being deemed an "unfit parent." These injustices co-exist with an atmosphere of charity and concern for disabled people.

Dr. I. King Jordan, the President of Gallaudet University, explained that:

> Discrimination occurs in every facet of our lives. There is not a disabled American alive today who has not experienced some form of discrimination. Of course, this has very serious consequences. It destroys healthy self-concepts and slowly erodes the human spirit. Discrimination does not belong in the lives of disabled people.

Judith Heumann explained that:

> In the past, disability has been a cause of shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity * * * This stigma scars for life.

Discrimination produces fear and reluctance to participate. Robert Burgdorf and Harold Jenkins testifed that fear of mistreatment and discrimination and the existence of architectural, transportation, and communication barriers are critical reasons why individuals with disabilities don't participate to the same extent as nondisabled people in public accommodations and transportation.

Dr. Mary Lynn Fletcher testifed about the factors that isolate people with disabilities and then explained that when one adds the rural factor on top of everthing else it "obliterates the person."

Discrimination results in social isolation and in some cases suicide.

Justin Dart testifed before the Committee about how several of his brothers had committed suicide because of their disabilities and about a California woman, a mother, a TV director before becoming disabled who said to him:

> We can go just so long constantly reaching dead ends. I am broke, degraded, and angry, have attempted suicide three times. I know hundreds. Most of us try, but which way and where can we go? What and who can we be? If I were understood, I would have something to live for.

THE EFFECTS OF DISCRIMINATION ON SOCIETY

The Committee also heard testimony and reviewed reports concluding that discrimination results in dependency on social welfare programs that cost the taxpayers unnecessary billions of dollars each year. Sandy Parrino, the chairperson of the National Council on Disability, testified that discrimination places people with disabilities in chains that:

> * * * bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

She added that:

> * * * it is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

President Bush has stated:

> On the cost side, the National Council on the Handicapped states that current spending on disability benefits and programs exceeds $60 billion annually. Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues.

Attorney General Thornburgh added that:

> We must recognize that passing comprehensive civil rights legislation protecting persons with disabilities will have direct and tangible benefits for our country * * * Certainly, the elimination of employment discrimination and the mainstreaming of persons with disabilities will result in more persons with disabilities working, in increased earnings, in less dependence on the Social Security system for financial support, in increased spending on consumer goods, and increased tax revenues.

Justin Dart testified that it is discrimination and segregation that are preventing persons with disabilities from becoming self-reliant:

> * * * and that are driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracy. We are already paying unaffordable and rapidly escalating billions in public and private funds to maintain ever-increasing millions of potentially productive Americans in unjust, unwanted dependency.

Thus, discrimination makes people with disabilities dependent on social welfare programs rather than allowing them to be taxpayers and consumers.

Discrimination also deprives our Nation of a valuable source of labor in a period of labor shortages in certain jobs.

President Bush has stated:

> The United States is now beginning to face labor shortages as the baby boomers move through the work force. The disabled offer a pool of talented workers whom we simply cannot afford to ignore, especially in connection with the high tech growth industries of the future.

Jay Rochlin, the executive director of the President's Committee on Employment of People with Disabilities, has stated:

> The demographics have given us an unprecedented 20 year window of opportunity. Employers will be desperate to find qualified employees. Of necessity, they will have to look beyond their traditional sources of personnel and work to attract minorities, women, and others for a new

workforce. Our challenge is to insure that the largest minority, people with disabilities, is included.

Discrimination also negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities. Dr. I. King Jordan testified that:

> We must stop sending disabled youth conflicting signals. America makes substantial investments in the education and development of these young people, then we deny them the opportunity to succeed and to graduate into a world that treats them with dignity and respect.

Sylvia Piper, a parent of a child with developmental disabilities testified that:

> We have invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. * * * Are we going to allow this investment of time, energy, and dollars, not to mention Dan's ability and quality of life, to cease when he reaches 21?

Attorney General Thornburgh made the same point in his testimony:

> The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

CURRENT FEDERAL AND STATE LAWS ARE INADEQUATE; NEED FOR COMPREHENSIVE FEDERAL LEGISLATION

State laws are inadequate to address the pervasive problems of discrimination that people with disabilities are facing. As Neil Hartigan, testified,

> This is a crucial area where the Federal Government can act to establish uniform minimum requirements for accessibility.

Admiral Watkins, testified that:

> My predecessor [Sandy Parrino] here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

According to Harold Russell:

> The fifty State Governors' Committees, with whom the President's Committee works, report that existing State laws do not adequately counter such acts of discrimination.

Current Federal law is also inadequate. Currently, Federal antidiscrimination laws only address discrimination by Federal agencies and recipients of Federal financial assistance. Last year, Congress amended the Fair Housing Act to prohibit discrimination against people with disabilities. However, there are still no protections against discrimination by employers in the private sector, by places of public accommodation, by State and local government agencies that do not receive Federal aid, and with respect to the provision of telecommunication services. With respect to the provision of accessible transportation services, there are still misinterpretations by executive agencies and some courts regarding transportation by public entities and lack of protection against private transportation companies.

The need to enact omnibus civil rights legislation for individuals with disabilities was one of the major recommendations of the National Council on Disability in its two most recent reports to Congress. In fact S. 2345, the Americans With Disabilities Act of 1988, introduced during the 100th Congress, was developed by the Council.

The need for omnibus civil rights legislation was also one of the major recommendations of the Presidential Commission on the HIV Epidemic:

> Comprehensive Federal anti-discrimination legislation, which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations and participation in government programs should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

Attorney General Thornburgh, on behalf of President Bush, also testified about the importance of enacting comprehensive civil rights legislation for people with disabilities:

> The Committee is to be commended for its efforts in drafting S. 933. One of its most impressive strengths is its comprehensive character. Over the last 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections.

VISION FOR THE FUTURE

Many of the witnesses described the vision of the Americans With Disabilities Act.

Sandy Parrino testified that:

> Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities.

Tony Coelho shared the following observation with the Committee:

> While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason—they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

Dr. Jordan testified that the ADA is necessary to demonstrate that disabled people:

> Can have the same aspirations and dreams as other American citizens. Disabled people know that their dreams can be fulfilled.

Dr. Jordan also testified that passage of ADA:

> Will tell disabled Americans that they are indeed equal to other Americans and that discrimination toward disabled persons will no longer be tolerated in our country. It will also make a powerful statement to the world that America is true to its ideals. That is the full measure of the American dream.

Perry Tillman, a Vietnam veteran, testified that:

> I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs I didn't lose my ability to achieve my dreams. Myself and other veterans before me fought for freedom for all Americans. But when I came home and found out that what I fought for applied to everyone but me and other handicapped people, I couldn't stop fighting. I have fought since my injury in Vietnam to regain my rightful place in society. I ask that you now join me in ending this fight and give quick and favorable consideration to the ADA in order to allow all Americans, disabled or not, to take part equally in American life.

CONCLUSION

In conclusion, there is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabillities into the economic and social mainstream of American life. Further, there is a need to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities. Finally, there is a need to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The difficult task before the Committee and, indeed, the Congress, is to establish standards that fulfill this mandate in a clear, balanced, and reasonable manner. The Committee believes that this legislation has done that. This report explains in detail how that balance has been struck.

V. SUMMARY OF COMMITTEE ACTION

S. 933 was brought for markup at the Committee on Labor and Human Resources executive session on August 2, 1989. At that time, the Committee discussed three amendments, of which two were adopted. Senator Harkin offered an amendment in the nature of a substitute, which included amendment No. 541, proposed by Senator McCain concerning amending the substitute by adding a provision concerning technical assistance, which was adopted by voice vote. Senator Hatch offered and then withdrew an amendment that would have extended the scope of coverage to include the Congress.

The Committee voted to adopt and report S. 933, as amended, as an amendment in the nature of a complete substitute, by a roll call vote of 16-0.

VI. EXPLANATION OF THE LEGISLATION

DEFINITION OF THE TERM "DISABILITY"

Section 3(2) of the legislation defines the term "disability" for purposes of this legislation. The definition of the term "disability" included in the bill is comparable to the definition of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act of 1973 and section 802(h) of the Fair Housing Act.

It is the Committee's intent that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare of the regulations implementing section 504 (42 Fed. Reg. 22685 et. seq. (May 4, 1977)) and the analysis by the Department of Housing and Urban Development of the regulations implementing the Fair Housing Amendments Act of 1988 apply to the definition of the term "disability" included in this legislation.

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Committee to make use of up-to-date, currently accepted terminology. In regard to this legislation, as well as in other contexts, the Congress has been apprised of the fact that to many individuals with disabilities the terminology applied to them is a very significant and sensitive issue.

As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities and organizations representing them object to the use of such terms as "handicapped person" or "the handicapped." In recent legislation, Congress has begun to recognize this shift of terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability.

The Committee concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

The term "disability" means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

The first prong of the definition includes any individual who has a "physical or mental impairment." A physical or mental impairment means—(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

It is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. The term includes, however, such conditions, diseases and infections as: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular distrophy, multiple sclerosis, infection with the Human Immunodeficiency Virus, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism.

The term "physical or mental impairment" does not include simple physical characteristics, such as blue eyes or black hair. Further, because only physical or mental impairments are included, environmental, cultural, and economic disadvantages are not in themselves covered. For example, having a prison record does not constitute having a disability. Age is not a disability, nor is homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental impairment, such as epilepsy, the person may be considered as having a disability or purposes of this legislation.

A physical or mental impairment does not constitute a disability under the first prong of the definition for purposes of the ADA unless its severity is such that it results in a "substantial limitation of one or more major life activities." A "major life activity" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic will have a substantial difficulty in the major life activity of walking; a deaf person will have a substantial difficulty in hearing aural communications; and a person with lung disease will have a substantial limitation in the major life activity of breathing. As noted by the U.S. Department of Justice, "Application of Section 504 of the Rehabilitation Act to HIV-Infected Individuals," September 27, 1988, at 9-11, a person infected with the Human Immunodeficiency Virus is covered under the first prong of the definition of the term "disability."

Persons with minor, trivial impairments, such as a simple infected finger are not impaired in a major life activity. A person is considered an individual with a disability for purposes of the first prong of the definition when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort. Moreover, whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids.

The second prong of the definition of the term "disability" includes an individual who has a record of such an impairment, i.e., an individual who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limtis one or more major life activities.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment which previously substantially limited them, in a major life activity. Discrimination on the basis of such a past impairment would be prohibited under this legislation. Frequently occurring examples of the first group (i.e., those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (i.e., those who have been misclassified as having an impairment) are persons who have been misclassified as mentally retarded.

The third prong of the definition includes an individual who is regarded as having a covered impairment. This third prong includes an individual who has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a covered entity as constituting such a limitation. The third prong also includes an individual who has a physical or mental impairment that substantially limits major activities only as a result of the attitudes of others toward such impairment or has no physical or mental impairment but is treated by a covered entity as having such an impairment.

The rationale for this third prong was clearly articulated by the U.S. Supreme Court in *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987). The Court noted that Congress included this third prong because it was as concerned about the effect of an impairment on others as it was about its effect on the individual. As the Court noted, the third prong of the definition is designed to protect individuals who have impairments that do not in fact substantially limit their functioning. The Court explained:

> Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment. 480 U.S. at 283.

The Court went on to conclude that:

> By amending the definition of "handicapped individual" to include not only those who are actually physically impaired but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment.

This third prong is particularly important for individuals with stigmatic conditions that are viewed as physical impairments but do not in fact result in a substantial limitation of a major life activity. For example, severe burn victims often face discrimination.

Another important goal of the third prong of the definition is to ensure that persons with medical conditions that are under control, and that therefore do not currently limit major life activities, are not discriminated against on the basis of their medical conditions. For example, individuals with controlled diabetes or epilepsy are often denied jobs for which they are qualified. Such denials are the result of negative attitudes and misinformation.

Other examples of individuals who fall within the "regarded as" prong of the definition include people who are rejected for a particular job for which they apply because of findings of a back abnormality on an x-ray, notwithstanding the absence of any symptoms, or people who are rejected for a particular job solely because they wear hearing aids, even though such people may compensate substantially for their hearing impairments by using their aids, speechreading, and a variety of other strategies.

A person who is excluded from any activity covered under this Act or is otherwise discriminated against because of a covered entity's negative attitudes towards disability is being treated as having a disability which affects a major life activity. For example, if a public accommodation, such as a restaurant, refused entry to a person with cerebral palsy because of that person's physical appearance, that person would be covered under the third prong of the definition. Similarly, if an employer refuses to hire someone because of a fear of the "negative reactions" of others to the individual, or because of the employer's perception that the applicant had a disability which prevented that person from working, that person would be covered under the third prong. See, e.g., *Arline,* 480 U.S. at 284; *Doe* v. *Centinela Hospital,* 57 U.S.L.W. 2034, No. CV-87-2514-PAR (C.D.Cal., June 30, 1988), *Thornhill* v. *Marsh,* 49 FEP Cases 6 (Feb. 2, 1989) (9th Cir. 1989).

TITLE I—EMPLOYMENT

Title I of the legislation sets forth prohibitions against discrimination on the basis of disability by employers, employment agencies, labor organizations, or joint labor-management committees (hereinafter referred to as "covered entities") with respect to hiring and all terms, conditions, and privileges of employment.

Scope of coverage

The bill covers employers (including governments, governmental agencies, and political subdivisions) who are engaged in an industry affecting commerce and who have 15 or more employees for each working day in each of 20 or more calender weeks in the current or preceding calendar year and any agent of such a person; except, for the two years following the effective date of title I, only entities with 25 or more employees are covered. Additional entities covered by title I of the legislation are employment agencies, labor organizations, or joint labor-management committees.

Consistent with title VII of the Civil Rights Act of 1964, the term "employer" under this legislation does not include (i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

Definitions

Several of the definitions set out in title VII of the Civil Rights Act of 1964 are adopted or incorporated by reference in this legislation (Commission, employer, person, labor organization, employment agency, commerce, and industry affecting commerce). The term "employee" means an individual employed by an employer. The exception set out in title VII of the Civil Rights Act of 1964 for elected officials and their employees and appointees has been deleted.

Actions covered by this legislation

Section 102(a) of the legislation specifies that no covered entity shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

The phrasing of this section is consistent with regulations implementing section 504 of the Rehabilitation Act of 1973. Consistent with these regulations, the phrase "other terms, conditions, and privileges of employment" includes: (1) recruitment, advertising, and the processing of applications for employment; (2) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring; (3) rates of pay or any other form of compensation and changes in compensation; (4) job assignment, job classification, organizational structures, position descriptions, lines of progression, and seniority lists; (5) leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether or not adminsitered by the covered entity; (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; and (8) employer-sponsored activities, including social or recreational programs.

Qualified individual with a disability

The term "qualified individual with a disability" is defined in section 101(7) of the bill to mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

This definition is comparable to the definition used in regulations implementing section 501 and section 504 of the Rehabilitation Act of 1973. The phrase "essential functions" means job tasks that are fundamental and not marginal. The point of including this phrase within the definition of a "qualified individual with a disability" is to ensure that employers can continue to require that all applicants and employees, including those with disabilities, are able to perform the essential, i.e., non-marginal functions of the job in question.

As the 1977 regulations issued by the Department of Health, Education, and Welfare pointed out "inclusion of this phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job." 42 Fed. Reg. 22686 (1977). In determining what constitutes the essential functions of the job, consideration should be given to the employer's judgment regarding what functions are essential as a matter of business necessity.

The basic concept is that an employer may require that every employee be qualified to perform the essential functions of a job. The term "qualified" refers to whether the individual is qualified at the time of the job action in question; the mere possibility of future incapacity does not by itself render the person not qualified.

By including the phrase "qualified individual with a disability," the Committee intends to reaffirm that this legislation does not undermine an employer's ability to choose and maintain qualified workers. This legislation simply provides that employment decisions must not have the purpose of effect of subjecting a qualified individual with a disability to discrimination on the basis of his or her disability.

Thus, under this legislation an employer is still free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, suppose an employer has an opening for a typist and two persons apply for the job, one being an individual with a disability who types 50 words per minute and the other being an individual without a disability who types 75 words per minute, the employer is permitted to choose the applicant with the higher typing speed.

On the other hand, if the two applicants are an individual with a hearing impairment who requires a telephone headset with an amplifier and an individual without a disability, both of whom have the same typing speed, the employer is not permitted to choose the individual without a disability because of the need to provide the needed reasonable accommodation.

In the above example, the employer would be permitted to reject the applicant with a disability and choose the other applicant for reasons not related to the disability or the accommodation or otherwise prohibited by this legislation. In other words, the employer's obligation is to consider applicants and make decisions without regard to an individual's disability, or the individual's need for reasonable accommodation. But, the employer has no obligation under this legislation to prefer applicants with disabilities over other applicants on the basis of disability.

Under this legislation an employer may still devise physical and other job criteria and tests for a job so long as the criteria or tests are job-related and consistent with business necessity. Thus, for example, an employer can adopt a physical criterion that an applicant be able to lift fifty pounds, if that ability is necessary to an individual's ability to perform the essential functions of the job in question.

Moreover, even if the criterion is legitimate, the employer must determine whether a reasonable accommodation would enable the person with the disability to perform the essential functions of the job without imposing an undue hardship on the business.

Finally, this legislation prohibits use of a blanket rule excluding people with certain disabilities except in the very limited situation where in all cases physical condition by its very nature would prevent the person with a disability from performing the essential functions of the job, even with reasonable accommodations.

It is also acceptable to deny employment to an applicant or to fire an employee with a disability on the basis that the individual poses a direct threat to the health or safety of others or poses a direct threat to property. The determination that an individual with a disability will pose a safety threat to others must be made on a case-by-case basis and not be based on generalizations, misperceptions, ignorance, irrational fears, patronizing attitudes, or pernicious mythologies.

The employer must identify the specific risk that the individual with a disability would pose. The standard to be used in determining whether there is a direct threat is whether the person poses a significant risk to the safety of others or to property, not a speculative or remote risk, and that no reasonable accommodation is available that can remove the risk. (See section 102(b) of the legislation). See also *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987). For people with mental disabilities, the employer must identify the specific behavior on the part of the individual that would pose the anticipated direct threat.

Making such a determination requires a fact-specific individualized inquiry resulting in a "well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives." *Hall* v. *U.S. Postal Service*, 857 F.2d 1073, 1079 (6th Cir. 1988), quoting *Arline*. See also *Mantolete* v. *Bolger*, 757 F.2d 1416 (9th Cir. 1985) and *Strathie* v. *Dept. of Transportation*, 716 F.2d 227 (3d Cir. 1983).

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under title I of this legislation.

In light of this legislation, the Committee expects that within two years from the date of enactment (the effective date of title I of this legislation), the Secretary of Transportation will undertake a thorough review of these regulations to ascertain whether the standards conform with current knowledge about the capabilties of persons with disabilities and currently available technological aids and devices and in light of section 504 of the Rehabilitation Act of 1973 and make any necessary changes within the two year period.

Specific forms of discrimination prohibited

As explained above, section 1029a) of the bill includes a general prohibition against discrimination on the basis of disability against a qualified individual with a disability. Section 102(b) of the bill specifies specific forms of discrimination that are prohibited by section 102(a).

Section 102(b)(1) of the legislation specifies that the term "discrimination" includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.

Thus, covered entities are required to make employment decisions based on facts applicable to individual applicants or employees, and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

For example, it would be a violation of this legislation if an employer were to limit the duties of an individual with a disability based on a presumption of what was best for such individual or based on a presumption about the ability of that individual to perform certain tasks. Similarly, it would be a violation for an employer to adopt separate lines of progression for employees with disabilities based on a presumption that no individual with a disability would be interested in moving into a particular job.

It would also be a violation to deny employment to an applicant based on generalized fears about the safety of the applicant or higher rates of absenteeism. By definition, such fears are based on averages and group-based predictions. This legislation requires individualized assessments which are incompatible with such an approach. Moreover, even group-based fears may be erroneous. In 1973, a study examined the job performance, safety record and attendance of 1,452 physically impaired employees of the E.I. du Pont de Nemours and Company (Wolfe, "Disability is No Hardship for du Pont").

The study was intended, in part, to determine the validity of several concerns expressed by employers with regard to hiring veterans with disabilities: (1) insurance rates will skyrocket; (2) considerable expense will be involved in making the necessary adjustments at the place of work; (3) safety records will be jeopardized; (4) special privileges will have to be granted; and (5) other employees may not accept workers with disabilities.

A du Pont executive said:

> Every one of these reasons for not considering the handicapped veteran is not only a myth—but has been proven through experience to hold no semblance of fact whatsoever.

Regarding insurance, the executive added

> Du Pont has had no increase in compensation costs as a result of hiring the handicapped and no lost-time injuries of the handicapped have been experienced.

With regard to the other concerns, the study showed that the disabled worker performed as well as or better than their non-disabled co-workers. The fears of safety and absenteeism were unfounded.

Some specific findings of the study were as follows:

> Ninety-one percent of Du Pont's disabled workers rated average or better in performance.
>
> Only four percent of the workers with disabilities were below average in safety records; more than half were above average.
>
> Ninety-three percent of the workers with disabilities rated average or better with regard to job stability (turnover rate).
>
> Seventy-nine percent of the workers with disabilities rated average or better in attendance.
>
> Fellow employees did not resent necessary accommodations made for employees with disabilities.

In addition, employers may not deny health insurance coverage completely to an individual based on the person's diagnosis or disability. For example, while it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments, e.g., only a specified amount per year for mental health coverage, a person who has a mental health condition may not be denied coverage for other conditions such as for a broken leg or for heart surgery because of the existence of the mental health condition. A limitation may be placed on reimbursements for a procedure or the types of drugs or procedures covered e.g., a limit on the number of x-rays or non-coverage of experimental drugs or procedures; but, that limitation must apply to persons with or without disabilities. All people with disabilities must have equal access to the health insurance coverage that is provided by the employer to all employees.

The ADA does not, however, affect pre-existing condition clauses included in insurance policies offered by employers. Thus, employers may continue to offer policies that contain pre-existing condition exclusions, even though such exclusions adversely affect people with disabilities, so long as such clauses are not used as a subterfuge to evade the purposes of this legislation.

For additional explanations of the treatment of insurance under this legislation, see the discussion in the report on insurance under title V of the legislation.

Section 102(b)(2) of the legislation specifies that "discrimination" includes participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title. Such relationships include a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs.

Section 102(b)(3) of the legislation specified that "discrimination" includes utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.

Paragraphs (2) and (3) of the legislation are derived from provisions set out in the title I of the ADA, as originally introduced (which has been deleted by the Substitute) and general forms of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973 (see e.g., 45 CFR Part 84). Thus, the Substitute should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA and these concepts are subsumed within the provision of the subsequent titles of the legislation. Further, this legislation in no way is intended to diminish the continued viability of sheltered workshops and programs implementing the Javits-Wagner O'Day Act.

Subparagraphs (B) and (C) incorporate a disparate impact standard to ensure that the legislative mandate to end discrimination does not ring hollow. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted:

> These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design.

The Court also noted, however, that section 504 was not intended to require that a "Handicapped Impact Statement" be prepared by a covered entity before any action was taken that might conceivably affect people with disabilities. Thus, the Court rejected "the boundless notion that all disparate-impact showings constitute prima facie cases under section 504."

Section 101(b)(4) of the legislation specifies that "discrimination" includes excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Thus, assume for example that an applicant applies for a job and discloses to the employer that his or her spouse has a disability. The employer believes the applicant is the most qualified person for the job. The employer, however, assuming without foundation that the applicant will have to miss work or frequently leave work early or both, in order to care for his or her spouse, declines to hire the individual for such reasons. Such a refusal is prohibited by this subparagraph.

In contrast, assume that the employer hires the applicant. If he or she violates a neutral employer policy concerning the attendance or tardiness, he or she may be dismissed even if the reason for the absence or tardiness is to care for the spouse. The employer need not provide any accommodation to the nondisabled employee.

Section 102(b)(5) of the legislation specifies that discrimination includes the failure by a covered entity to make reasonable accommodations to the known physicial or mental limitations of a qualified individual with a disability who is an applicant or employee, unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

The duty to make reasonable accommodations applies to all employment decisions, not simply to hiring and promotion decisions. This duty has been included as a form of non-discrimination on the basis of disability for almost fifteen years under section 501 and section 504 of the Rehabilitation Act of 1973 and under the nondiscrimination section of the regulations implementing section 503 of that Act.

The term "reasonable accommodation" is defined in section 101(8) of the legislation. The definition includes illustrations of accommodations that may be required in appropriate circumstances. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation. Furthermore, the list is not meant to suggest that employers must follow all of the actions listed in each particular case. Rather, the decision as to what reasonable accommodation is appropriate is one which must be determined based on the particular facts of the individual case. This fact-specific case-by-case approach to providing reasonable accommodations is generally consistent with interpretations of this phrase under sections 501, 503, and 504 of the Rehabilitation Act of 1973.

The first illustration of a reasonable accommodation included in the legislation is making existing facilities used by employees in general, readily accessible to and usable by individuals with disabilities.

The legislation also specifies, as examples of reasonable accommodation, job restructuring, part-time or modified work schedules and reassignment to a vacant position.

Job restructuring means modifying a job so that a person with a disability can perform the essential functions of the position. Barriers to performance may be eliminated by eliminating nonessential elements; redelegating assignments; exchanging assignments with another employee; and redesigning procedures for task accomplishment.

Part-time or modified work schedules can be a no-cost way of accommodation. Some people with disabilities are denied employment opportunities because they cannot work a standard schedule. For example, persons who need medical treatment may benefit from flexible or adjusted work schedules. A person with epilepsy may require constant shifts rather than rotation from day to night shifts. Other persons who may require modified work schedules are persons with mobility impairments who depend on a public transportation system that is not currently fully accessible. Allowing constant shifts or modified work schedules are examples of means to accommodate the individual with a disability to allow him or her to do the same job as a nondisabled person. This legislation does not entitle the individual with a disability to more paid leave time than non-disabled employees.

Reasonable accommodation may also include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and the employer from losing a valuable worker.

Reassignment as a reasonable accommodation is not available to applicants for employment. The Committee believes that efforts should be made to accommodate an employee in the position that he or she was hired to fill before reassignment should be considered. The Committee also wishes to make clear that reassignment need only be to a vacant position—"bumping" another employee out of a position to create a vacancy is not required.

The section 504 regulations provide that "a recipient's obligation to comply with this subpart [employment] is not affected by any inconsistent term of any collective bargaining agreement to which it is a party." 45 CFR 84.11(c). This policy also applies to the ADA. An employer cannot use a collective bargaining agreement to accomplish what it otherwise would be prohibited from doing under this legislation. For example, a collective bargaining agreement that contained physical criteria which caused a disparate impact on individuals with disabilities and were not job-related and consistent with business necessity could be challenged under this legislation.

The collective bargaining agreement could be relevant, however, in determining whether a given accommodation is reasonable. For example, if a collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, it may be considered as a factor in determining whether it is a reasonable accommodation to assign an employee with a disability without seniority to that job.

In other situations, the relevant question would be whether the collective bargaining agreement articulates legitimate business criteria. For example, if the collective bargaining agreement includes job duties, it may be taken into account as a factor in determining whether a given task is an essential function of the job.

Conflicts between provisions of a collective bargaining agreement and an employer's duty to provide reasonable accommodations may be avoided by ensuring that agreements negotiated after the effective date of this title contain a provision permitting the employer to take all actions necessary to comply with this legislation.

Additional forms of reasonable accommodation included in the legislation are acquisition or modification of equipment or devices. The Job Accommodation Network operated by the President's Committee on Employment of People with Disabilities reports that it is possible to accommodate many employees with relatively simple and inexpensive assistive technology.

For blind and visually-impaired persons, this may include adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and brailled material.

For persons with hearing impairments, this may include telephone handset amplifiers, telephones compatible with hearing aids, and telecommunication devices for deaf persons. For persons with limited physical dexterity, this may include goose neck telephone headsets, mechanical page turners, and raised or lowered furniture.

The Committee wishes to make it clear that non job-related personal use items such as hearing aids and eyeglasses are not included in this provision.

The legislation also lists appropriate adjustment or modifications of examinations, training materials or policies. For example, many employers have a policy that in order to qualify for a job an employee must have a driver's license—even though the jobs do not involve driving. The employer may believe that someone who drives will be on time for work or may be able to do an occasional errand. This requirement, however, would be marginal and should not be used to exclude persons with disabilities who can do the essential functions of the job that admittedly do not include driving.

The Committee wishes to emphasize again that this legislation does not require an employer to make any modification, adjustment, or change in a job description or policy that an employer can demonstrate would fundamentally alter the essential functions of the job in question.

The legislation also explicitly includes provision of qualified readers of interpreters as examples of reasonable accommodations. As with readers and interpreters, the provision of an attendant to assist a person with a disability during parts of the workday may be a reasonable accommodation depending on the circumstances of the individual case. Attendants may, for example, be required for traveling and other job-related functions. This issue must be dealt with on a case-by-case basis to determine whether an undue hardship is created by providing attendants.

The Committee wishes to clarify the employer's obligation to notify the applicant and the employee of its obligation to provide a reasonable accommodation, who is entitled to an accommodation, when the duty to provide a reasonable accommodation is triggered, and the process of determining the appropriate accommodation.

First, pursuant to section 104 of the legislation, the employer must notify applicants and employees of its obligation under this legislation to make reasonable accommodations.

Second, section 102(b)(5) of the legislation requires that reasonable accommodation be made for "a qualified individual who is an applicant or employee * * *" The term "qualified" as used in this section does not refer to the definition of "qualified individual with a disability" set forth in section 101(7) because such an interpretation would be circular and meaningless. Rather, as in section 504 regulations, the term "qualified" in section 102(b)(5) means "otherwise qualified" (See 45 CFR 84.12(a)), i.e., a person with a disability who meets all of an employer's job-related selection criteria except such criteria he or she cannot meet because of a disability.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a disability who has not met these selection criteria. That individual is not yet eligible for a reasonable accommodation because he or she is not otherwise qualified for the position.

On the other hand, if the individual graduated from an accredited law school and passed a bar examination (assuming that these are the only selection criteria) the person is "otherwise qualified" and the law firm would be required to provide a reasonable accommodation to the employee's visual impairment, such as a reader, that would enable the employee to perform the essential functions of the job as an attorney unless the necessary accommodation would impose an undue hardship.

If, to continue the example, a part-time reader can be provided as a reasonable accommodation that permits the individual to perform the essential functions of the attorney position without imposing an undue hardship, the person is a "qualified individual with a disability" as defined in section 101(7) of the legislation and it would be unlawful not to hire the individual because of his or her visual impairment.

Third, the legislation clearly states that employers are obligated to make reasonable accommodations only to the "known" physical or mental limitations of a qualified individual with a disability. Thus, the duty to accommodate is generally triggered by a request from an employee or applicant for employment. Of course, if a person with a known disability is having difficulty performing his or her job, it would be permissible for the employer to discuss the possibility of a reasonable accommodation with an employee.

In the absence of a request, it would be inappropriate to provide an accommodation, especially where it could impact adversely on the individual. For example, it would be unlawful to transfer unilaterally a person with HIV infection from a job as a teacher to a job where such person has no contact with people. See, e.g., *Chalk* v. *United States District Court,* 840 F.2nd 701 (9th Cir. 1988).

The Committee believes that the reasonable accommodation requirement is best understood as a process in which barriers to a particular individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to problems in performance of a particular job because of a physical or mental impairment. A problem-solving approach should be used to identify the particular tasks or aspects of the work environment that limit performance and to identify possible accommodations that will result in a meaningful equal opportunity for the individual with a disability.

The Committee suggests that, after a request for an accommodation has been made, employers first will consult with and involve the individual with a disability in deciding on the appropriate accommodation. The Committee recognizes that people with disabilities may have a lifetime of experience identifying ways to accomplish tasks differently in many different circumstances. Frequently, therefore, the person with a disability will know exactly what accommodation he or she will need to perform successfully in a particular job. And, just as frequently, the employee or applicant's suggested accommodation is simpler and less expensive than the accommodation the employer might have devised, resulting in the employer and the employee mutually benefiting from the consultation.

The Committee also recognizes that there are times when the appropriate accommodation is not obvious to the employer or applicant because such individual is not familiar in detail with the manner in which the job in question is performed and the employer is not familiar enough with the individual's disability to identify the appropriate accommodation. In such circumstances, the Committee believes the employer should consider four informal steps to identify and provide an appropriate accommodation.

The first informal step is to identify barriers to equal opportunity. This includes identifying and distinguishing between essential and nonessential job tasks and aspects of the work environment of the relevant position(s). With the cooperation of the person with a disability, the employer must also identify the abilities and limitations of the individual with a disability for whom the accommodation is being provided. The employer then should identify job tasks or work environment that limit the individual's effectiveness or prevent performance.

Having identified the barriers to job performance caused by the disability, the second informal step is to identify possible accommodations. As noted above, the search for possible accommodations must begin with consulting the individual with a disability. Other resources to consult include the appropriate State Vocational Rehabilitation Services agency, the Job Accommodation Network operated by the President's Committee on Employment of People With Disabilities, or other employers.

Having identified one or more possible accommodations, the third informal step is to assess the reasonableness of each in terms of effectiveness and equal opportunity. A reasonable accommodation should be effective for the employee. Factors to be considered include the reliability of the accommodation and whether it can be provided in a timely manner.

The Committee believes strongly that a reasonable accommodation should provide a meaningful equal employment opportunity. Meaningful equal employment opportunity means an opportunity to attain the same level of performance as is available to non-disabled employees having similar skills and abilities.

The final informal step is to implement the accommodation that is most appropriate for the employee and the employer and that does not impose an undue hardship on the employer's operation or to permit the employee to provide his or her own accommodation if it does impose an undue hardship. In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity.

The expressed choice of the applicant or employee shall be given primary consideration unless another effective accommodation exists that would provide a meaningful equal employment opportunity or that the accommodation requested would pose an undue hardship.

The Committee wishes to note that many individuals with disabilities do not require any reasonable accommodation whatsoever. The only change that needs to be made for such individuals is a change in attitude regarding employment of people with disabilities.

The term "undue hardship" is defined in section 101(9) to mean an action requiring significant difficulty or expense i.e., an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business i.e., require significant difficulty or expense, factors to be considered include: (1) the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget; (2) the type of operation maintained by the covered entity, including the composition and structure of the entity's workforce; and (3) the nature and cost of the accommodation needed.

This provision is derived from and should be applied consistently with interpretations by Federal agencies applying the term set forth in regulations implementing sections 501 and 504 of the Rehabilitation Act of 1973.

The weight given to each factor in making the determination as to whether a reasonable accommodation nonetheless constitutes an "undue hardship" will vary depending on the facts of a particular situation and turns on both the nature and cost of the accommodation in relation to the employer's resources and operations. In explaining the "undue hardship" provision, the Department of Health, Education, and Welfare explained in the appendix accompanying the section 504 regulations (42 Fed. Reg. 22676 et. seq, May 4, 1977):

> Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a State welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

The mere fact that an employer is a large entity for the purposes of factor (1), should not be construed to negate the importance of factors (2) and (3) in determining the existence of undue hardship.

The Committee wishes to make it clear that the principles enunciated by the Supreme Court in *TWA* v. *Hardison*, 432 U.S. 63 (1977) are not applicable to this legislation. In *Hardison*, the Supreme Court concluded that under title VII of the Civil Rights Act of 1964 an employer need not accommodate persons with religious beliefs if the accommodation would require more than a de minimus cost for the employer.

Finally, the Committee wishes to make it clear that even if there is a determination that a particular reasonable accommodation will result in undue hardship, the employer must pay for the portion of the accommodation that would not cause an undue hardship if, for example, the State Vocational Rehabilitation Agency, other similar agency, or the employee or applicant pays for the remainder of the cost of the accommodation.

Section 102(b)(6) of the legislation specifies that discrimination includes the denial of employment opportunities by a covered entity to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation.

Thus, for example, where an applicant with a disability is otherwise equally qualified as an applicant without a disability, an employer cannot reject the applicant with a disability who requires a reasonable accommodation in favor of one who does not if the reason for the rejection is the reasonable accommodation requirement. Even where an employer is not required under this law to pay for a reasonable accommodation, because it would impose an undue hardship on the employer, the employer cannot refuse to hire an applicant where the applicant is willing to make his or her own arrangements for the provision of such an accommodation, if the reason for the rejection is the reasonable accommodation requirement.

Section 102(b)(7) of the legislation specifies that discrimination includes using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

As in Section 504, the ADA adopts a framework for employment selection procedures which is designed to assure that persons with disabilities are not excluded from job opportunities unless they are actually unable to do the job. The requirement that job criteria actually measure ability required by the job is a critical protection against discrimination based on disability. As was made strikingly clear at the hearings on the ADA, stereotypes and misconceptions about the abilities, or more correctly the inabilities, of persons with disabilities are still pervasive today. Every government and private study on the issue has shown that employers disfavor hiring persons with disabilities because of stereotypes, discomfort, misconceptions, and unfounded fears about increased costs and decreased productivity.

The three pivotal provisions to assure a fit between job criteria and an applicant's actual ability to do the job are:

(1) The requirement that persons with disabilities not be disqualified because of the inability to perform non-essential or marginal functions of the job;

(2) The requirement that any selection criteria that screen out or tend to screen out be job-related and consistent with business necessity; and

(3) The requirement to provide resonable accommodation to assist persons with disabilties to meet legitimate criteria.

These three legal requirements, which are incorporated in sections 102(b)(5) and (7) of the legislation, work together to provide a high degree of protection to eliminate the current pervasive bias against employing persons with disabilities in the selection process.

The interrelationship of these requirements in the selection procedure is as follows. If a person with a disability applies for a job and meets all selection criteria except one that he or she cannot meet because of a disability, the criteria must concern an essential, non-marginal aspect of the job, and be carefully tailored to measure the person's actual ability to do an essential function of the job. If the criteria meets this test, it is nondiscriminatory on its face and it is otherwise lawful under the legislation. However, the criteria may not be used to exclude an applicant with a disability if the criteria can be satisfied by the applicant with a reasonable accommodation. A reasonable accommodation may entail adopting an alternative, less discriminatory criterion.

For example, in *Stutts* v. *Freeman*, 694 F2d 666 (11th Cir. 1983), Mr. Stutts, who was dyslexic, was denied the job of heavy equipment operator because he could not pass a written test used by the employer for entering the training program, which was a prerequisite for the job. The written test had a disparate impact on persons with dyslexia. The questions, therefore, were whether both the written test for admission to the training program and the reading requirements of the training program itself, were necessary criteria for the heavy equipment operator job. If the answers to both those questions were yes, the question then became whether a reasonable accommodation could enable the person with a disability to meet the employment criteria at issue.

In *Stutts*, the record reflected that Mr. Stutts could perform the job of heavy equipment operator. As stated by the court,

> Indeed, everyone involved in this case seems to concede that Mr. Stutts would have no problems doing the job but rather may experience difficulty with the outside reading requirements of the training program. If selected, this obstacle may be overcome by Mr. Stutts obtaining the assistance of someone to act as a "reader" * * * [T]o eliminate Mr. Stutts without implementing an alternative test (oral) administered by outside professionals of TVA's staff or by failing to adjust the entry requirements to accommodate his dyslexia, TVA has failed to comply with the statute.

Hence, the requirement that job selection procedures be "job-related and consistent with business necessity" underscores the need to examine all selection criteria to assure that they not only provide an accurate measure of an applicant's actual ability to perform the job, but that even if they do provide such a measure, a disabled applicant is offered a "reasonable accommodation" to meet the criteria that relate to the essential functions of the job at issue. It is critical that paternalistic concerns for the disabled person's own safety not be used to disqualify an otherwise qualified applicant. As noted, these requirements are incorporated in the legislation in sections 102(b)(1)(5) and (7).

The Committee intends that the burden of proof under each of the aforementioned sections be construed in the same manner in which parallel agency provisions are construed under Section 504 of the Rehabilitation Act as of June 4, 1989. See, e.g., 45 C.F.R. 84.13 (Department of Health and Human Services); 29 C.F.R. 1613.705 (Equal Employment Opportunity Commission); 28 C.F.R. 42.512 (Department of Justice); 29 C.F.R. 32.14 (Department of Labor).

Section 102(b)(8) of the legislation specifies that discrimination includes failing to select and administer tests so as best to ensure that, when the test is administered to an applicant or employee with a disability that impairs sensory, manual, or speaking skills, the tests results accurately reflect the individual's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Section 102(c) of the legislation specifies that the prohibition against discrimination in section 101(a) applies to medical examinations and inquiries. Historically, employment application forms and employment interviews requested information concerning an applicant's physical or mental condition. This information was often used to exclude applicants with disabilities—particularly those with so-called hidden disabilities such as epilepsy, diabetes, emotional illness, heart disease and cancer—before their ability to perform the job was even evaluated.

In order to assure that misconceptions do not bias the employment selection process, the legislation sets forth a process which begins with the prohibition to pre-offer medical examinations or inquiries. The process established by the legislation parallels the regulations issued under section 504 of the Rehabilitation Act of 1973.

The legislation prohibits any identification of a disability by inquiry or examination at the pre-offer stage. Employers may ask questions which relate to the ability to perform job-related functions, but may not ask questions in terms of disability. For example, an employer may ask whether the applicant has a driver's license, if driving is an essential job function, but may not ask whether the applicant has a visual disability. This prohibition against inquiries regarding disability is critical to assure that bias does not enter the selection process.

The only exception to making medical inquiries that are not strictly job-related is narrow. The legislation allows covered entities to require post-offer medical examinations so long as they are given to all entering employees in a particular category, the results of the examinations are kept confidential, and the results are not used to discriminate against individuals with disabilities unless such results makes the individual not qualified for the job. For example, an entity can test all police officers rather than all city employees or all construction workers rather than all construction company employees. This exception to the general rule meets the employer's need to discover possible disabilities that do limit the person's ability to do the job, i.e., those that are job-related.

Once an employee is on the job, the actual performance on the job is, of course, the best measure of ability to do the job. When a need arises to question the continued ability of a person to do the job, the employer may make disability inquiries, including medical exams, which are job-related and consistent with business necessity. The concept of "job-related and consistent with business necessity" has been outlined elsewhere in the report under the discussion of section 102(b)(7) of the legislation.

An inquiry or medical examination that is not job-related serves no legitimate employer purpose, but simply serves to stigmatize the person with a disability. For example, if an employee starts to lose a significant amount of hair, the employer should not be able to require the person to be tested for cancer unless such testing is job-related. Testimony before the Committee indicated there still exists widespread irrational prejudice against persons with cancer. While the employer might argue that it does not intend to penalize the individual, the individual with cancer may object merely to being identified, independent of the consequences. As was abundantly clear before the Committee, being identified as disabled often carries both blatant and subtle stigma. An employer's legitimate needs will be met by allowing the medical inquiries and examinations which are job-related.

Consistent with the section in the legisalation pertaining to preemployment inquiries, it is the Committee's intent that a covered entity may invite applicants for employment to indicate whether and to what extent they have a disability under the following circumstances only: (1) when a covered entity is taking remedial action to correct the effects of past discrimination, (2) when a recipient is taking voluntary action to overcome the effects of conditions that resulted in iimited employment opportunities, or (3) when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, provided that:

> (a) The covered entity states clearly on any written questionnaire used for this purpose or makes clear orally (if no written questionnaire is used) that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts, and
>
> (b) The covered entity states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this title of the Act.

Defenses

Section 103(a) of the legislation specifies that in general, it may be a defense to a charge of discrimination that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

With respect to contagious diseases or infections, section 103(b) of the legislation specifies that the term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace. Under this qualification standard, for a person with a currently contagious disease or infection to constitute a direct threat to the health or safety of others, the person must pose a significant risk of transmitting the infection to others in the workplace which cannot be eliminated by reasonable accommodation. See *School Board of Nassau County* v. *Arline*, 480 U.S. 273, 287, note 16.

With respect to drug addicts and alcoholics, section 103(c)(1) of the legislation specifies that, notwithstanding any other provision of this legislation, a covered entity:

> (1) May prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(3) May require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988, and that transportation employees meet requirements established by the Department of Transportation with respect to drugs and alcohol; and

(4) May hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

Further, section 103(c)(2) of the legislation specifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

With respect to the defense that transportation employers may require that transportation employees meet requirements established by the Secretary of Transportation pursuant to and consistent with Federal law, the Committee wishes to make the following clarifications.

First, licensing of motor carrier drivers and railroad engineers, and certification of airplane pilots involves consideration of drunk and drug-related driving convictions, as recorded by individual States and made available to employers through the National Drivers Register at the Department of Transportation. In addition, records of other drug or alcohol related violations of State or Federal law may be considered as indicators of "fitness for duty" for safety-sensitive transportation positions.

Second, this defense applies to violations of Department of Transportation regulations concerning drug and alcohol use outside the workplace e.g., an air crew member who, in violation of Federal Aviation Administration rules, drinks alcohol within 8 hours of going on duty.

Third, this defense applies to actions based on an individual's failure to pass DOT mandated drug and alcohol tests when administered in accordance with Federal and State laws e.g., a truck driver who tests positive for illegal drugs and the failure or refusal to take a drug test mandated by Department of Transportation regulations.

The Committee believes that test results should be accurate and encourages covered entities to follow the Mandatory Guidelines on Federal Workplace Testing as issued by the Department of Health and Human Services. In any event, testing must comply with applicable Federal, State, or local laws or regulations regarding quality control, confidentiality, and rehabilitation; provided that, with respect to transportation employees, if testing is undertaken, it must be done in compliance with applicable Federal laws and regulations.

The reasonable accommodation provision in section 102(b)(5) of this title does not affirmatively require that a covered entity must provide a rehabilitation program or an opportunity for rehabilitation for any job applicant who is a drug addict or alcoholic or for any current employee who is a drug addict or alcoholic against whom employment-related actions are taken for the reasons enumerated in section 103(c) relating to defenses.

Although the provision of a rehabilitation program or an opportunity for rehabilitation of a drug addict or alcoholic is not required by this title, the Committee strongly encourages covered entities to follow the lead of the Federal government and many private employers, consistent with the policy embedded in the Drug Free Workplace Act, to offer such rehabilitation programs or provide an opportunity for rehabilitation.

Finally, the Committee wishes to emphasize that the provisions of section 103(c) of this legislation apply only to addicts that are currently using illegal drugs or alcohol.

With respect to religious entities, section 103(d) of the legislation specifies that title I does not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

Because title I of this legislation incorporates by reference the definition of the term "employer" and "employee" used in title VII of the Civil Rights Act of 1964 and because of the similarity between the "religious preference" provisions in title VII and the ADA, it is the Committee's intent that title I of the ADA be interpreted in a manner consistent with title VII of the Civil Rights Act of 1964 as it applies to the employment relationship between a religious organization and those who minister on its behalf.

In addition, section 103(d) of the legislation includes a provision not included in title VII of the Civil Rights Act of 1964 which specifies that under title I of the legislation, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization. This exemption is modeled after the provision in title IX of the Education Amendments of 1972. Thus, is is the Committee's intent that the terms "religious organizations" and "religious tenets" be interpreted consistent with the Department of Education's regulations thereunder.

The inclusion of a "religious tenets" defense is not intended to affect in any way the scope given to section 702 of title VII of the Civil Right Act of 1964.

Posting notices

Section 104 of the legislation specifies that every employer, employment agency, labor organization, or joint labor-management committee covered under this title must post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

Regulations

Section 105 of the legislation specifies that not later than one year after the date of enactment of this Act, the Equal Employment Opportunity Commission must issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

It is the Committee's intent that these regulations will be drafted so as to be a self-contained document. The regulations should not incorporate by reference other laws or regulations. The Commission's regulations will have the force and effect of law.

This format will increase the likelihood of voluntray compliance on the part of covered entities and should minimize the need to hire a battery of lawyers to ascertain the obligations created by this legislation.

Enforcement

Section 106 of the legislation specifies that the remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 shall be available with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this legislation, or regulations promulgated under section 105 concerning employmnet. As has been the case under title VII of the Civil Rights Act of 1964, the Attorney General may continue to have pattern or practice authority with respect to State and local governments.

Section 205 of S. 933, as originally introduced, provided protection to individuals who believe that they are being or who are "about to be subjected to discrimination." This provision has been deleted becasue the Committee determined that the case law under title VII of the Civil Rights Act of 1964 already provides protection against discrimination in those circumstances with which the Committee had had concerns, and thus, a specific provision in the ADA is unnecessary.

The Supreme Court enumerated the "futile gesture" doctrine under title VII: "When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application." *Internatiional Brotherhood of Teamsters* v. *United States,* 431 U.S.C. 324, 365–67.

The term "is being subjected to discrimination" also includes the situation where the employee discovers that the employer is redesigning office space in such a way that it will become inaccessible to a disabled employee. In this situation, the employee should be able to stop the illegal constrution before it begins.

The Committee recognizes that this legislation's requirements are substantially different from the other statutes governing private sector employment that are enforced by the Commission. The fact that most of the Commission's current professional employees are unfamiliar with disability nondiscrimination requirements will necessitate that the Commission provide extensive training for staff.

The Committee expects the Commission will establish and implement employer training programs and otherwise provide technical assistance to employers seeking to comply with the legislation's requirements.

Effective date

Section 107 of the legislation specifies that title I shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Title II of the legislation has two purposes. The first purpose is to make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, regardless of whether or not such entities receive Federal financial assistance. Currently, section 504 prohibits discrimination only by recipients of Federal financial assistance.

The second purpose is to clarify the requirements of section 504 for public transportation entities that receive Federal aid, and to extend coverage to all public entities that provide public transportation, whether or not such entities receive Federal aid.

Extending a Federal prohibition against discrimination on the basis of disability to all State and local governmental entities

Section 202 of the legislation extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local governmental entities. Specifically, section 202 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

The forms of discrimination prohibited by section 202 are comparable to those set out in the applicable provisions of titles I and III of this legislation. It is the Committee's intent that section 202 and other sections of the legislation be interpreted consistent with *Alexander* v. *Choate*, 469 U.S. 287 (1985).

The Committee recognizes that the phrasing of section 202 in this legislation differs from section 504 by virtue of the fact that the phrase "solely by reason of his or her handicap" has been deleted. The deletion of this phrase is supported by the experience of the executive agencies charged with implementing section 504. The regulations issued by most executive agencies use the exact language set out in section 202 in lieu of the language included in the section 504 statute.

A literal reliance on the phrase "solely by reason of his or her handicap" leads to absurd results. For example, assume that an employee is black and has a disability and that he needs a reasonable accommodation that, if provided, will enable him to perform the job for which he is applying. He is the most qualified applicant. Neverthless, the employer rejects the applicant because he is black and because he has a disability.

In this case, the employer did not refuse to hire the individual solely on the basis of his handicap—the employer refused to hire him because of his disability and because he was black. Although he might have a claim of race discrimination under title VII of the

Civil Rights Act, it could be argued that he would not have a claim under section 504 because the failure to hire was not based solely on his disability and as a result he would not be entitled to a reasonable accommodation.

The Committee, by adopting the language used in regulations issued by the executive agencies, rejects the results described above. Court cases interpreting section 504 have also rejected such reasoning. As the Tenth Circuit explained in *Pushkin* v. *Regents of University of Colorado,* 658 F. 2d 1372, the fact that the covered entity lists a number of factors to rejection in addition to the disability is not dispositive. In this case, the University stated that Dr. Pushkin was rejected because of low interview scores. The court stated that "it is not possible to extricate ratings from the reactions to the handicap itself."

Morever, the interview ratings "as a general practice are not necessarily controlling in the selection process." The question was whether "the reasons articulated for the rejection other than handicap encompass unjustified consideration of the handicap itself" (Id. at 1387). As stated by the court, the "issue is whether rejecting Dr. Pushkin after expressly weighing the implication of his handicap was justified."

If the plaintiff is qualified for the position in question, a rejection which considered the disability as a factor would not be justified. The existence of non-disability related factors in the rejection decisions does not immunize employers. The entire selection procedure must be reviewed to determine if the disability was improperly considered.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, spcial purpose district, or other instrumentality of a State or a local government.

The term "instrumentality of a state and local government" includes public transit authorities.

With regard to school bus operations by public entities, it is not the intent of this Committee to require anything different under this legislation than is currently required of school systems and other entities receiving Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (e.g., 34 CFR Part 104).

Agencies of a State, or a political subdivision of a State that provide school bus transportation are required to provide bus service to children with disabilities equivalent to that provided to children without disabilities (whether provided directly or by contract or other arrangement with a private entity).

The school bus transportation provided to children with disabilities must be provided in the most integrated setting possible. This means that when a child with a disability requires transporation, the school bus that serves his/her route should be accessible. This does not mean that all school buses need to be accessible; only that equal nonsegregated opportunities are provided to all children.

School bus operations, as defined in 49 CFRT 605.3(b) and the associated revisions established in Highway Safety Program Standard No. 17, means transportation by Type I and II school bus vehicles of school children, personnel, and equipment to and from school or school-related activities.

Actions applicable to public transportation considered discriminatory

Definition

As used in title II, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, including service contracted through a private sector entity.

As used in title II, the term "public entity" includes the National Railroad Passenger Corporation.

The Committee excluded transportation by air because the Congress recently passed the Air Carrier Access Act, which was designed to address the problem of discrimination by Air Carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent. However, this title applies to the public entities' fixed facilities used in air travel, such as airport terminals, and to related services, such as ground transportation, provided by public entities.

It is not the Committee's intent to make the vehicle accessibility provisions of this title applicable to vehicles donated to a public entity. The Committee understands that it is not usual to donate vehicles to a public entity. However, there could be instances where someone could conceivably donate a bus to a public transit operator in a will. In such a case, the transit operators should not be prevented from accepting the gift.

The Committee does not intend that this limited exemption for donated vehicles be used to circumvent the intent of the ADA. For example, a local transit authority could not arrange to be the recipient of donated inaccessible buses. This would be a violation of the ADA.

As a general rule, all requirements for nondiscrimination apply not only to the design of vehicles and facilities but to their operation as well. Thus, new fixed route buses must have lifts, and new and key stations must have elevators or other means to ensure accessibility as necessary components for a transit authority to be in compliance with the provisions of this title of the legislation. Merely installing the access equipment is never sufficient by itself, however; the lifts and elevators must also operate, be in good working order, and be available when needed for access in order for an entity to be in compliance with the law.

The Committee believes that a strong commitment from a transit authority's management team will ensure nondiscrimination in the provision of transportation to people with disabilities. This includes adequate training of maintenance personnel and bus operators, sensitivity training of all personnel which stresses the importance of providing transportation, and creative marketing strategies.

New buses, rail vehicles, and other fixed route vehicles

Section 203(b)(1) of the legislation specifies that it shall be considered discrimination, for purposes of this Act and for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This requirement is included to ensure that an accessible transportation system is phased-in as new vehicles are purchased. It makes no sense, at this point in time, to perpertuate continued inaccessibility and to exclude persons with disabilities from the opportunity to use a key public service—transportation. Inaccessible vehicles affect more than just individuals with disabilities' ability to travel independently. It affects their ability to gain employment. When such individuals are able to depend on an accessible transportation system, one major barrier is removed which would prevent them from joining the work force. This ability ultimately affects our society as a whole. Accessible transportation also allows individuals with disabilities to enjoy cultural, recreational, commercial and other benefits that society has to offer.

Transportation affects virtually every aspect of American life. Mainline services are geared to moving people to and from work, school, stores, and other activities on schedules that reflect most people's daily routines. It is false and discriminatory to suggest that people with disabilities—who have the same needs as other community residents—are not as interested in or worthy of using transit services as people without disabilities.

The term "fixed route" means a bus system that operates on a continuing and regular basis on a fixed pattern and schedule.

The term "new" means buses which are offered for first sale or lease after manufacture without any prior use. Buses for which a solicitation is made within 30 days after enactment of this legislation are not subject to the accessibility requirement and thus are not required to have wheelchair lift equipment. However, buses that are solicited for after 30 days from enactment of this legislation are covered by the accessibility provision and would have to comply with the requirement that all newly purchased vehicles be accessible to people with disabilities including wheelchair users.

The phrase "for which a solicitation by such individual or entity is made" means when a public entity asks for bids from manufacturers to build buses or begins to offer to purchase or bid for the purchase of new buses 30 days after enactment of this legislation.

The term "readily accessible to and usable by" is a term of art that means the ability of individuals with disabilities, including individuals using wheelchairs, to enter into and exit and safely and effectively use a vehicle used for public transportation.

Lifts or ramps and other equipment, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals using wheelchairs or other mobility aids; how many spaces per vehicles are to be made available for wheelchairs is, however, a determination that depends upon various factors, including the number of vehicles in the fleet, the seat vacancy rates, and usage by people with disabilities.

The Committee intends, consistent with these factors, that the determination of how many spaces must be available for wheelchair use should be flexible and generally left up to the provider, provided that at least some seats on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be promulgated under this legislation. These minimum guidelines should be consistent with the Committee's desire for flexibility and decisionmaking by the provider.

The Committee wishes to emphasize that the legislation uses the phrase "including individuals who use wheelchairs" because of misinterpretations of the nature and extent of obligations under section 504. The obligation to provide public transportation in a nondiscriminatory fashion applies to all persons with disabilities, including people with sensory impairments and those with cognitive impairments such as mental retardation. It is the Committee's intent that the obligation to provide lift service applies, not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. For example, people who use crutches, walkers or three-wheeled mobility aids should be allowed to use a lift.

A public transit authority should develop training sessions to familiarize bus operators with the services that individuals with disabilities may need. For example, assuring that people with vision impairmants get off at the correct stop, training bus drivers how to use the lift in a bus, and developing a program which would assist people with mental retardation in how to use the transportation system. Transit authorities should also be required to have written materials available in a format accessible to people with vision impairments and to make TDD numbers available to persons with hearing and communication impairments.

Section 203(e) of the legislation provides temporary relief for public entities from the obligations under section 203(b) where lifts are unavailable. Specifically, with respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities, if such public entity can demonstrate the existence of four factors:

(1) That the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) The unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) That the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) That any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

Section 203(f) of the legislation makes it clear that any relief granted under subsection (e) must be limited in duration by a specified date. In addition, if, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall cancel such relief, if such relief is still in effect, and take other steps that he or she considers appropriate.

Further, the appropriate committees of the Congress must be notified of any such relief granted. The appropriate committees in the Senate include the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources.

Used vehicles

Section 203(b)(2) of the legislation specifies that if a public entity purchases or leases a used vehicle after the date of enactment of this Act, such public entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The term "used vehicle" means a vehicle that was purchased before a date which is at least 30 days prior to the enactment of this legislation. Frequently small and rural communities do not purchase new buses. Many of these communities buy used buses that are less expensive than new buses in an effort to provide transportation to individuals in these areas without expending large sums of money. Purchasers of used vehicles are required by this legislation to make "demonstrated good faith efforts" to locate accessible used vehicles.

The phrase "demonstrated good faith efforts" is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It might involve the transit authority advertising in a trade magazine, i.e., Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available.

It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy.

Remanufactured vehicles

Section 203(b)(3) of the legislation specifies that if a public entity remanufacturers a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its useful lift for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The phrase "remanufactures a vehicle or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more" means that the vehicle is stripped to its frame and is then rebuilt. It does not simply mean an engine overhaul. The additional cost to make a remanufactured vehicle accessible would be comparable to the cost of making a new vehicle accessible. Therefore, remanufactured vehicles should be treated the same as new vehicles.

The phrase "to the maximum extent feasible" is included in order to provide clarification that the Committee does not intend to require accessibility for remanufactured vehicles if it would destroy the structural integrity of the vehicle.

Paratransit as a supplement to fixed route public transportation system

Section 203(c) of the legislation specifies that if a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and for purpose of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity to fail to ensure the provision of paratransit or other special transporation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transporation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transporation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under rqulations promulgated by the Secretary of transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

If the provision of comparable paratransit or other special transporation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden may include a flexible numerical formula that incorporates appropriate local characteristics such as population. Although the legislation mentions only population as an example of local characteristics that might be reflected is such a formula, other characteristics appropriate to consider include population density, level of paratransit services currently being provided in the area, residential patterns, and the interim degree of accessibility of fixed route transit service.

Notwithstanding the above provisions, the Secretary may require, at the discretion of the Secretary, public transit authority to provide paratransit services beyond the amount determined by such formula.

It is the Committee's intent that any criteria developed by the Secretary regarding the "undue financial burden" proviso, including the use of a formula, be consistent with that portion of the *ADAPT* v. *Skinner* decision handed down on July 24, 1989 by the Third Circuit Court of Appeals (Nos. 88-1139, 88-1177, and 88-1178) concerning the three percent "safe harbor" provision (pages 38-46 of the slip opinion).

The Committee recognizes that there will always be a need for paratransit services. Paratransit services must be available to individuals who are unable to use mainline public transportation. By "unable to use" the committee means to include those individuals who cannot gain access to the public transportation systems. The reasons for this inability to access the transit system could be because of the nature and severity of the individual's physical or mental disability or because of other factors determined by the local community, such as the lack of curb cuts which would prevent individuals with certain disabilities from traveling to a bus stop.

In developing the criteria that will be used to determine which individuals with disabilities are unable to use the transportation services, it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities. The Committee wishes to make it clear that criteria developed to determine eligibility for paratransit e.g., inability to use mainline transportation services shall not be used to prevent, limit, or otherwise exclude such individuals from using mainline services if they so choose.

The term "paratransit or other special transportation services" means a transporation system that is available to those individuals who are unable to use the transportation system available to other people. This has been characteristically provided by transit authorities or contracted out to private companies and uses small buses or vans. Usually, the services is demand responsive or door-to-door service.

The Committee does not intend to require a public transit authority to actually provide paratransit or other special transportation services if such services are provided by other entities serving the same geographical location as is served by the public transit authority providing the fixed route system. However, the Committee wishes to emphasize that the paratransit or other special transportation services provided must be consistent with the requirements set out in this legislation and a public transit entity must be ultimately accountable for ensuring that the services are being provided in compliance with this legislation.

The following minimum service criteria should apply to special paratransit service systems that are used to supplement a fixed route accessible system:

a. Eligibility: All persons with disabilities unable to use the fixed route vehicles and their companions shall be eligible to use the special service.

b. Response time: The service should be provided to a person with a disability with a comparable response time that a person without a disability would receive.

c. Restrictions or priorities based on trip purpose: There shall not be priorities or restrictions based on trip purpose on users of the special service.

d. Fares: The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the fixed route service.

e. Hours and days of service: The special service shall be available throughout the same hours of days as the fixed route service.

f. Service area: The special service shall be available throughout the service area in which the fixed route service is provided. Service to points outside this service area served by extended express or commuter bus service shall be available to persons with disabilities in an accessible manner.

The term "comparable level of services" means that when all aspects of a transportation system are analyzed, equal opportunities to use the transportation system exist for all persons—individuals with and without disabilities. The essential test to meet is whether the system is providing a level of service that meets the needs of persons with and without disabilities to a comparable extent.

For instance, if a person with a disability calls for a ride on a demand response system for the general public—and an accessible bus arrives within fifteen minutes—that is equal treatment if a person without a disability has to wait for the bus for an equivalent amount of time. However, if the bus arrives and it does not have a lift and one is needed, or if a disabled person has to wait considerably more time than a non-disabled person, then equal opportunity to use the demand responsive public transportation system is not being provided.

The term "other individuals associated with such individuals with disabilities" means the companions of those individuals who cannot otherwise use fixed route bus service whether they are part of the person's family, or friends of the individual with a disability. For instance, if a father wanted to take his children to the zoo and paratransit services are the only means of transportation that father is qualified for, he should be allowed to take his children on the paratransit bus. He should not be relegated to the paratransit by himself while his children are required to take fixed route public transportation.

If a man and woman were dating and the woman could not otherwise use public fixed route transportation then they should be able to use the paratransit services to and from that date. Likewise, if an individual had out of town guests and one of the out of town guests cannot use the fixed route bus system and is qualified to use the paratransit services of the state where they are visiting, then everyone in the group should be allowed to use the paratransit service to go sightseeing.

The Committee intends that during the interim period in which substantial numbers of fixed route buses are not accessible, the public transit authorities form an advisory committee to ensure the participation of individuals with disabilities in the planning, development, and implementation stages of the transportation system. One way to do this is by instituting an advisory group. Careful consideration should be given to the composition of the advisory group and every effort should be made to have adequate representation from all elements of the disability community.

This advisory group is an essential component to the development of standards which must then appear in the authorities' transit plan. Cooperation between the disability community and the transit operators is imperative during the period of time in which the system will be in transition, from an inaccessible system to an accessible one.

The transition options chosen will depend, to a certain extent, on the system involved. Some systems will require the broadest use of the existing accessible buses. For instance, it may be advantageous for a small system to require that all the accessible buses be in service during both off-peak and peak hours and at regular intervals so as to provide some service to the most people. A larger system might choose to make key lines accessible or ensure that the feeder lines are accessible. In this way, the system will be providing meaningful transportation at least to a portion of the individuals that need the access of the system.

The mainline interim service agreed upon by the advisory Committee must be available throughout the regular service area and during the normal service hours. This service, to the extent feasible, must meet a number of criteria as to convenience and comparability to regular mainline service (e.g., no restriction as to trip purpose, wait, fares and travel time).

Regardless of the mainline accessible transportation that will be available, it is important that a paratransit service be in place to ensure adequate access in those areas where accessible mainline service cannot yet be achieved. It is equally as important to realize that paratransit will always be necessary for those individuals who for legitimate reasons are unable to use mainline accessible service.

The local transit authority must be sincere in its efforts to coordinate special services in the locality to meet the service standards. The paratransit services should meet the service criteria both during the transition phase and thereafter.

Community operating demand responsive systems for the general public

Section 203(d) of the legislation specifies that if a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such public entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public.

The intent of the Committee is to provide flexibility for rural and small urban communities that only have a demand responsive system for everyone. These systems are available to people without disabilities as well as to those with disabilities. The Committee intends that the time delay between a telephone call to access the demand responsive system and the pick up of the individual is not to be greater because the individual needs a lift or ramp or other accommodation to access the vehicle.

The term "demand responsive service" means service where the individual must request transportation service before it is rendered. This fact distinguishes this type of service from fixed route service.

With fixed route service, no action is needed by an individual to initiate public transportation. If an individual is at a bus stop at the time the bus is scheduled to appear then that individual will be able to access the transportation system. With demand-responsive service, an additional step must be taken by the individual before he or she can ride the bus, i.e., the individual must make a telephone call. In this type of service, the transit provider will know ahead of time whether or not an accessible vehicle is necessary. Therefore, all demand responsive vehicles need not be accessible as long as the level of service provided to individuals with disabilities is equal to that provided to those without disabilities.

The phrase "when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public" means that when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist.

The Committee wishes to make it clear that the authority of the Secretary to grant temporary relief where lifts are unavailable applies to communities operating demand responsive as well as fixed route bus systems.

New facilities

Section 203(g) of the legislation specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The meaning of the key phrases used in this subsection are described subsequently in the section of the report pertaining to title III of the Act.

Alterations of existing facilities

Section 203(h) of the legislation specifies that, with respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

If such public entity is undertaking major structural alterations that affect or could affect tthe usability of the facility (as defined under criteria established by the Secretary of Transportation) such public entity shall also make any additional alterations that are necessary to ensure that, to the maximum extent feasible, a path of travel from a primary entrance, and a reasonable number of bathrooms, telephones, and drinking fountains serve such path of travel are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The key phrases used in this subsection are described subsequently under the section of the report concerning title III of the legislation.

Existing facilities

Section 203(i)(1) of the legislation specifies that with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This is the same standard that currently applies under section 504 regulations issued by the Department of Transportation.

The standards set out above do not apply to stations in intercity rail systems, and rapid rail, commuter rail and light rail systems. Such stations are governed by section 203(i)(3) of the legislation, which specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Intercity rail systems, including the National Railroad Passenger Corporation, must be made accessible as soon as practicable, but in no event later than 20 years after the date of enactment. Key stations in rapid rail, commuter rail, and light rail systems must be made accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

The Committee intends that the term "key stations" shall include stations that have high ridership, and stations that serve as transfer and feeder stations. The public transit authority shall develop a plan for complying with the requirement that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of this requirement.

The phrase "key stations" includes high ridership stations since individuals with disabilities have the same travel objectives as individuals without disabilities. Stations may have high ridership because they are located in business and employment districts, cultural, educational, recreational and entertainment centers, or are transfer points from other modes of transportation.

In addition to high ridership stations, "feeder stations" should be designated as "key" because they generally are located in suburban areas. Making these stations accessible will provide individuals with disabilities who live in these areas the ability to commute.

Exactly what stations will be determined "key" is a decision best left to the local community. The Committee does not intend to mandate a process to identify "key stations" except that—in developing the criteria that will be used to determine which stations will be "key"—it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities.

It is the Committee's understanding the settlement agreements recently reached in New York City specifying approximately 38 particular stations out of over 465 stations in the system and in Philadelphia where 11 out of approximately 53 stations on the high speed line and 31 out of approximately 172 commuter rail stations are to be considered "key stations" are in full compliance with the criteria and procedures set out above.

The phrase "as soon as practicable" is included in order to create an obligation to attain accessibility before the specified period of time has elapsed. It is the intent of this Committee that this requirement would prohibit a transit authoriety from delaying the installation of an elevator, if capital funds were available and the installation could otherwise be accomplished, could be just because the absolute time limit is not up.

The phrase "extraordinarily expensive structural change to or replacement of existing. facilities" is intended to create a narrow exemption for the facilities where the only means of creating accessibility would be to raise the entire platform of a station or to install an elevator. The costs to accomplish these structural changes can be extremely costly.

In issuing regulations for the enforcement of this section, the Secretary of Transportation may prescribe a procedure for the resolution of disputes when a local rail transit operator and representatives of the disability community are unable to reach mutual agreement.

Intercity, rapid, light, and commuter rail systems

Section 203(i)(2) of the legislation specifies that with respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

It is the Committee's expectation that the regulations issued by the Secretary of Transportation will ensure that the car that is accessible stops at an appropriate place in the station that is level with the car and that signage is included to indicate where such car will stop.

Regulations

Section 204 of the legislation specifies that not later than one year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28 Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities" and "communications" such regulations shall be consistent with applicable portions of regulations and analysis relating to Federally conducted activities under section 504 of the Rehabilitation Act of 1973 (part 39 of title 28 of the Code of Federal Regulations).

Section 204(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203.

Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Enforcement

Section 205 of the legislation specifies that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning public services.

It is the Committee's intent that enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local government. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities. Again, consistent with section 504, it is not our intent that persons with disabilities need to exhaust Federal administrative remedies before exercising the private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

Scope of coverage of public accommodations

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

(1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, or lecture hall;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(7) A terminal used for public transportation;

(8) A museum, library, gallery, and other similar place of public display or collection;

(9) A park or zoo;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(12) A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are exhaustive. However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase "other similar" entities. The Committee intends that the "other similar" terminology should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities.

For example, the legislation lists "golf course" as an example under the category of "place of exercise or recreation." This does not mean that only driving ranges constitute "other similar establishments." Tennis courts, basketball courts, dance halls, playgrounds, and aerobics facilities, to name a few other entities are also included in this category. Other entities covered under this category include video arcades, swimming pools, beaches, camping areas, fishing and boating facilities, and amusement parks.

Similarly, although not expressly mentioned, bookstores, video stores, stationary stores, pet stores, computer stores, and other stores that offer merchandise for sale or rent are included as retail sales establishments.

The phrase "privately operated" is included to make it clear that establishments operated by Federal, State, and local governments are not covered by this title. Of course an establishment operated by a private entity which is otherewise covered by this title that also receives Federal, State, or local funds is still covered by this title.

Only nonresidential entities or portions of entities are covered by this title. For example, in a large hotel that has a residential apartment wing, the apartment wing would be covered by the Fair Housing Act, but not this title. The nonresidential accommodations in the rest of the hotel would be covered by this title. Although included in the definition of public accommodations, homeless shelters are subject to the provisions of this title only to the extent that they are not covered by the Fair Housing Act, as amended in 1988.

Private schools, including elementary and secondary schools, are covered by this title. The Committee does not intend, however, that compliance with this legislation requires a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations implementing section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104) and regulations implementing part B of the Education of the Handicapped Act (34

CFR Part 300). Of course, if a private school is under contract with a public entity to provide a free appropriate public education, it must provide such education in accordance with section 504 and part B.

The term "commerce" is defined in section 301(1) of the legislation to mean travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or between points in the same state but through another state or foreign country.

Prohibition of discrimination by public accommodations

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

"Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of S. 933, as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the Substitute.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

> To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractural, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or beanefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;
>
> To afford such an opportunity that is not equal to that afforded other individuals; or
>
> To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes above individuals with disabilities. Consistent with these standards, covered entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class individuals with disabilities can or cannot do.

The Committee wishes to emphasize that these provisions should not be construed to jeopardize in any way the continued viability of separate private schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, the Committee wishes to reaffirm that individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and over-arching principle of the Committee's bill. Separate, special, or different programs are designed to make participation by persons with disabilities possible. Such programs are not intended to restrict the participation of disabled persons in ways that are appropriate to them.

For example, a blind person may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his own pace with the museum's recorded tour. It is not the intent of this title to require the blind person to avail him or herself of the special tour. The Committee intends that modified participation for persons with disabilities be a choice but not a requirement.

In addition, it would not be a violation of this title for an establishment to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this title if the entity then excluded such children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Section 302(b)(1)(D) of the legislation specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. This provision is identical to section 102(b)(3) of the bill, which was discussed previously in the report.

Section 302(b)(1)(E) of the legislation specifies that it shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. This provisions is comparable to section 102(b)(4) of the legislation, which was discussed previously in the report.

Section 302(b)(2) of the legislation includes specific applications of the general prohibition against discrimination in section 302(a) and the general prohibitions set out in section 302(b)(1) of the legislation. The Committee wishes to emphasize that the specific provisions contained in title III, including the exceptions and terms of limitation, control over the more general provisions in section 302(a) and section 302(b)(1) to the extent there is any apparent conflict.

Section 302(b)(2)(A)(i) of the legislation specifies that the term "discrimination" includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

As explained above, it is a violation of this title to exclude persons with disabilities. For example, it would be a violation for a grocery store to impose a rule that no blind persons would be allowed in the store, or for a drugstore to refuse to serve deaf people. It also would be a violation for such an establishment to invade such people's privacy by trying to identify unnecessarily the existence of a disability, as, for example, if the credit application of a department store were to inquire whether an individual has epilepsy, has ever had been hospitalized for mental illness, or has other disability.

Similarly, it can constitute a violation to impose criteria that limit the participation of people with disabilities, as for example, by requiring that individuals with Down syndrome can only be seated at the counter, but not the table-seating section of a diner.

And it would be a violation to adopt policies which impose additional requirements or burdens upon people with disabilities not applied to other persons. Thus, it would be a violation for a theater or restaurant to adopt a policy specifying that individuals who use wheelchairs must be chaperoned by an attendant.

In addition, this subsection prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, drawn from current regulations under Section 504 (See, e.g. 45 C.F.R. 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, diminish such individuals' chances of participation.

Such diminution of opportunity to participate can take a number of different forms. If, for example, a drugstore refuses to accept checks to pay for prescription drugs unless an individual presents a driver's license, and no other form of identification is acceptable the store is not imposing a criterion that identifies or mentions disability. But for many individuals with visual impairments, and various other disabilities, this policy will operate to deny them access to the service available to other customers; people with disabilities will be disproportionately screened out.

Section 302(b)(2)(A)(ii) of the legislation specifies that discrimination includes a failure to make reasonable modifications in policies, practices, and procedures when such modifications may be necessary to afford such goods, services, facilities, privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations.

For example, a physician who specializes is treating burn victims could not refuse to treat the burns of a deaf person because of his or her deafness. However, such a physician need not treat the deaf individual if he or she does not have burns nor need the physician provide other types of medical treatment to individuals with disabilities unless he or she provides other types of medical treatment to nondisabled invididuals.

Thus, nothing in this legislation is intended to prohibit a physician from providing the most appropriate medical treatment in the physician's judgment or from referring an individual with a disability to another physician when the physician would make such a referral of an individual who does not have a disability.

Similarly, a drug rehabilitation clinic could refuse to treat a person who was not a drug addict but could not refuse to treat a person who was a drug addict simply because the patient tests positive for HIV.

A public accommodation which does not allow dogs must modify that rule for a blind person with a seeing-eye dog, a deaf person with a hearing ear dog, or a person with some other disability who uses a service dog.

Section 302(b)(2)(A)(iii) of the legislation specifies that discrimination includes a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, advantages, and accommodations being offered or would result in an undue burden.

The phrase "undue burden" is the limit applied under the ADA upon the duty of places of public accommodation to provide auxiliary aids and services. It is analogous to the phrase "undue hardship" used in the employment title of ADA (see previous discussion in the report) and is derived from section 504 and regulations thereunder. The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determinng "undue hardship."

The fact that the provision of any particular auxiliary aid would result in a undue burden does not relieve the business from the duty to furnish an alternative auxiliary aid, if available, that would not result in such a burden.

The term "auxiliary aids and services" is defined in section 3(1) of the legislation. The definition includes illustrations of aids and services that may be provided. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation.

The Committee expects that the covered entity will consult with the individual with a disability before providing a particular auxiliary aid or service. Frequently, an individual with a disability requires a simple adjustment or aid rather than an expensive or elaborate modification often envisioned by a covered entity.

For example, auxiliary aids and services for blind persons include both readers and the provision of brailled documents (see below). A restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Similarly, a bookstore need not braille its price tags, stock brailled books, or lower all its shelves so that a person who uses a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

The legislation specifies that auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. Other effective methods may include: telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for the deaf, closed captions, and decoders.

For example, it would be appropriate for regulations issued by the Attorney General to require hotels of a certain size to have decoders for closed captions available or, where televisions are centrally controlled by the hotel, to have a master decoder.

It is also the Committee's expectation that regulations issued by the Attorney General will include guidelines as to when public accommodations are required to make available portable telecommunication devices for the deaf. In this regard, it is the Committee's intent that hotels and other similar establishments that offer nondisabled individuals the opportunity to make outgoing calls, on more than an incidental convenience basis, to provide a similar opportunity for hearing impaired customers and customers with communication disorders to make such outgoing calls by making available a portable telecommunication device for the deaf.

It is not the Committee's intent that individual retail stores, doctors' offices, restaurants or similar establishments must have telecommunications devices for the deaf since people with hearing impairments will be able to make inquiries, appointments, or reservations with such establishments through the relay system established pursuant to title IV of the legislation, and the presence of a public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films and theaters are encouraged to have at least some preannounced screenings of a captioned version of feature films.

Places of public accommodations that provide film and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services includes qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include: audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services includes the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-guided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may enable covered entities to provide auxiliary aids and services which today might be considered to impose undue burdens on such entities.

Section 302(b)(2)(A)(iv) of the legislation specifies that discrimination includes a failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable.

The Committee was faced with a choice in how to address the question of what actions, if any, a public accommodation should be required to take in order to remove structural barriers in existing facilities and vehicles. On the one hand, the Committee could have required retrofitting of all existing facilities and vehicles to make them fully accessible. On the other hand, the Committee could have required that no actions be taken to remove barriers in existing facilities and vehicles.

The Committee rejected both of these alternatives and instead decided to adopt a modest requirement that covered entities make structural changes or adopt alternative methods that are "readily achievable."

The phrase "readily achievable" is defined in section 301(5) to mean easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

(2) The type of operation of the covered entity, including the composition and structure of the entity; and

(3) The nature and cost of the action needed.

It is important to note that readily achievable is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I of this legislation. Any changes that are not easily accomplishable and are not able to be carried out without much difficulty or expense when the preceding factors are weighed are not required under the readily achievable standard, even if they do not impose an undue burden.

The concept of readily achievable should not be confused with the phraseology of "readily accessible" used in regard to accessibility requirements for alterations (section 302(b)(2)(A)(vi)) and new construction (section 303). While the word "readily" appears in both phrases and has roughly the same meaning in each context—easily, without much difficulty—the concepts of "readily achievable" and "readily accessible" are sharply distinguishable and represent almost polar opposites in focus.

The phrase "readily accessible to and usable by individuals with disabilities" focuses on the person with a disability and addresses the degree of ease with which an individual with a disability can enter and use a facility; it is access and usability which must be "ready."

"Readily achievable," on the other hand, focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier; if barrier removal cannot be accomplished readily, then it is not required.

What the "readily achievable" standard will mean in any particular public accommodation will depend on the circumstances, considering the factors listed previously, but the kind of barrier-removal which is envisioned includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

This section may require the removal of physical barriers, including those created by the arrangement or location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

A public accommodation would not be required to provide physical access if there is a flight of steps which would require extensive ramping or an elevator. The readily achievable standard only requires physical access that can be achieved without extensive restructuring or burdensome expense.

In small facilities like single-entrance stores or restaurants, "readily achievable" changes could involve small ramps, the installation of grab bars in restrooms in various sections and other such minor adjustments and additions.

The readily achievable standard allows for minimal investment with a potential return of profit from use by disabled patrons, often more than justifying the small expense.

Section 302(b)(2)(A)(v) of the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Section 302(b)(2)(A)(vi) of the legislation specifies that discrimination includes, with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

Where the entity is undertaking major structural alterations that affect or could affect the usability of the existing facility, the entity must also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities.

The phrase "major structural alterations" will be defined by the Attorney General. The Committee intends that the term "structural" means elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways.

The term "major structural alterations" refers to structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered "major." On the other hand, structural alteration to the customer service lobby of a bank would be considered major because it houses a major or primary function of the bank building.

The legislation includes an exception regarding the installation of elevators, which specifies that the obligation to make a facility readily accessible to and usable by individuals with disabilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The Committee wishes to make it clear that the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator. And, in the event a facility which meets the criteria for the exception nonetheless has an elevator installed, then such elevator shall be required to meet accessibility standards.

The Committee intends that the term "facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located. This definition is consistent with the definitions used under current Federal regulations and standards and thus includes both indoor areas and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

The phrase "readily accessible to and usable by individuals with disabilities" is a term of art which is explained in the section of the report concerning new construction.

The phrase "to the maximum extent feasible" has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Thus, for example the term "to the maximum extent feasible" should be construed as not requiring entities to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member unless the load-bearing structural member is otherwise being removed or altered as part of the alteration.

Section 302(b)(2)(B) of the legislation includes policies applicable to fixed route vehicles used by entities that are not in the principal business of transporting people. First, it is considered discrimination for an entity to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act that are not readily accessible to and usable by individuals with disabilities except that over-the-road buses shall be subject to section 304(b)(4) (which delays the effective date for 6 years for small operators and 5 years for other operators) and section 305 (which provides for a study of how to make the impact of making such buses accessible).

If an entity not in the principal business of transporting people purchases or leases a vehicle carrying 16 or fewer passengers after the effective date of title III that is not readily accessible to or usable by individuals with disabilities, it is discriminatory for such an entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

Section 302(b)(2)(C) includes provisions applicable to vehicles used in demand-responsive systems by entities that are not in the principal business of transporting people. The provisions applicable to such vehicles are the same as those applicable to fixed route vehicles except that the entity need not ensure that all new vehicles carrying more than 16 passengers are accessible if it can demonstrate that the system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public.

For example, where a hotel at an airport provides free shuttle service, the hotel need not purchase new vehicles that are accessible so long as it makes alternative equivalent arrangements for transporting people with disabilities who cannot ride the inaccessible vehicles. This might be accomplished through the use of a portable lift or by making arrangements with another entity that has an accessible vehicle that can be made available to provide equivalent shuttle service.

New construction

Section 303 of the legislation sets forth obligations with respect to the construction of new facilities. This section is applicable to public accommodations and potential places of employment.

The term "potential places of employment" is defined in section 301(2) to mean facilities that are intended for nonresidential use and whose operations affect commerce. The Committee expects that implementing regulations concerning "potential places of employment" will cover the same areas in a facility as existing design standards. Thus, unusual spaces that are not duty stations, such as catwalks and fan rooms, would continue to lie outside the scope of design standards.

The term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968.

Specifically, section 303(a) of the legislation specifies that it is unlawful discrimination for a public accommodation or potential place of employment to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impacticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under title III.

Section 303(b) of the legislation exempts entities from installing elevators under the same circumstances applicable to alterations (see section 302(b)(2)(A)(vi) and the accompanying clarifications in the report).

The phrase "readily accessible to or usable by" is a term of art which, in slightly varied formulations, has been applied in the Architectural Barriers Act of 1968 ("ready access to, and use of"), the Fair Housing Act of 1968, as amended ("readily accessible to and usable by"), and the regulations implementing section 504 of the Rehabilitation Act of 1973 ("readily accessible to and usable by") and is included in standards used by Federal agencies and private industry e.g., the Uniform Federal Accessibility Standards (UFAS) ("ready access to and use of") and the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1) (readily accessible to, and usable by).

The term is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter, and use a facility. While the term does not necessarily require the accessibility of every part of every area of a facility, the term contemplates a high degree of convenient accessibility, entailing accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services, programs, facilities, and accommodations offered at the facility.

The term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, etc. are accessible; only a reasonable number must be accessible, depending on such factors as their location and number.

Accessibility elements for each particular type of facility should assure both ready access to the facility and usability of its features and equipment and of the goods, services, and programs available therein.

For example, for a hotel "readily accessible to and usable by" includes, but is not limited to, providing full access to the public use and common use portions of the hotel; requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs; making a percentage of each class of hotel rooms fully accessible (e.g., including grab bars in bath and at the toilet, accessible counters in bathrooms); audio loops in meeting areas; signage, emergency flashing lights or alarms; braille or raised letter words and numbers on elevators; and handrails on stairs and ramps.

Of course, if a person with a disability needing a fully accessible room makes an advance registration without informing the hotel of the need for such a room arrives on the date of the reservation and no fully accessible room is available, the hote has not violated the Act. Moreover, a hotel is not required to forego renting fully accessible rooms to nondisabled persons if to do so would cause the hotel to lose a rental.

In a physician's office, "readily accessible to and usable by" would include ready access to the waiting areas, a bathroom, and a percentage of the examining rooms.

Historically, particularized guidance and specifications regarding the meaning of the phrase "readily accessible to and usable by" for various type of facilities have been provided by MGRAD, UFAS, and the ANSI standards. Under this legislation, such specificity will be provided by the expanded MGRAD standards to be issued by the Architectural and Transportation Barriers Compliance Board and by the regulations issued by the Attorney General, both of which are discussed subsequently in this report.

It is the expectation of the Committee that the regulations issued by the executive branch could utilize appropriate portions of MGRAD.

It is also the Committee's intent that the regulations will include language providing that departures from particular technical and scoping requirements, as revised, will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Allowing these departures will provide covered entities with necessary flexibility to design for special circumstances and will facilitate the application of new technologies.

The phrase "structurally impracticable" is a narrow exception that will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted:

> certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing traditionally may be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act over-

> ride the need to protect the physical integrity of multifamily housing that may be built on such sites.

By incorporating the phrase "structurally impracticable," the ADA explicitly recognizes an exception analogous to the "physical integrity" exception for peculiarities of terrain recognized implicitly in statutory language and expressly in the House Committee Report accompanying the Fair Housing Amendments Act. As under the Fair Housing Amendments Act, this is intended to be a narrow exception to the requirement of accessibility. It means that only where unique characteristics of terrain prevent the incorporation of accessibility features and would destroy the physical integrity of a facility is it acceptable to deviate from accessibility requirements. Buildings that must be built on stilts because of their location in marshlands or over water are one of the few situations in which the structurally impracticable exception would apply.

Neither under the ADA nor the Fair Housing Amendments Act should an exception to accessibility requirements be applied to situations in which a facility is located in "hilly" terrain or on a plot of land upon which there are steep grades; in such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and ought to be required in the construction of new facilities.

In those are circumstances in which it is structurally impracticable to achieve full compliance with accessibility requirements under the ADA, public accommodations should still be designed and constructed to incorporate accessibility features to the extent that they are structurally practicable. The accessibility requirements should not be viewed as an all-or-nothing proposition in such circumstances.

If it is structurally impracticable for a facility in its entirety to be readily accessible to and usable by people with disabilities, then those portions which can be made accessible should be. If a building cannot comply with the full range of accessibility requirements because of structural impracticability, then it should still be required to incorporate those features which are structurally practicable. And if it is structurally impracticable to make a particular facility accessible to persons who have particular types of disabilities, it is still appropriate to require it to be made accessible to persons with other types of disabilities.

If, for example, a facility which is of necessity built on stilts cannot be made accessible to persons who use wheelchairs because it is structurally impracticable to do so, this is no reason not to still require it to be accessible for individuals with vision or hearing impairments or other kinds of disabilities.

The new construction provision includes establishments that "are potential places of employment" as well as public accommodations. The Committee decided to include this provision to ensure that unnecessary barriers to employment are not built into facilities that are constructed in the future. Since it is easy and inexpensive to incorporate accessibility features in new construction, the Committee concluded that there is no rational justification for employers to continue to construct inaccessible facilities that will bar the entrance of and limit opportunities for people with disabilities for years to come.

In addition, this provision will ensure that all new facilities which potentially may be occupied by places of public accommodation but whose first occupant may not be such an entity are constructed in such a way that they are readily accessible to and usable by individuals with disabilities for the original use for which the building is intended.

The Committee decided not to limit this provision to potential places of employment of 15 or more employees because of the desire to establish a uniform requirement of accessibility in new construction, because of the ease with which such a requirement can be accomplished in the design and construction stages, and because future expansion of a business or sale or lease of the property to a larger employer or to a business that is open to the public is always a possibility.

The phrase "are potential places of employment" is not intended to make an establishment that is not a public accommodation subject to the other provisions of this title e.g., the obligation to provide auxiliary aids or services.

Prohibition of discrimination in public transportation services provided by private entities

Section 304(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

The term "public transportation" is defined in section 301(4) of the legislation to mean transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

The Committee wishes to make it clear that the provisions of title III do not apply to public entities such as public transit authorities and school districts. Public entities providing transportation services are generally subject to the provisions of title II of this legislation and school bus operations are generally covered by regulations implementing section 504 of the Rehabilitation Act of 1973 issued by agencies providing Federal financial assistance to school districts.

The Committee also wishes to make it clear that title III does not apply to volunteer-driven commuter ridership arrangements.

The Committee excluded transportation by air because the Congress recently passed the Air Carriers Access Act, which was designed to address the problem of discrimination by air carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent.

Section 304(b) of the legislation includes specific applications of the general prohibition set out in section 303(a). As used in subsection (a), the term "discrimination against" includes:

(1) The imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual

with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) The failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi); and

(3) The purchase or lease of a new vehicle (other than an automobile or over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The bill includes a special exception for vehicles used in a demand-responsive system. In the case of a vehicle used in a demand-response system, the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

With respect to the purchase of new over-the-road buses, it is considered discrimination to purchase or lease a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 6 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 5 years for other providers, that is not readily accessible to and usable by individuals with disabilities.

The term "readily accessible to and usable by" means, with respect to vehicles used for public transportation, able to be entered into and exited from and safely and effectively used by individuals with disabilities, including individuals who use wheelchairs.

Currently, technology may not exist that will enable an individual who uses a wheelchair to access restrooms in over-the-road buses without resulting in the significant loss of current seating capacity. Since this legislation is future driven, the Committee intends that the Department of Transportation develop regulations which require that accessible restrooms be installed on intercity coaches when technologically feasible.

Lifts or ramps, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the current features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals who use wheelchairs or three-wheeled mobility aids; how many spaces per vehicle are to be made available for wheelchairs is, however, a determination that depends on various factors, including the number of vehicles in the fleet, seat vacancy rates, and usage by people with disabilities.

The Committee intends that, consistent with these general factors, the determination of how many spaces must be available should be flexible and generally left up to the provider; provided that at least some spaces on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be issued under this legislation.

The Committee intends that during the interim periods prior to the date when over-the-road buses must be readily accessible to and usable by individuals with disabilities that regulations specify that providers modify their policies so that individuals who use wheelchairs may get on and off such buses without having to bring their own attendant to help them get on and off the bus. Further, policies should be modified to require the on-board storage of batteries for battery operated wheelchairs.

Section 305 of the legislation directs the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the access needs of individuals with disabilities to over-the-road buses and the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities.

In determining the most cost-effective methods for making over-the-road buses readily accessible to and usable by persons with disabilities, particularly individuals who use wheelchairs, the legislation specifies that the study should analyze the cost of providing accessibility, recent technological and cost saving developments in equipment and devices, and possible design changes.

Thus, the Committee is interested in having the study include a review of current technology such as lifts that enable persons with mobility impairments, particularly those individuals who use wheelchairs, to get on and off buses without being carried; alternative designs to the current lifts; as well as alternative technologies and modifications to the design of buses that may be developed that will also enable such individuals to get on and off over-the-road buses without being carried.

It is also expected that the study will review alternative design modifications that will enable an individual using the over-the-road bus to have access to the restroom and at the same time permitting the provider to retain approximately the same seating capacity.

The study must also assess the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service in light of the economic pressures on the bus industry that have lead to a reduction of service, particularly in rural America. According to an analysis by the Interstate Commerce Commission staff, 3,400 communities lost all intercity bus service between 1982 and 1986. Of these nine-tenths were areas with populations of under 10,000.

Thus, this study should analyze how the private bus operators can comply with the requirement in section 304 of the legislation that over-the-road buses be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, without contributing to the deterioration of rural bus service.

It is the Committee expectation that the study will also review current policies that impede the shared use by private companies providing tours and charter services of public buses that are currently accessible. Another component of the study may be to seek ways to link local providers of accessible transportation services with intercity bus service in hub areas. This may necessitate expansion of service by local providers to match intercity and intermodal schedules in order to help ensure effective development of such a feeder service relationship.

The Committee recognizes that after deregulation of the airline and rail industries, safety net programs were implemented to assist States in preserving efficient air and rail transportation, primarily between smaller cities and communities threatened by the loss of service. No similar Federal program was established to assist the private bus industry. The Committee expects that the study will consider whether and, if deemed appropriate, identify policy alternatives that might assist private bus companies meet the mandates in this legislation.

The legislation also calls for the establishment of an advisory board of which 50 percent of the members must be selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers; and 50 percent of the members must be individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses.

Anyone in the business of providing taxi service shall not discriminate on the basis of disability in the delivery of that service. For example, it would be illegal under the Act to refuse to pick up a person on the basis of that person's disability. A taxi cab driver could not refuse to pick up someone in a wheelchair because he or she believes that the person could not get out of their chair or because he or she did not want to lift the wheelchair into the trunk of the taxi or put it in the back seat.

Regulations

Section 306(a) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

With respect to section 304(b)(4) of the legislation, the Committee recognizes the apparent anomaly in requiring the promulgation of regulations while a needs and impact assessment is in progress and two years prior to the submission of the study and its recommendations to the President and the Congress. This timing, however, should not be construed as calling into question the importance or necessity of empirical data and technolgical information to this rulemaking process. Rather, the Committee believed it wise that, with respect to over-the-road buses, regulations be in place well in advance of the compliance dates of the Act.

The Committee fully expects that, following submission, the study and its recommendations will be expeditiously and carefully reviewed to determine if, or to what extent, the regulations promulgated pursuant to this section of the legislation need to be revised or amended.

Section 306(b) of the legislation, specifies that not later than one year after the date of enactment of this Act, the Attorney General shall issue regulations in an acccessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Exemptions for private clubs and religious organizations

Section 307 of the legislation specifies that the provisions of title III do not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 or to religious organizations or to entities controlled by religious organizations. Places of worship and schools controlled by religious organizations are among those organizations and entities which fall within this exemption.

The reference to "entities controlled by a religious organization" is modeled after the provisions in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the term "controlled by a religious organization" be interpreted consistently with the Attachment which accompanied the Assurance of Compliance with title IX required by the U.S. Department of Education. Of course, the Committee recognizes that unlike the title IX exemption, this provision applies to entities that are not educational institutions. The term "religious organization" has the same meaning as the term "religious organization" in the phrase "entitles controlled by a religious organization."

Activities conducted by a religious organization or an entity controlled by a religious organization on its own property which are open to nonmembers of that organization or entity are included in this exemption.

Enforcement

Section 308 of the legislation sets forth the scheme for enforcing the rights provided for in title III. Section 308(a)(1) provides a private right of action for any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of title III. This subsection makes available to such an individual the remedies and procedures set forth in section 204a-3(a) of the Civil Rights Act of 1964 (preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order).

Section 308(a)(2) of the legislation makes it clear that in the case of violations of section 302(b)(2)(A)(iv) pertaining to removing barriers in existing facilities, section 302(b)(2)(A)(vi) pertaining to alterations of existing facilities, and section 303(a) pertaining to new construction, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities as required by title III.

Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

Section 308(b) of the legislation specifies the enforcement scheme for the Attorney General. First, the Attorney General shall investigate alleged violations of title III, which shall include undertaking periodic reviews of compliance of covered entities.

If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title III or that any person or group of persons has been denied any of the rights granted by title III and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

In a civil action brought by the Attorney General, the court may grant any equitable relief it considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by title III.

In addition, a court may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved, when requested by the Attorney General. Thus, it is the Committee's intent that the Attorney General shall have discretion regarding the damages he or she seeks on behalf of persons aggrieved. It is not the Committee's intent that this authority include the authority to award punitive damages.

Furthermore, the court may vindicate the public interest by assessing a civil penalty against the covered entity in an amount not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation.

Effective date

In accordance with section 309 of the legislation, title III of the legislation shall become effective 18 months after the date of enactment of this legislation.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Title IV of the legislation, as reported, will help to further the statutory goals of universal service as mandated in the Communications Act of 1934. It will provide to hearing- and speech-impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals.

Background

There are over 24 million hearing-impaired and 2.8 million speech-impaired individuals in the United States, yet inadequate attention has been paid to their special needs with respect to accessing the Nation's telephone system. Given the pervasiveness of the telephone for both commercial and personal matters, the inability to utilize the telephone system fully has enormous impact on an individual's ability to integrate effectively in today's society.

The Communications Act of 1934 mandates that communications services be "[made] available, so far as possbile, to *all* the people of the United States. * * *". (Section 1, emphasis added). This goal of universal service has governed the development of the Nation's telephone system for over fifty years. The inability of over 26 million Americans to access fully the Nation's telephone system poses a serious threat to the full attainment of the goal of universal service.

In order to realize this goal more fully, Title IV of this legislation amends Title II of the Communications Act of 1934, as amended, by adding a new section 225. This new section imposes on all common carriers providing interstate or intrastate telephone service, an obligation to provide to hearing and speech impaired individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals. Carriers are granted the flexibility to determine whether such services are provided by the carrier alone, in concert with other carriers, or through a designee. Hereinafter, this part of the Report will be referring to this new section 225 and not to sections in S. 933, The Americans with Disabilities Act.

Currently, individuals with hearing and speech impairments can communicate with each other over the telephone network with the aid of Telecommunications Devices for the Deaf (TDDs). TDDs use a typewriter-style device equipped with a message display (screen and/or printer) to send a coded signal through the telephone network. However, users of TDDs can communicate only with other users of TDDs. This creates serious hardships for Americans with hearing and/or speech impairments, since access to the community at large is significantly limited.

The Committee intends that section 225 better serve to incorporate the hearing- and speech-impaired communities into the telecommunications mainstream by requiring that telephone services be provided to hearing and/or speech impaired individuals in a manner that is functionally equivalent to telephone services offered to those who do not have these impairments. This requirement will service to bridge the gap between the communications impaired telephone and the community at large. To participate actively in society, one must have the ability to call firends, family, businesses, and employers.

Current technology allows for communications between a TDD user and a voice telephone user by employing a type of relay system. Such systems include a third party operator who completes the connection between the two parties and who transmits messages back and forth in real time between the TDD user and the hearing individual. The originator of the call communicates to the operator either by voice or TDD. The operator then uses a video display system to translate the typed or voice message simultaneously from one medium to the other.

Although the Committee notes that relay systems represent the current state-of-the-art, this legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. The hearing- and speech-impaired communities should be allowed to benefit from advancing technology. As such, the provisions of this section do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology.

The Committee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of such services. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under this section whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services.

The Committee finds it necessary to grant the FCC such residual authority in this instance to ensure universal service to the hearing- and speech-impaired community. Although a number of states have mandated statewide relay systems, the majority of states have not done so. Moreover, the systems that do exist vary greatly in quality and accessibility. The Committee finds that to ensure universal service to this population of users, service must be made uniformly available on a local, intrastate, and interstate basis. It is the Committee's hope and expectation, however, that all states will seek certification in a timely manner and that the FCC will not find it necessary to exercise its enforcement authority. It is essential to this population's well-being, self-sufficiency and full integration into society to be able to access the telecommunications network and place calls nationwide without regard to geographic location.

Attaining meaningful universal service for this population also requires that some level of minimum federal standards for service, service quality, and functional equivalency to voice telephone services be established and maintained. The FCC is therefore required to establish certain minimum federal standards that all telecommunications relay service providers must meet.

By requiring telecommunications relay services to be provided throughout the United States, this section takes a major step towards enabling individuals with hearing and speech impairments to achieve the level of independence in employment, public accommodations and public services sought by other sections of the Americans with Disabilities Act. The Committee concludes that expanding the FCC's authority in this instance will both promote interstate commerce and be of benefit to all Americans.

The grant of jurisdiction to the FCC is limited, however, by the state certification procedures required to be established under this section. It is the Committee's intention that these procedures operate to preserve initiatives by a state or group of states to implement a telecommunications relay services program within that state or within a region either through the state itself, through designees, or through regulation of intrastate common carriers. As such, the section provides that any state may regulate intrastate telecommunications relay services provided by intrastate carriers once the state is granted certification by the FCC. The FCC is to establish clearly defined procedures for requesting certification and a review process to ensure that a state program, however it is provided, satisfies the minimum standards promulgated under this section. The certification procedures and review process should afford the least possible intrusion into state jurisdiction consistent with the goals of this section to have nationwide universal service for hearing- and speech-impaired individuals.

The Committee intends that telecommunications relay services be governed by minimum federal standards that will ensure that telephone service for hearing and speech impaired individuals is functionally equivalent to telephone services offered to hearing individuals. Such standards, however, should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

Cost recovery for telecommunications relay services will be determined by the FCC in the case of interstate telecommunications relay services and by certified states in the case of intrastate telecommunications relay services. While states are granted the maximum latitude to determine the method of cost recovery for intrastate relay services provided under their jurisdiction, the FCC is specifically prohibited from allowing the imposition of a flat monthly charge on residential end users to recover the costs of providing interstate telecommunications relay service. It is the Committee's expectation that the costs of providing telecommunications relay services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.

Definitions

Section 225(a) defines: (1) "Common Carrier or Carrier" to include interstate carriers and intrastate carriers for purposes of this section only; (2) "TDD" to mean a machine that may be used by a variety of disabled individuals such as deaf, hard of hearing, deaf-blind, or speech impaired individuals and that employs graphic communications through the transmission of coded signals over telephone wires; and (3) "Telecommunications relay services" to mean telephone transmission services that allow a hearing- and/or speech-impaired individual to communicate in a manner that is functionally equivalent to voice communications services offered to hearing individuals. The term includes, but is not limited to, TDD relay services.

Availability of telecommunications relay services

Section 225(b)(1) states that in furtherance of the goals of universal service, the FCC must ensure that interstate and intrastate telecommunications relay services are provided to the greatest extent possible and in the most efficient manner.

Section 225(b)(2) extends the remedies, procedures, rights and obligations applicable to interstate carriers under the Communications Act of 1934, as amended, to intrastate carriers for the limited purpose of implementing and enforcing the requirements of this section.

Provision of services

Section (c) requires that carriers providing telephone voice transmission services provide telecommunications relay services within two years after the date of enactment of this section. Carriers are to offer to hearing- and speech-impaired individuals services which are functionally equivalent to telephone services provided to hearing individuals including providing services with the same geographic radius that they offer to hearing individuals. Carriers are granted the flexibility to provide such services either individually, in concert with other carriers, or through designees. In exercising this flexibility to appoint designees, however, carriers must ensure that all requirements of this section are complied with.

Regulations

Section (d) requires the FCC to prescribe the necessary rules and regulations to carry out the requirements of this section within one year of its enactment.

Also, given the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties. The Committee notes that the FCC has already issued several notices on the creation of an interstate relay system and the most efficient way such a system could be provided. While the FCC is afforded a significant amount of flexibility in implementing the goals of this section, subsection (d) requires that the FCC establish certain minimum standards, practices and criteria applicable to all telecommunications relay services and service providers as follows:

Section (d)(1)(A) requires the FCC to establish functional requirements, guidelines, and operational procedures for the provision of telecommunications relay services. One of these requirements shall be that all carriers subject to this section shall provide telecommunications relay services on a non-discriminatory basis to all users within their serving area. The FCC should pursue means in which the goals of this section may be met in the most efficient manner. In addition, the Commission should include specific language requiring that operators be sufficiently trained so as to effectively meet the specialized communications needs of individuals with hearing and speech impairments, including sufficient skills in typing, grammar and spelling.

Section (d)(1)(B) requires the FCC to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services including technical standards, quality of service standards, and the standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services. Telecommunications relay services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals. In determining factors necessary to establish functional equivalency, the FCC should include, for example, the requirement that telecommunications relay services transmit messages between the TDD and voice caller in real time, as well as the requirement that blockage rates for telecommunications relay services be no greater than standard industry blockage rates for voice telephone services. Other factors that should be included are the opportunity for telecommunications relay service users to choose an interstate carrier whenever possible. The FCC should enumerate other such measurable standards to ensure that hearing and non-hearing individuals have equivalent access to the Nation's telephone networks.

Section (d)(1)(C) requires that such telecommunications relay services operate 24 hours a day, seven days a week.

Section (d)(1)(D) requires that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination. Although the Committee commends states that have chosen to implement a discount, this section is not intended to mandate a rate discount with respect to call duration.

Section (d)(1)(E) prohibits relay operators from refusing calls or limiting the length of calls that use such relay services.

Section (d)(1)(F) prohibits relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of that call. The Committee recognizes that printed records of such calls may be necessary to complete the call; however, this requirement is to ensure that records are not kept after termination of the conversation. In addition, the Committee recognizes that it may be technically impossible today to relay recorded messages in their entirety because TDDs can only transmit messages at a given speed. In these situations, a hearing or speech impaired individual should be given the option to have the message summarized.

Section (d)(1)(G) prohibits relay operators from intentionally altering any relayed conversation.

Section (d)(2) requires that the FCC ensure that regulations prescribed to implement this section encourage the use of state-of-the-art technology. Such regulations should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

Section (d)(3) states that the Commission should issue regulations to govern the separation of costs for the services provided pursuant to this section. No change to the procedures for allocating joint costs between the interstate and intrastate jurisdictions as set forth elsewhere in the Communications Act of 1934 is intended.

Section (d)(4) prohibits the Commission from allowing the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunications relay services. However, the manner in which the costs of providing intrastate telecommunications relay services are recovered is left to the discretion of certified states. It is the Committee's expectation that the costs of providing such services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.

Section (d)(5) grants the FCC flexibility to extend the date of full compliance with the requirements of this Section by one year for any carrier or group of carriers that it finds will be unduly burdened. Interested parties should be given an opportunity to comment on any such request for an extension and such requests should not be granted without compelling justification.

Enforcement

Section (e)(1) requires that the Commission enforce the requirements of this section subject to subsections (f) and (g). The Committee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of the service. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under subsection (f) whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services.

Section (e)(2) requires that the Commission resolve any complaint by final order within 180 days after that complaint has been filed.

Certification

Sections (f) (1) and (2) describe the state certification procedure whereby states may apply to reassert jurisdiction over the provision of intrastate telecommunications relay services. The FCC may grant certification upon a showing that such services are being made available in the state and that they comply with the federal guidelines and standards promulgated pursuant to section (d). A state plan may make service available through the state itself, through designees or through regulation of intrastate carriers.

Section (f)(3) states that, except for reasons affecting rules promulgated pursuant to section (d), the FCC may not deny certification to a state based solely on its chosen method of funding the provision of intrastate telecommunications relay services. Section (d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of telecommunications relay services to pay effectively higher rates than those paid for functionally equivalent voice communications services. Additionally, the Committee urges that because this service is of benefit to all society that any funding mechanism not be labeled so as to unduly prejudice the hearing- and speech-impaired community.

Section (f)(4) allows for the Commission to revoke such certification, if after notice and opportunity for hearing, the Commission determines that certification is no longer warranted.

Complaint

Section (g)(1) states that when a complaint is filed with the Commission that alleges a violation of this section with respect to the provision of intrastate telecommunication relay services, the Commission shall refer such complaint to the appropriate State commission if that State has been duly certified by the FCC pursuant to section (f). If the appropriate State has not been duly certified, then the Commission will handle the complaint pursuant to sections (e) (1) and (2).

Once a complaint has been properly referred to a State Commission, subsection (g)(2) permits the FCC to exercise its jurisdiction over such a complaint only if final action has not been taken within 180 days after the complaint is filed with the State, or within a shorter period as prescribed by the regulations of such State, or if the Commission determines that a State program no longer qualifies for certification under section (f).

TITLE V—MISCELLANEOUS PROVISIONS

Construction

Section 501 of the legislation specifies the relationship between this legislation and the Rehabilitation Act of 1973 and other Federal, State or local laws. Section 501 also specifies the relationship between this legislation and the regulation of insurance.

With respect to the Rehabilitation Act of 1973, section 501(a) of the legislation specifies that nothing in this legislation should be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by the Federal agencies pursuant to such title.

With respect to other laws, section 501(b) of the legislation specifies that nothing in this legislation should be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities that are afforded by this legislation. This legislation could be construed to be in conflict with other laws governing spaces or worksites, for example OSHA requirements. The Committee expects the Attorney General to exercise coordinating authority to avoid and eliminate conflicts.

With respect to insurance, section 501(c) of the legislation specifies that titles I, II, and III of this legislation shall not be construed to prohibit or restrict—

> (1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
>
> (2) Any person or organization covered by this Act from establishing, sponsoring or observing the terms of a bona fide benefit plan which terms are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

provided that points (1) and (2) are not used as a subterfuge to evade the purposes of titles I, II and III of this legislation.

As indicated earlier in this report, the main purposes of this legislation include prohibiting discrimination in employment, public services, and places of public accommodation. The Committee does not intend that any provisions of this legislation should affect the way the insurance industry does business in accordance with the State laws and regulations under which it is regulated.

Virtually all States prohibit unfair discrimination among persons of the same class and equal expectation of life. The ADA adopts this prohibition of discrimination. Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

Since there is some uncertainty over the possible interpretations of the language contained in titles I, II and III as it applies to insurance, the Committee added section 501(c) to make it clear that this legislation will not disrupt the current nature of insurance underwriting or the current regulatory structure for self-insured employers or of the insurance industry in sales, underwriting, pricing, administrative and other services, claims, and similar insurance related activities based on classification of risks as regulated by the States.

However, the decision to include this section may not be used to evade the protections of title I pertaining to employment, title II pertaining to public services, and title III pertaining to public accommodations beyond the terms of points (1) and (2), regardless of the date an insurance plan or employer benefit plan was adopted.

For example, an employer could not deny a qualified applicant a job because the employer's current insurance plan does not cover the person's disability or because of the increased costs of the insurance.

Moreover, while a plan which limits certain kinds of coverage based on classification of risk would be allowed under this section, the plan may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

For example, a blind person may not be denied coverage based on blindness independent of actuarial risk classification. Likewise, with respect to group health insurance coverage, an individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy but cannot be denied coverage for illnesses or injuries unrelated to the pre-existing condition.

Specifically, point (1) makes it clear that insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually underwritten basis, or to service such insurance products.

Point (2) recognizes the need for employers, and/or agents thereof, to establish and observe the terms of employee benefit plans, so long as these plans are based on underwriting or classification of risks.

In both cases, points (1) and (2) shall not be used as a subterfuge to evade the purposes of titles I, II and III of the legislation, regardless of the date the insurance plan or employer benefit plan was adopted.

As explained previously in this report, the Committee also wishes to clarify that in its view, as is stated by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), employee benefit plans should not be found to be in violation of this legislation under impact analysis simply because they do not address the special needs of every person with a disability, e.g., additional sick leave or medical coverage.

Moreover, this subsection must be read to be consistent with subsection (b) of section 501 pertaining to other Federal and State laws.

In sum, section 501(c) is intended to afford to insurers and employers the same opportunities they would enjoy in the absence of this legislation to design and administer insurance products and benefit plans in a manner that is consistent with basic principles of insurance risk classification. Without such a clarification, this legislation could arguably find violative of its provisions any action taken by an insurer or employer which treats disabled persons differently under an insurance or benefit plan because they represent an increased hazard of death or illness.

The provisions recognize that benefit plans (whether insured or not) need to be able to continue present business practices in the way they underwrite, classify, and administer risks, so long as they carry out those functions in accordance with accepted principles of insurance risk classification.

While the bill is intended to apply nondiscrimination standards equally to self-insured plans as well as to third-party payer and third-party administered plans with respect to persons with disabilities, section 501(c) of this legislation should not be interpreted as subjecting self-insured plans to any State insurance laws of general application regarding underwriting risks, classifying risks, or administering such risks that are otherwise preempted by the Employee Retirement Income Security Act of 1974 (ERISA).

Prohibition against retaliation and coercion

Section 502(a) of the legislation specifies that no individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Section 502(b) of the legislation specifies that it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her have aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this legislation.

Section 502(c) of the legislation specifies that the remedies and procedures available under sections 106, 205, and 308 shall be available to aggrieved persons for violations of subsections (a) and (b).

State immunity

Section 503 of the legislation specifies that a State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

This provision is included in order to comply with the standards for covering states set forth in the *Atascadero State Hospital* v. *Scanlon*, 105 S. Ct. 3142 (1985).

Regulations by the Architectural and Transportation Barriers Compliance Board

Section 504 specifies that not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

These guidelines shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

The "Minimum Guidelines and Requirements for Accessible Design" (MGRAD), as issued and revised by the Board have provided guidance to four Federal standard-setting agencies (the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service) in their regulations establishing the Uniform Federal Accessibility Standards (UFAS).

The ADA directs the Board to issue supplemental guidelines and requirements to guide two additional Federal standard-setting agencies—the Department of Transportation and the Department of Justice—in their development of regulations under this legislation.

The development of supplemental MGRAD will require the Board to complete and expand its previous guidelines and requirements. There are some areas within the Board's MGRAD authority in which it has not yet issued minimum guidelines. One such example is the area of recreation. In 1985, the Federal Government Working Group on Access to Recreation Developed for the Board a technical paper titled, "Access to Outdoor Recreation Planning and Design," including technical requirements and specific guidelines, but the Board has not officially issued minimum guidelines and requirements in this area. The Committee expects the Board to take prompt action to complete the filling of such gaps in the existing MGRAD.

In issuing the supplemental minimum guidelines and requirements called for under this legislation, the Board should consider whether other revisions or improvements of the existing MGRAD (including scoping provisions) are called for to achieve consistency with the intent and the requirements of this legislation. Particular attention should be paid to providing greater guidance regarding communication accessbility.

In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in existing MGRAD.

This legislation also explicitly provides that the Board is to develop minimum guidelines for vehicles. The Committee intends that the Board shall issue minimum guidelines regarding various types of conveyances and means of transport that come within the ambit of titles II and III of the legislation. Such guidelines should include specifications regarding wheelchair lifts and ramps on vehicles where necessary for boarding and getting off. The Board should also review its minimum guidelines regarding stations and other places of boarding or departure from vehicles to make sure that they are coordinated with and complementary to the minimum guidelines regarding vehicles.

Attorneys fees

Section 505 specifies that in any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Technical assistance

Section 506 specifies that the Attorney General, in consultation with the Secretary of Transportation, the Chairman of the Federal Communications Commission, and the Secretary of Commerce, shall, within 180 days after the enactment of this legislation, develop and implement a plan to assist entities covered under this legislation.

The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out his or her responsibilities.

VII. Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 933 is made:

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OR CLASSIFICATIONS

S. 933 would regulate all private sector employers with 15 or more employees. Data from the Equal Employment Opportunity Commission for 1989 put the number of employers with 15 or more employees at 666,000. The bill would regulate all units of State and local government, which do not receive Federal aid. The total number of units of State and local government in the United States is 83,250. Many of these units of government already are subject to section 504 of the Rehabilitation Act of 1973, as amended, which contains similar requirements to this bill.

S. 933 would also regulate private businesses engaged in commerce and open to the general public, of which Census Bureau figures indicate there are approximately 3.9 million. For new construction, the ADA will add accessibility requirements not already contained in existing State laws to 44 percent of new commercial construction.

There are over 1500 telephone common carriers in the United States that will be subject to the provisions of this law. The law permits these companies to act in concert or to contract out to third parties to provide this service over their networks, much as they do today in providing various forms of operator services. The legislation deliberately leaves these options to the carriers in order to encourage them to find the most economically efficient means of providing the service.

Approximately forty-three million persons with disabilities will be entitled to the protections of this legislation as employees, job applicants, clients and customes of places of public accommodation, and users of telephone services. There are approximately 24 million hearing impaired and 2.75 million speech impaired persons in the United States that will benefit from having telecommunication relay service available to them.

B. ECONOMIC IMPACT ON THE INDIVIDUALS, CONSUMERS AND BUSINESSES AFFECTED

Individuals with disabilities will have barriers to participation in all aspects of our society eliminated, permitting them to be employed, use public transportation, enjoy the services of State and local governments and public accommodations and use telephone services.

Savings to the public and private sectors in the form of increased earnings for people with disabilities and decreased government benefit and private insurance and benefit payments is estimated to be in the billions of dollars per year.

Costs to businesses for reasonable accommodations are expected to be less than $100.00 per worker for 30% of workers needing an accommodation, with 51% of those needing an accommodation requiring no expenses at all. A Louis Harris national survey of people with disabilities found that among those employed, accommodations were provided in only 35% of the cases.

For renovation and new construction, costs of accessibility are generally between zero and one percent of the construction budget. For new buses, lifts are available for approximately $11,000 per bus, with a Federal subsidy for 80% of the capital costs of municipal buses. There are no reliable figures for determining how much the provision of telecommunications relay service will cost. AT&T has informally estimated the cost to be around $300 million, while the Federal Communications Commission's estimate is $250 million. This translates to about $1.20 per customer per year.

Impact of the act on personal privacy

The Committee believes that this legislation has no significant impact on personal privacy. With respect to telecommunications, the legislation contains provisions to ensure that the privacy of the individuals using the service is protected. Section 225(d)(1)(F) of the Communications Act of 1934, as added by this legislation, specifically prohibits relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any conversations beyond the duration of the call. Section 225(d)(1)(G) also prohibits relay operators from intentionally altering a relayed conversation. The Federal Communications Commission is directed to adopt regulations to enforce these provisions. Violators of these provisions are subject to the penalty provisions contained in the Communications Act.

Additional paperwork, time and costs

With respect to titles I (employment), II (public services), and III (public accommodations), the bill would result in some additional paperwork, time and costs to the EEOC, the Justice Department, and the Department of Transportation, which are entrusted with the enforcement of the Act. The bill does not contain additional recordkeeping requirements.

With respect to title IV (telecommunication relay services), this legislation will require minimal amount of paperwork. The Federal Communications Commission must adopt rules to implement this legislation, and for this purpose should collect and review comments from interested parties. The Commission has an outstanding rulemaking proceeding at the present time which can be supplemented to implement this legislation. This should reduce the regulatory burden on the Commission and interested parties. Some additional paperwork will be required of States that wish to certify their programs with the Commission. One certified, however, the enforcement and paperwork burdens will be transferred to the State with minimal oversight by the Commission. Further, once the carriers have established systems that comply with this legislation, additional oversight and paperwork should be minor.

VIII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 29, 1989.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 933, the Americans with Disabilities Act of 1989, as ordered reported by the Committee on Labor and Human Resources on August 2, 1989. CBO estimates enactment of S. 933 would result in no direct spending by the federal government. The bill would require several agencies to establish regulations and standards with regard to this bill. We estimate the costs of these activities to be $20 million in fiscal year 1990 and $19 million annually in 1991-1994, assuming appropriation of the necessary funds. The costs to state and local governments are likely to be greater, particularly for improvements in transit systems. While these costs cannot be precisely estimated, they are discussed under costs to state and local governments.

If enacted, S. 933 would prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services. S. 933 would require that the Equal Employment Opportunities Commission, the Department of Transportation, the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and the Federal Communications Commission develop and issue regulations and standards for implementation and enforcement of this Act.

IMPACT ON THE FEDERAL BUDGET

Equal Employment Opportunities Commission (EEOC).—Title II—Public Services—would prohibit discrimination by employers against qualified individuals with disabilities. S. 933 would require the EEOC to issue regulations to carry out Title II and to provide for enforcement of the provisions. Although no specific authorization level is stated in the bill, CBO estimates this cost would be $15 million annually. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 240 additional full-time employees would be need for the Commission's 52 field offices and that approximately 70 additional staff would be needed for the EEOC headquarters.

Department of Transportation.—S. 933 would direct the Secretary of Transportation to issue regulations within one year including standards applicable to the facilities and vehicles covered by these provisions. CBO estimates that the cost to the federal government of developing these regulations would be about $0.5 million in fiscal year 1990. In addition, the federal government might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to S. 933.

Architectural and Transportation Barriers Compliance Board.—S. 933 would require the board to develop, issue, and maintain minimum guidelines for the design of accessible buildings, facilities and vehicles, and to establish an advisory committee for the following study. The board would be required to undertake a study to determine (1) the needs of individuals with disabilities with regards to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. Although no specific authorization level is stated in the bill, CBO estimates the cost of the guidelines, study and advisory committee would be $0.3 million in fiscal year 1990, $0.3 million in 1991, $0.1 million in 1992, $0.1 million in 1993 and $0.2 million in 1994. The cost estimate for this section fluctuates because: (1) salaries and expense costs ($104,000) are reflected in all years, (2) the study costs ($150,000) are reflected in fiscal years 1990 and 1991, (3) the advisory committee costs ($40,000) are reflected in 1991 and 1992, and (4) the research contracts costs ($80,000) for updating the minimum guidelines are reflected in 1994. This estimate assumes that 2.5 additional full-time employees would be needed as well as additional research contracts for the study and guidelines.

Department of Justice.—S. 933 also would require the Attorney General to develop regulations to carry out sections 201 and 202 of Title II—Public Services—and to investigate alleged violations of Title III—Public Accommodations—which includes undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. Based on discussions with staff in the Department of Justice and on comparisons with the costs of similar tasks in other agencies, we estimate the cost of these activities would be $4 million annually.

Federal Communications Commission (FCC).—S. 933 requires the FCC to prescribe and enforce regulations with regards to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1990, negligible in fiscal year 1991, $0.2 million in 1992, $0.2 million in 1993, and $0.1 million in 1994. The FCC anticipates a lull in fiscal year 1991 because the states will be designing telecommunications relay systems and there won't be much FCC involvement. During fiscal years 1992 and 1993, the actual certification and evaluation of state programs would occur.

In addition to the federal costs of establishing and enforcing new regulations, S. 933 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

COSTS TO STATE AND LOCAL GOVERNMENTS

Public Buildings.—S. 933 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly constructed state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs. This estimate assumes that the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public Transit.—Due to the limited time available to prepare this estimate, CBO cannot provide a comprehensive analysis of the impact of S. 933 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

S. 933 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services.—CBO estimates that it would cost state and local governments between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by S. 933. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach $15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 37 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,900 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1990, increasing to $15 million in 1994, to maintain and operate the additional lift-equipped buses required by S. 933.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would utilize the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such service would not impose an "undue financial burden". Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

Transit Facilities.—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over twenty years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study (*Urban Transportation for Handicapped Persons: Alternative Federal Approaches,* November 1979) that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of S. 933, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, based on a draft of language in the committee's report on this bill, we expect that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. The committee's draft report language indicates that these plans would satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cory Leach (226-2820) and Marjorie Miller (226-2860).

Sincerely,

ROBERT D. REISCHAUER,
Director.

IX. CHANGES IN EXISTING LAWS

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph (12) of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS OF SENATOR HATCH

The story of America is one of ever growing inclusiveness, as more and more Americans have become able to participate in the great mainstream of American life. Persons with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream.

Indeed, through their own efforts, and with the benefit of a growing array of programs and antidiscrimination provisions at the local, state, and federal levels designed to enhance their abilities to lead lives of independence, not dependence, persons with disabilities have long been writing an inspiring chapter in this quintessential American story. Persons with disabilities, through their hard work and determination, have already made great advances and destroyed many stereotypes which have been used to deny them equal opportunities in the past. They have demonstrated they are no "insular minority" in America. But more can still be done to provide equal opportunity for persons with disabilities.

At the outset of the hearings on S. 933, I stated my support for a comprehensive federal civil rights bill banning discrimination against persons with disabilities. Such protection against discrimination is long overdue. At the same time, I also expressed the view that such legislation must be both meaningful and reasonable. Accordingly, I was unable to endorse S. 933, as introduced. There were several serious problems with S. 933, as introduced, including: its excessive penalty scheme; its breadth of coverage of "public accommodations"; its significant departure from the standards of Section 504 of the Rehabilitation Act of 1973, which bans disability discrimination in programs or activities receiving federal aid and in federally conducted programs; and its onerous treatment of the private bus industry.

The substitute version, which emerged from a period of negotiations and was adopted unanimously by the Labor and Human Resources Committee, is still not a perfect compromise. It retains features that I believe merit further improvement. But it incorporated enough important changes to enable me to cosponsor it at the mark-up, while I reserved my right to pursue further changes on the Floor.

At the mark-up, the Committee accepted an amendment which I offered, requiring the Attorney General, in consultation with other federal agencies, to develop and implement a plan to assist covered entities in understanding their duties under the bill.

I also have further concerns about the bill in certain areas.

I. SMALL BUSINESS EXEMPTION FOR PUBLIC ACCOMMODATIONS

Title I of the bill bans employment discrimination and is effective in two years. At that time, the employment discrimination provisions will apply to employers with 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Two years thereafter—four years after enactment—the employment provisions will apply to employers of 15 or more employees.

Title III of the bill covers "public accommodations and services operated by private entities." Private entities defined as "potential places of employment" are subject only to accessibility requirements concerning new facilities designed and constructed for first occupancy later than 30 months after the bill's enactment. These entities include facilities intended for nonresidential use and whose operations affect commerce. Section 301(2).

Private entities defined as "public accommodations," which include much of the private sector, are subject not only to this new construction requirement but also to a wide variety of prohibitions and obligations with respect to their existing facilities and general policies. These prohibitions and obligations pertain to a business in its treatment of customers, clients, and visitors.

The term "public accommodation" is defined very broadly. It includes not only businesses covered by Title II of the 1964 Civil Rights Act, which bans racial, ethnic, and religious discrimination in public accommodations, defined as places of eating; places of lodging; places of entertainment; and gasoline stations, but it also includes retail stores, service establishments, and other elements of the private sector. Section 301(e).[1]

This ban on discrimination in privately operated "public accommodations" in Title III of the bill is effective 18 months after enactment. In stark contrast to the small business exemption from the bill's employment provisions, however, the bill contains no small business entity exemption whatsoever from these public accommodations provisions.

Thus, the bill creates the following anomaly: a mom-and-pop grocery store is not subject to the bill when it hires a clerk as a new employee, but it is subject to all of the bill's requirements in its treatment of customers, as well as to an extremely onerous penalty scheme when it violates any of these requirements.

Even under the standards of the substitute bill, the costs some small businesses may incur can be significant.[2] In the disability rights area, nondiscrimination requirements, including those in this bill, not only require elimination of outright exclusion based on stereotypes, they often impose additional duties to make reasonable accommodations to the needs of persons with disabilities. I support these requirements. But, we must acknowledge that these accommodations can cost money. Sometimes the cost is not great, but even under the standards of this bill, these costs can be more than *de minimus* where necessary to provide accessibility. This is a crucial difference between a disability civil rights statute and a civil rights statute in the race area. In order to provide equal treatment to racial minorities, a business need only disregard race and judge a person on his or her merits. To provide equal opportunity for a person with a disability will sometimes require additional actions and costs than those required to provide access to a person without a disability.

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[1] Religious organizations and entities controlled by religious organizations are completely exempt from coverage under Title III.

[2] Some persons may assert that costs should not be a factor in designing a disability civil rights law. In the context of a disability rights law, however, costs may have to be incurred in order to provide nondiscriminatory treatment; e.g., putting in a ramp, providing auxiliary aids and services, and other accommodations. Indeed, the failure to incur reasonable costs in order to provide access is regarded as discriminatory. At some point, however, the undertaking of an accommodation can be so costly or represent such a fundamental alteration in the covered entity's program that the failure to undertake the accommodation is simply not discriminatory. This principle reflects Supreme Court caselaw interpreting Section 504 of the Rehabilitation Act of 1973. E.g. *School Board of Nassau County* v. *Arline*, 480 U.S. 273, 287 n. 17 (1987); *Alexander* v. *Choate*, 469 U.S. 287 (1985); *Southeastern Community College* v. *Davis*, 442 U.S. 397, 409–414 (1979).

For example, under the public accommodations title of this bill, covered entities must seek to provide "full and equal enjoyment of [their] goods, services, facilities, privileges, advantages and accommodations." Section 302(a). Among the specific requirements applicable to the smallest businesses are:

1. The obligation to provide auxiliary aids and services to persons with disabilities, unless to do so would cause either an undue burden to the entity or a fundamental alteration in its activities. Section 302(b)(2)(A)(iii). Auxiliary aids and services are defined in Section 3(1) and can include providing qualified interpreters, qualified readers, signage, taped texts; the acquisition or modifications of equipment or devices; and similar actions and devices.
2. The obligation to make reasonable modifications in policies, practices, and procedures, unless doing so fundamentally alters the entity's activities. Section 302(b)(2)(A)(ii).
3. The obligation to remove "architectural barriers, and communication barriers that are structural in nature, in existing facilities * * * where such removal is readily achievable." Section 302(b)(2)(A)(iv). The term "readily achievable" is defined in Section 301(5).
4. The obligation to remove "transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable." Section 302(b)(2)(A)(iv)).
5. Where the removal of a barrier described in paragraphs 3 and 4 is not readily achievable, an obligation "to make [the entity's] goods, services, facilities, privileges, advantages available through alternative methods if such methods are readily achievable." Section 302(b)(2)(A)(v).
6. The elimination of eligibility criteria that screen out or tend to screen out a person or persons with disabilities unless the criteria are shown to be necessary to the conduct of the activity in question. Section 302(b)(2)(A)(i).

While these requirements will, in theory, generally translate into less actual cost the smaller the entity, any financial or administrative impact on the smallest businesses can be very troublesome for those businesses. Even comparatively "lesser" costs can be quite burdensome for a small business struggling to survive. Further, the determination as to whether an accommodation is an undue burden or a barrier removal is readily achievable may ultimately be made by a federal agency or judge. A small business is less able to absorb an overreaching determination by these authorities than a larger business.

Moreover, government compliance reviews (Section 308(b)(1)), and the costs of private as well as Attorney General litigation, will add further to those expenses small businesses must bear under the bill's public accommodation title. Indeed, in a private enforcement action, a plaintiff can obtain injunctive relief and attorneys fees. For larger businesses, these costs can be more readily absorbed and passed on to a large consumer base. For some smaller businesses, the cost of compliance with injunctive relief combined with attorneys fees might be onerous.

But it is the penalty scheme in an Attorney General action to enforce the public accommodations title that is of particular concern. In an Attorney General action, a court, at the request of the Attorney General, can order the smallest business to pay monetary damages to aggrieved persons. Moreover, the court can order such a business to pay a civil penalty of up to $50,000 for a first violation and up to $100,000 for subsequent violations. This remedy scheme is potentially a very heavy burden, which I will also address as a separate concern.

Opponents of a small business exemption in the public accommodations title of S. 933 claim that since Title II of the 1964 Civil Rights Act has no small business exemption, neither should S. 933. There are several responses to this argument:

1. S. 933 already departs from Title II of the 1964 Civil Rights Act in two important ways:

A. Title II only covers places of eating, lodging, entertainment, and gasoline stations. S. 933 goes well beyond such coverage, encompassing virtually all elements of the private sector as "public accommodations" or "potential places of employment," except religious organizations and entities controlled by religious organizations.

B. Title II provides only for injunctive relief in Attorney General actions; this bill, as mentioned earlier, permits recovery of monetary damages and huge civil fines in Attorney General actions.

Thus, it is inconsistent for the opponents of a small business exemption to rely upon Title II as the basis for their opposition when they have so readily departed from that parallel statute in other important respects.

2. In any case, compliance with Title II of the 1964 Civil Rights Act imposes no costs—it simply requires admitting and serving persons without regard to their color, ethnicity, or religion. As mentioned earlier, compliance with S. 933 can result in costs to covered entities. This difference between Title II and S. 933 alone justifies a small business exemption in public accommodations.

I favor an exemption of small businesses from the prohibitions and obligations in the public accommodations provisions of the bill, i.e., provisions relating to a business's existing facilities and general policies. I would not, however, exempt *any* public accommodation from the requirement that its new facilities be accessible. The cost of accessibility to a new facility when "built-in" to the plans and construction of such a new facility is not burdensome. But for businesses in the operation of their existing facilities and in the provision of auxiliary aids and services, modifications of policies, procedures, and criteria, a small entity exemption is appropriate.

I also believe that even with an exemption for small businesses, the marketplace will exert pressure on small businesses which will lead to increased accessibility. When a small business operator sees a larger competitor gain customers with disabilities because the latter business is accessible, the small business operator is likely to take steps it can afford to get some of those customers—even if those steps don't meet every single requirement of this title—without exposure to the costs of compliance reviews and litigation.

With this voluntary activity, the requirement that *all new* facilities be accessible, and the full coverage of all "public accommodations" other than small businesses, I believe we can provide genuine access to public accommodations for persons with disabilities, while assuring that we do not overly burden small businesses in America.

II. EXCESSIVE PENALTIES AGAINST PUBLIC ACCOMMODATIONS

Under Title II of the 1964 Civil Rights Act (hereinafter "Title II"), as mentioned earlier, a private plaintiff can obtain injunctive relief and attorneys fees. The Attorney General can obtain injunctive relief. No monetary damages or civil penalties are available in either action.

Under S. 933, in an action for a violation of the public accomodations title, a private plaintiff can obtain an injunction and attorneys fees. I believe such relief, paralleling that of Title II, is appropriate.

But, in an Attorney General action under this bill the court can award not only an injunction, but also civil penalties of up to $50,000 for a first violation, and up to $100,000 for subsequent violations. Further, the court can award monetary damages to aggrieved persons when requested to do so by the Attorney General. This relief is excessive and unjustifiable.

The threat of litigation, its cost to covered entities, the added expense of paying the plaintiff's attorneys fees in private litigation, and marketplace factors are all powerful incentives for a business to comply with this bill in the first instance.

Moreover, if an entity is in noncompliance, injunctive relief is significant. An injunction requires the offending entity to cease its discrimination. If a ramp must be put in, a bathroom made accessible, or policies changed, pursuant to the entity's duties under the bill's public accommodations provisions, a court can order such relief.

Everyone knows that 25 years ago black people and other racial and ethnic minorities were routinely denied the opportunity to eat, to lodge, and to be entertained in places they could afford. Today, while there are still instances of racial and ethnic discrimination in public accommodations, we face an entirely different situation. The public accommodations covered by Title II are now essentially open on a nondiscriminatory basis. This resulted largely from Title II's enactment, with the injunctive relief and attorneys fees enforcement scheme previously described.

Yet, relief in an Attorney General action against a public accommodations under this bill goes well beyond the relief available in an Attorney General action under Title II.

Ironically, a private party, in his own action, cannot obtain monetary damages for himself. The court can award monetary damages, however, to an aggrieved person, in an Attorney General action.

There is a further anomaly in the bill. The bill subjects state and local governments to the remedies available under Section 505 of the Rehabilitation Act of 1973. Under Section 505, a federal agency, in an enforcement action, may either terminate federal aid to the part of a covered entity where the discrimination occurs or it may refer the case to the Department of Justice for injunctive relief. Civil penalties are not recoverable by the federal government in an enforcement action. Thus, in an Attorney General action, state and local governments, with their enormous tax resources, are subject to lesser penalties than the private sector, which is not supported by tax revenues or, for the most part, federal aid. The potential for a sole proprietor, a mom-and-pop business, or any other business to be more harshly sanctioned than a state or local government in an Attorney General action requires further consideration.

Our purpose here should not be punitive. Providing for monetary damages and huge civil penalties in Attorney General actions is excessive. To the extent we are trying to provide access by enacting this bill, since such access can impose costs on covered entities, rather than penalize a public accommodation by imposing monetary damages and huge civil penalties, we should keep the money available to the entity for use in providing access pursuant to the injunctive relief.

Proponents of the stiff remedy provisions in S. 933 assert that it parallels remedies now available in an Attorney General action under the Fair Housing Act, as amended last year. This analogy, however, is unpersuasive.

In the field of housing, the original remedies of the 1968 Fair Housing Act proved inadequate to the task of rooting out racial and ethnic discrimination in housing as quickly as hoped. Why? In my opinion, it is because housing discrimination is probably the most peristent form of racial discrimination in the nation today. Thus, toughening the penalties for such discrimination in 1988 made sense and I supported the effort to do so.

But the record in the public accommodations area is much different. As mentioned earlier, the Title II penalties—injunctive relief and attorneys fees—have been adequate to work a revolution of equal opportunity.

If the Fair Housing Amendments Act of 1988 had not added disability discrimination to the list of prohibited conduct under the Fair Housing Act, and a ban on housing discrimination on the basis of disability was being added in this bill, the use of Fair Housing Act remedies for such housing discrimination would be appropriate. It is inappropriate, however, to use the Fair Housing Act, rather than Title II of the 1964 Civil Rights Act, as the analogue for the remedies in the public accommodations context in this bill.

I note that, with respect to employment discrimination, S. 933 uses the remedies available under the parallel civil rights statute, Title VII of the 1964 Civil Rights Act. Unfortunately, this parallelism was not maintained with respect to public accommodations.

I prefer to retain such parallelism in remedies. I am prepared, however, to break the parallelism with Title II and to consider a more modest enforcement scheme in this area that goes beyond Title II relief but is more reasonable than the provision currently in the bill.

III. THE BILL'S THREAT TO THE PRIVATE BUS TRANSPORTATION INDUSTRY

The bill applies to transportation services "provided by a privately operated entity that is primarily engaged in the business of transporting people," except for air carriers. Section 304(a). This coverage includes private rail, limousine, taxi, and bus companies.

I am especially concerned about this bill's impact on the private bus transportation industry. The bill imposes a variety of requirements on these companies, including:

1. The obligation to make reasonable modifications in policies, practices, and procedures, unless to do so would fundamentally alter the company's activities. Section 304(b)(2)(A).

2. The obligation to provide auxiliary aids and services to persons with disabilities, unless to do so would cause an undue burden or fundamentally alter the company's activities. Section 304(b)(2)(B).

3. The obligation to remove "transportation barriers in existing vehicles * * * where such removal is readily achievable." This obligation does not include the addition of a lift. Section 304(b)(2)(C).

4. Where the removal of a barrier described in paragraph 3 is not readily achievable, an obligation "to make [the entity's] goods, services, facilities, privileges, advantages available through alternative methods if such methods are readily achievable." Section 304(b)(2)(C).

I favor these provisions.

The truly onerous provision, however, is the requirement that all small bus companies must purchase or lease all new over-the-road buses with lifts six years after the bill's enactment; large bus companies must do so beginning five years after enactment. In the meantime, ironically having imposed this major requirement on the private bus transportation industry, the bill requires a three-year study to determine whether this requirement is, in effect, feasible. The requirement, however, is not contingent on the results of the study—it remains in place under this bill even if the study shows that the requirement is excessive.

The bill, in its present form, presents the strong likelihood that private intercity and charter and tour bus service will be seriously curtailed soon after the bill's new bus requirements become effective, if not virtually eliminated at some point thereafter. The stakes are that high.

Unlike state and local government mass transit, which is heavily subsidized by the federal government, private transportation companies receive virtually no federal aid. Private companies provide virtually all of the intercity bus transportation in the country. There are well over one thousand such private, intercity bus companies, such as Greyhound, Gold Line, East Coast Parlor, and Peter

Pan. Some of these companies provide two kinds of services: over the road regular route service—that is, scheduled service between communities—and charter and tour services. Other companies provide only charter and tour services.

These companies serve about 10,000 communities, most of which have no other intercity transportation available to them. The number of communities served has been declining in the last 30 years. According to an Interstate Commerce Commission staff analysis, there was a net loss of nearly 3,400 communities receiving intercity bus service between 1982 and 1986 alone. Ninety percent of the communities losing this service had populations of less than 10,000. This industry operates on a low profit margin. In many rural areas, including in Utah, this private bus service is the only available intercity transportation. There is only token Amtrak service available. Intercity buses provide transportation for those who need a low cost transportation alternative.

The requirement that all new buses have wheelchair lifts would quickly accelerate the loss of private, intercity bus service to our nation's communities, if not entirely end such service, according to the American Bus Association, United Bus Owners of America, and Greyhound (the largest company). Delaying this result by five or six years, in the hope an efficient and economical lift will appear on the scene, is small comfort.

A lift for an intercity bus is more expensive than for an intracity bus, such as the Metrobuses used in the District of Columbia, because with the baggage compartment and other differences, access to the intercity bus is higher off the ground—as much as four or six feet, rather than one foot for an intracity bus.

The added costs for new buses for these private companies include not only the cost of the lift but widening the aisles and making the bathrooms accessible. There are maintenance costs—and there is little experience with maintenance of intercity bus lifts. There will be a loss of as many as four seats, which especially hurts bus companies during their peak periods, such as holiday periods. Moreover, particularly in rural areas, these companies are successful because of their package express service. The room available for carrying such packages, however, is reduced in lift-equipped buses.

Even if the least expensive lift is used on all new buses—and this is, I am told, a lift which has had little use in this country and one which not all bus companies might feel is suited to their operations—the cost of this provision is unreasonable. Indeed, I understand that the principal basis for this provision is information from the Regional Transportation District of Denver, Colorado. According to the Department of Transportation, however, Denver has only 17 buses which use a "less expensive" lift developed in Germany. I understand these buses have been in use in Denver for about one year. Moreover, according to the Department of Transportation, Denver uses these buses on one-way routes of less than 30 miles. This usage is atypical for the private bus industry as a whole, which consists of some 20,000 buses which travel far greater distances on trips.

Representatives of the private bus transportation industry have stated that their lowest annual cost estimate for the bill's requirement regarding new buses, which includes lift and accessible restroom installation, loss of revenue seats for lift and restroom accessibility, maintenance costs, and training costs would be so high as to seriously threaten the viability of the private bus transportation industry. This lowest annual cost estimate is based on a cost of $10,100 per new bus for each year its service, and assumes a 10-year life span for the industry's 20,000 bus fleet. In other words, under this analysis, each new bus will cost a company $101,000 over the life of the bus. I note that representatives of the industry believe these estimates are unrealistic and actual costs will be higher.

The Committee heard virtually no testimony on this vital issue. I, along with proponents of the present provision, can point to correspondence from officials of the Denver system and the American distributor of the lift in question citing a variety of different figures and costs related to wheelchair accessibility for these over-the-road buses. Following the hearings on the bill, the cost figures have been flying back and forth concerning costs associated with the lift which has recently begun to be used in Denver. The dispute over the utility of any particular lift and its costs are precisely why a study is most appropriate.

I support a requirement that bans discrimination based on stereotypes against persons with disabilities in their use of privately operated buses. I also support a requirement that private bus companies make reasonable accommodations to the needs of persons with disabilities with respect to their current bus fleet.

The Committee, however, simply has not been presented with enough clear testimony and data to know what is reasonable with respect to requirements such as lifts on new buses purchased or leased by the private bus industry. That is why a study of private bus accessibility, followed by Congressional action based on the study, is the most sensible course of action with respect to any future requirements, such as lifts, concerning new buses.

It might be suggested that this bill will have no significant impact on bus companies for the next five years. Even this suggestion is doubtful. In an August 1, 1989, letter to Roger Porter, domestic policy advisor to the President, Theodore Knappen, a Senior Vice President at Greyhound Lines, Inc., opposed this provision of S. 933. He wrote, "Greyhound Lines Inc. is a new company, which is the result of the merger of two failing bus systems, Greyhound and Trailways. We are highly leveraged with $375 million in debt * * *." Greyhound "lost $17 million last year and will be marginally profitable this year. The annual cost of full implementation of S. 933 will be at a minimum, $40 million. Even if the startup is delayed for five years, the financial institutions upon which we rely are not likely to continue to support us in light of this burden. The system will inevitably crumble with the marginal rural service being the first to go. I should add that most small bus companies are in a similar financial situation."

In summary, the current provision regarding the private bus transportation industry's purchase and lease of readily accessible new buses rests on inadequate and contested data and runs a serious risk of unintentionally causing devastating effects in the private bus industry. The prudent course is to study the issue first and then to impose appropriate requirements based on the study—not the reverse, as currently provided for in the bill.

ORRIN G. HATCH.

ADDITIONAL VIEWS OF SENATOR COATS

I am pleased to have been able to vote in favor of reporting S. 933 favorably out of Committee despite certain problems that I see in this legislation. Full and equal protection under the law for persons with disabilities is long overdue. Our society must no longer tolerate discrimination against any of its citizens, especially those with physical and mental impairments.

I believe that this landmark civil rights bill, despite its flaws, will accomplish its goals. The ADA bill is comprehensive, far-reaching, fair and tough. It has real teeth in its enforcement provisions. I believe that it will ensure that Americans with disabilities will no longer face discrimination in employment, in public accommodations, in public services, transportation or communications services. I earnestly believe that the provisions of S. 933, together with the force of Judaeo-Christian good will and a healthy and vibrant free market economy, will help bring all disabled persons into the mainstream of American life.

I am pleased that my amendments relating to drug and alcohol abuse and religious institutions were substantially incorporated into the ADA bill during the lengthy negotiations that resulted in the radically amended, much improved version of S. 933 that the Committee finally approved. Despite certain ambiguities that remain in the bill, I am satisfied that S. 933 will ensure that employers can implement a zero tolerance policy and maintain a drug-free workplace. Section 103(c) of Title I is intended to make clear that an individual applicant or employee who currently uses alcohol or illegal drugs is not protected by the ADA's nondiscrimination provisions. Similarly, this section makes clear that an individual who is an alcoholic or current or past user of drugs—illegal or legal—can be held to the same standards of job performance and behavior as other individuals, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism. At the same time, and consistent with the Rehabilitation Act of 1973, it is intended that rehabilitated alcoholics and drug users will be protected under this law. I believe that the bill's language and accompanying report make clear that an employer can subject job applicants and employees to drug urinalysis or other testing to determine the unlawful use of drugs or the presence of alcohol, and can refuse to hire job applicants and can discipline or discharge employees who are found to be using illegal drugs or alcohol, without being charged with discrimination.

Having stated my support for S. 933 and my intention to work for its speedy passage, I also wish to associate myself with the additional views of Senator Hatch. I share many of the concerns he has expressed so clearly, particularly with regard to the need for a small business exemption and the problems facing the bus industry as a consequence of the costly requirements imposed on both by this legislation. I am hopeful that the spirit of compromise and determination which resulted in the amended legislation that we voted out of committee will carry the day, so that these remaining problems can be worked out to the satisfaction of all parties, and legislation, which has White House support, will be enacted law.

Dan Coats.

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HOUSE REPORT 101-485, Parts 1, 2, 3, and 4

101st Congress | HOUSE OF REPRESENTATIVES | Rept. 101-485
2d Session | | Part 1

AMERICANS WITH DISABILITIES ACT OF 1990

May 14, 1990.—Continued to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Anderson, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 2273]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

39-081

TITLE II—PUBLIC SERVICES

Sec. 201. Definitions.
Sec. 202. Prohibition against discrimination.
Sec. 203. Public entities operating fixed route systems.
Sec. 204. Paratransit as a complement to fixed route service.
Sec. 205. Public entity operating a demand responsive system.
Sec. 206. Temporary relief where lifts are unavailable.
Sec. 207. New facilities.
Sec. 208. Alterations of existing facilities.
Sec. 209. Public transportation programs and activities in existing facilities and one car per train rule.
Sec. 210. Regulations.
Sec. 211. Enforcement.
Sec. 212. Effective date.
Sec. 213. Applicability to certain commuter rail systems.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and potential places of employment.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemptions for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICE

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Congressional inclusion.
Sec. 510. Illegal drug use.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architecural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) **Purpose.**—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards against discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commence, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **Auxiliary aids and service.**—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) **Disability.**—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or

(C) being regarded as having such an impairment.

(3) **State.**—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title, the following definitions apply:

(1) **Commission.**—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) **Covered entity.**—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) **Employee.**—The term "employee" means an individual employed by an employer.

(4) **Employer.**—

(A) **In general.**—The term "employer" means a persion engaged in an industry affecting commerce who has 15 or more employee for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person; except that, for 2 years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) **Exceptions.**—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) Illegal drug.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) Person, etc.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce" have the same meaning such terms have in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) Reasonable accommodation.—The term "reasonable accommodation" includes—

(A) making existing facilities used by employers readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) Undue hardship.—

(A) In general.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) Determination.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) General rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) Construction.—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test accurately reflects the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Medical Examinations and Inquiries.—

(1) In general.—The prohibition against discrimination as referred to in subsection (a) shall include medial examinations and inquiries.

(2) Preemployment.—

(A) Prohibited examination or inquiry.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) Examination and inquiry.—

(A) Prohibited examinations and inquiries.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable inquiries.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) In General.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accomodation.

(b) Qualification Standards.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious Entities.—

(1) In general.—This title shall not prohibit a religious corporatoin, association, educational institution, or society from giving preference in employment to individuals or a particular religion to perform work connected with the carry-

ing on by such corporation, association, educational institution, or society of its activities.

(2) **Qualification standard.**—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) **Qualified Individual With a Disability.**—For purposes of this title, the term "qualified individual with a disability" does not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs.

(b) **Authority of Covered Entity.**—A covered entity—

(1) may prohibit the useof alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) **Drug Testing.**—

(1) **In general.**—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) **Construction.**—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of the enactment of this Act.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITIONS.

As used in this title—

(1) **Demand responsive system.**—The term "demand responsive system" means any system of providing public transportation which is not a fixed route system.

(2) **Fixed route system.**—The term "fixed route system" means a system of providing public transporttion on which a vehicle is operate along a prescribed route according to a fixed schedule.

(3) **Operates.**—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a

person under a contractual or other arrangement or relationship with a public entity.

(4) **Public entity.**—The term "public entity" means a department, agency, special purpose district, or other instrumentality of a State or local government.

(5) **Public school transportation.**—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) **Public transportation.**—The term "public transportation" means transportation (other than public school transportation), by bus, rail, or by any other conveyance (other than aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(7) **Qualified individual with a disability.**—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(8) **Secretary.**—The term "Secretary" means the Secretary of Transportation.

SEC. 202. PROHIBITION AGAINST DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by means of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

SEC. 203. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

(a) **Purchase and Lease of New Vehicles.**—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) **Purchase and Lease of Used Vehicles.**—Subject to subsection (c)(1), it shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) **Remanufactured Vehicles.**—

(1) **General rule.**—Except as provided in paragraph (2), it shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to manufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins) or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) **Exception for historic vehicles.**—

(A) **General rule.**—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necesary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations.—For purposes of this paragraph and section 209(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SEC. 294. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) General Rule.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service or commuter rail service) to fail to provide, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of public transportation services provided to individuals without disabilities using such system.

(b) Issuance of Regulations.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) Required Contents of Regulations.—

(1) Eligible recipients of service.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system; and

(B) to 1 other individual accompanying the individual with the disability.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service area in which the public entity solely provides commuter bus service or commuter rail service.

(3) Service criteria.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services.—The regulations issued under undere this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transpor-

tation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of Plan.—

(1) General rule.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefore.

(3) Modification of disapproved plan.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary and commence implementation of, such modified plan.

(e) Discrimination Defined.—As used in subsection (a), the term "discrimination" includes—

(1) failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special operation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory Construction.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SEC. 205. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 206. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 203(a) or 205 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary as reasonable cause to believe that any relief granted under subsection (a) was faudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 207. NEW FACILITIES.

For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a pbulic entity to construct a new facility to be used in the provision of public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 208. ALTERATIONS OF EXISTING FACILITIES.

(a) GENERAL RULE.—With respect to a facility or part thereof that is used in the provision of public transportation services and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to fail to make the alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities if such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purpsoes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail, in accordance with the provisions of this subsection, to make stations in intercity rail systems and key stations (as determined under criteria established by the Secretary by regulation) in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including idividuals who use wheelchairs.

(2) RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key statons (as determined under criteria established by the Secretary by regulation) in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) Extension for extraordinarily expensive structural changes.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail, commuter rail, or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Intercity rail systems.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of the enactment of this Act.

(4) Plans and milestones.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SEC. 209. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) Public Transportation Programs and Activities in Existing Facilities.—With respect to existing facilities used in the provision of public transportation services (other than facilities which have not been made readily accessible to and usable by individuals with disabilities in accordance with section 208(b)), it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by such individuals.

(b) One Car Per Train Rule.—

(1) General rule.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of an intercity, light rapid, or commuter rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 203(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 210. REGULATIONS.

(a) Attorney General.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format that implement this title (other than sections 201(1), 201(2), 201(4), 201(5), 203 through 209, and 213). Except for "program accessibility", "existing facilities", and "communications", such regulations shall be consistent with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility", "existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(b) SECRETARY.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue in an accessible format regulations to carry out sections 201(1), 201(2), 201(4), 201(5), 203, 205, 206, 207, 208, 209, and 213.

(2) STANDARDS.—The regulations issued under this section and section 204 shall include standards applicable to facilities and vehicles covered by such sections. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 211. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this title, including the regulations issued under this title.

SEC. 212. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this title shall become effective 18 months after the date of the enactment of this Act.

(b) EXCEPTION.—Sections 203, 204 (other than subsection (a)), 205, 206, 208(b), 209(b), 210, and 213 shall take effect on the date of the enactment of this Act.

SEC. 213. APPLICABILITY TO CERTAIN COMMUTER RAIL SYSTEMS.

(a) GENERAL RULE.—Subject to subsection (b), a public entity which operates a fixed route system providing commuter rail service does not have to purchase or lease readily accessible and usable commuter rail vehicles to meet the requirements of this title and does not have to remanufacture commuter rail vehicles to meet the requirements of this title—

(1) if such entity is meeting the requirement of this title relating to 1 car per train being accessible to individuals with disabilities;

(2) if such entity provides clear, concise, and adequate notice, in its stations, of which cars are so accessible and the location of such cars on its trains; and

(3) if, in any case in which additional services are offered in a nonaccessible car of a train, such entity makes reasonable provision to ensure that such services are available to individuals with disabilities in the accessible car or cars of such train.

(b) ADDITIONAL ACCESSIBLE CARS TO MEET DEMAND.—In order for a public entity to be exempt under subsection (a), in any case in which actual continuing demand for accessible service cannot be met by the public entity with 1 accessible car per train, the public entity must use such additional accessible cars per train as may be necessary to meet such demand.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title, the following definitions apply:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communications—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals which is not a fixed routine system.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transporation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(5) POTENTIAL PLACES OF EMPLOYMENT.—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(6) Private entity.—The term "private entity" means any entity other than a department, agency, special purpose district, or other instrumentality of a Federal, State or local government.

(7) Public accommodation.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or similar places of lodging, except for an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, staduim, or other place of exhibition or entertainment;

(D) an auditorium, convention center or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, good bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(8) Public transportation.—The term "public transportation" means transportation by bus or rail, or by other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(9) Readily achievable.—

(A) In general.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) Determination.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to a number of employees, number and type of facilities, and the size of budgets;

(ii) the type of operation of the coverd entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATION.

(A) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, priviledges, advantages, and accommodations of any public accommodation.

(b) Construction.—

(1) General prohibition.—

(A) activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial or the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, priviledges, advantages, and accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractural, contractural, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, priviledge, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractural, licensing, or other arrangements with a good, service, facility privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, priviledge, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(B) Integrated settings.—Goods, facilities, privileges, advantages accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.—

(A) Discrimination.—As used in subsection (a), the term "discrimination" includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally after the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectual barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure of make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable; and

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities if such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General), except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than 3 stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the uses of such facilities.

(B) Fixed route system.—

(i) Accessibility.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C).—Demand responsive system.—As used in subsection (a), the term "discrimination" includes—

(i) a failure of a private entity which operates a demand responsive system and which not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses.—

(i) Limitation on applicability.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements.—As used in subsection (a), the term "discrimination" includes (I) the purchase or lease of an over-the-road bus bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure to such entity to comply with such regulations.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.

(a) Application of Term.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) potential place of employment;

the term "discrimination" as used in section 302(a) means a failure to design and construct facilities for first occupancy later than 30 months after the date of the enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structually impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimnated against" includes—

(1) the imposition or application by a private entity that is primary engaged in the business of transporting people and whose operations affect commerce of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by such entity, unless such criteria can be shown to be necessary for the provision of such services;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section (b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A)(iv) and (v), and (vi);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public.

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Techology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, include any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and services to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements of the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 302(b)(2)(B) and (C) and 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period fo such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) Final requirement.—

(i) Review of study and interim requirements.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) Issuance.—Not later than 1 year after the date of this submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) Limitation on requiring installation of accessible restrooms.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) Other Provisions.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) Consistency With ATBCB Guidelines.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) General.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) Injunctive relief.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) Denial of rights.—

(A) Duty to investigate.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) Potential violation.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States direct court.

(2) **Authority of court.**—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) **Judicial consideration.**—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

SEC. 309. EFFECTIVE DATE.

(a) **General Rule.**—Except as provided in subsection (b), this title shall become effective 18 months after the date of the enactment of this Act.

(b) **Exception.**—Section 302(a) for purposes of sections 302(b)(2) (B) and (C) only, 304(a) for purposes of section 304(b)(3) only, sections 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) **Telecommunications.**—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) **Definitions.**—As used in this section—

"(1) **Common carrier or carrier.**—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) **Telecommunications relay services.**—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) **Availability of Telecommunications Relay Services.**—

"(1) **In general.**—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) **Remedies.**—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicble to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire of radio.

"(c) Provision of Service.—Each common carrier providing telephone voice transmission service shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) Regulations.—

"(1) in general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rate paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) Jurisdictional separation of costs.—

"(A) In general.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) Recovering costs.—Such regulations shall generally provide that costs cause by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) Joint provision of services.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures establish in section 410 shall be followed, as applicable.

"(4) Fixed monthly charge.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the cost of providing interstate telecommunication relay services.

"(5) Undue burden.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) Enforcement.—

"(1) In general.—Subject to subsection (f) and (g), the Commission shall enforce this section.

"(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) Certification.—

"(1) State documentation.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) Complaint.—

"(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) Conforming Amendments.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "section 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) Rehabilitation Act of 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Other Laws.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) Insurance.—Titles I through IV of this Act shall not be construed to prohibit it or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide plan that is not subject to State laws that regulate insurance;

except that paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purpose of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) Retaliation.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, Coercion, or Intimidation.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedures.—The remedies and procedures available under sections 107, 211, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution or the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) Issuance of Guidelines.—Not later than 6 months after the date of the enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) Contents of Guidelines.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communications, to individuals with disabilities.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonble attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) Plan for Assistance.—

(1) In general.—Not later than 180 days after the date of the enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) Publication of plan.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) Agency and Public Assistance.—The Attorney General is authorize to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation.—

(1) Authority to contract.—Each department or agency that has responsibility for implementing this Act may render technical assistance to idividuals and institutions that have rights or responsibilities under this Act.

(2) Implementation of titles.—

(A) Title I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) Title II.—

(i) In general.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) Exception.—The Secretary of Transportation shall implement such plan for assistance for sections 203 through 209.

(C) Title III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) Title IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) Grants and Contracts.—

(1) In general.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions

and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) **Dissemination of information.**—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) **Failure to Receive Assistance.**—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of the Act because of any failure to receive technical assistance under this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) **Study.**—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.)

(b) **Submission of Report.**—Not later than 1 year after the date of the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITTES.

For the purposes of this Act, the term "disabled" or "disability" does not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

Notwithstanding any other provision of this act or of law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

SEC. 510. ILLEGAL DRUG USE.

(a) **General Rule.**—For purposes of this Act, an individual with a "disability" does not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

(b) **Exception.**—However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

SEC. 511 DEFINITIONS.

Under this Act the term "disability" does not include "homosexuality", "bisexuality", "transvestism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", or "pyromania", "gender indentify disorder", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) **Handicapped Individual.**—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended—

(1) in the first sentence of subparagraph (B) by striking "Subject to the second sentence of this subparagraph, the" and inserting "The";

(2) by striking the second sentence of subparagraph (B) and inserting the following:

"Notwithstanding any other provision of law, but subject to subparagraph (D) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, and individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services."; and

(3) by adding at the end the following new subparagraphs:

"(D) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(E) For purposes of section 503 and 504 of this Act as such sections relate to employment, the term "individual with handicaps' does not include any indivudal who is an alcoholic whose current use of alcohol prevents such individual for performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Illegal Drugs Defined.—Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs' does not mean the use of a controlled substances pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

SEC. 513. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be served from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

INTRODUCTION

The Americans With Disabilities Act (ADA) will permit the United States to take a long-delayed but very necessary step to welcome individuals with disabilities fully into the mainstream of American society. The specific provisions of the bill which lie within the jurisdiction of the Committee on Public Works and Transportation are primarily within Titles II and III, dealing with publicly and privately provided transportation services.

With regard to pubilicly provided transportation services, the bill requires the purchase of new transit vehicles for use on fixed route systems which are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The bill also requires the provision of paratransit services for those individuals whose disabilities preclude their use of the fixed route system.

Transit agencies across the United States have already made some progress in the provision of accessible transit services—35% of America's transit buses are currently accessible. As more and more transit authorities make the commitment to provide fully accessible bus service, the percentage of new bus purchases which are accessible has grown to more than 50% annually. By the mid-1990's many American cities will have completely accessible fixed route systems. Furthermore, many of the transit systems in America already provide some type of paratransit services to the disabled. So, the passage of the ADA will not break sharply with existing transit policy. It will simply extend past successes to even more cities, so that this country can continue to make progress in providing much needed transit services for individuals with disabilities.

With regard to privately provided transportation services, which do not receive the high levels of federal subsidies that publicly provided services do, the requirements of the bill vary according to the size and type of vehicle, as well as according to the type of system on which the vehicle operates.

Nonetheless, in all cases, the Americans with Disabilities Act provides strong guarantees that individuals with disabilities will be treated with respect and dignity while using transporatation services. After all, the Americans With Disabilities Act is ultimately a civil rights bill. The history of the United States is rich with examples of diversity triumphing over discrimination, but not so rich that this country can ever afford to exclude, or segregate in any way, the significant number of its citizens who have disabilities.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Subsection (a) of this section provides that the Act may be cited as the "Americans with Disabilities Act of 1990".

SECTION 2. FINDINGS AND PURPOSES

This section describes the findings and purposes of the Act.

SECTION 3. DEFINITIONS

This section defines the terms "auxiliary aids and services", "disability", and "State" for purposes of the Act.

TITLE I—EMPLOYMENT

SECTION 101. DEFINITIONS

This section defines the terms "Commission", "covered entity", "employee", "employer", "Illegal drug", "person", "labor organization", "employment agency", "commerce", "industry affecting commerce", "qualified individual with a disability", "reasonable accommodation", and "undue hardship" for purposes of the Title.

SECTION 102. DISCRIMINATION

Subsection (a) of this section prohibits discrimination against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

SECTION 103. DEFENSES

Subsection (a) of this section provides that a defense to a charge of discrimination under the Act may be that a denial of a job or benefit to a qualified individual with a disability was job-related, consistent with business necessity, and could not be avoided through reasonable accommodation.

SECTION 104. ILLEGAL DRUGS AND ALCOHOL

This section includes provisions regarding the use of alcohol or illegal drugs at the workplace, including provisions regarding tests to determine the use of illegal drugs.

SECTION 105. POSTING NOTICES

This section requires the posting of notices describing the provisions of the Act.

SECTION 106. REGULATIONS

This section requires the Equal Employment Opportunity Commission to issue regulations in an accessible format to carry out this Title not later than one year after the date of the enactment of the Act.

SECTION 107. ENFORCEMENT

This section provides that, with regard to employment, the remedies and procedures set forth in Title VII of the Civil Rights Act of 1964 shall be available to any individual who believes that he or she is being subjected to discrimination under the Act.

SECTION 108. EFFECTIVE DATE

This section provides that Title I become effective 24 months after the date of the enactment of the Act.

TITLE II—PUBLIC SERVICES

SECTION 201. DEFINITIONS

This section defines the terms "demand responsive system", "fixed route system", "operates", "public entity", "public school transportation", "public transportation", "qualified individual with a disability", and "Secretary" for purpose of the Title.

With regard to fixed route systems, the Committee defines these systems as those which operate along prescribed routes according to fixed schedules. The Committee intends that the "fixed schedule" component of this definition include those systems which operate vehicles at set times of day or at set intervals between vehicles. So long as the schedule is fixed, the system may operate at 5 minute intervals during periods of peak demand and 15 minute intervals during periods of weal demand and still be considered a fixed route system.

With regard to the operation of a system providing public transportation, if a public entity has entered into a contractual or other arrangement or relationship with a private entity to operate the system, or a portion of the system, the public entity must ensure that the same accessibility requirements are met by the private entity for service provided under a contractual, or other arrangement or relationship as would apply if the public entity were operating the system, or portion of the system, itself.

The Committee intends that the requirements of this legislation not be applied to "public school transportation" as defined in this Act, since such services are subject to the requirements of section 504 of the Rehabilitation Act of 1973, and it is not the intent of the Committee to require school systems receiving Federal financial assistance to meet any different requirements under this legislation than are currently required under seciton 504. Therefore, in promulgating regulations to implement this title, the Department of Transportation should recognize the special arrangements which are currently made with school districts in the provision of pupil transportation.

For example, although the definition speaks to transportation "to and from a public elementary or secondary school and school-related activities," it is the Committee's intent to include in the scope of this exemption from the provisions of the Act, transportation of pre-Kindergarten children to Head Start or special education programs which receive Federal assistance. Similarly, it is the Committee's intent to include in this exemption transportation arrangements which permit pre-school children of school bus drivers to ride a school bus, or special arrangements allowing pre-school children of teenage mothers to be transported to day care facilities at a school or along the school bus route so that these mothers may continue to attend school.

SECTION 202. PROHIBITION AGAINST DISCRIMINATION

This section, subject to the provisions of the title, prohibits discrimination against a qualified individual with a disability with regard to the services, programs or activities of a public entity.

SECITON 203. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS

Subsection (a) of this section provides that it shall be considered discrimination for purposes of this Act and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rail vehicle, or any other vehicle to be used on a fixed route system unless the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Although individuals who use wheelchairs are specifically referenced, the concept of making a vehicle "readily accessible to and usable by individuals with disabilities" involves more than simply making it accessible to an individual using a wheelchair. For example, the regulations implementing this section may require vehicles to incorporate non-slip floors for individuals whose disabilities cause balance problems or specific visual information for the hearing-impaired.

This subsection applies to any solicitation for a vehicle made more than 30 days after the date of the enactment of the Act and applies to any public entity which operates a fixed route system regardless of the size of the community in which the system operates.

With regard to rail vehicles, the Committee intends that the use of "mini-high platforms" or portable wheelchair lifts meet the requirement that these vehicles are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, so long as a mini-high platform or a portable wheelchair lift is available when needed to board an individual with a disability.

Subsection (b) of this section states that it is discrimination for a public entity which operates a fixed route system to fail to make demonstrated good faith efforts to purchase or lease accessible used vehicles. For purposes of this subsection, remanufactured vehicles shall be treated as used vehicles beginning on the day after the last day of the period by which the usable life of the remanufactured vehicle was extended.

Subsection (c) of this section provides that it is discrimination for a public entity which operates a fixed route system, when remanufacturing a vehicle to extend its usable life by five years or more, to fail to make that vehicle readily accessible to and usable by individuals with disabilities, to the maximum extent feasible. The word "remanufacture" means that the vehicle is stripped to its frame and rebuilt. Regarding the limitation of "to the maximum extent feasible", the Committee intends that remanufactured vehicles need only be modified to make them accessible to the extent that the modifications do not adversely affect the structural integrity of the vehicle in a significant way.

A partial exception to subsection (c) is provided for the remanufacturing of any vehicle operating on a segment of a system if that segment is included on the National Register of Historic Places. Vehicles used solely on such segments need only be made accessible to the extent that the modifications needed to provide accessibility to the vehicle do not significantly alter the historic character of such vehicles.

SECTION 204. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE

This section states that it shall be considered discrimination for purposes of this Act and section 504 of the Rehablitation Act of 1973 for a public entity which operates a fixed route system, other than a system which provides solely commuter bus or commuter rail service, to fail to provide paratransit and other special transportation services to individuals with disabilities. The level of these services provided to individuals with disabilities must be comparable to the level of transit service provided to individuals without disabilities, except with regard to response time, in which case the level of service must only be comparable to the extent practicable. The paratransit service must be provided, beginning 18 months after the date of the enactment of the Act, in accordance with regulations issued by the Department of Transportation within one year after the date of the enactment of the Act.

Since the operations of fixed route and paratransit service differ so markedly, levels of service must only be comparable—not identical. With regard to response time, the Committee acknowledges that paratransit vehicle response time may not meet a standard of comparability with a fixed route system which operates vehicles at short headways. Instead, the legislation states that paratransit vehicle response time need only be "comparable to the extent practicable" to the response time of a vehicle provided on a fixed route system.

Subsection (c) of this section states that these regulations must require each public entity operating a fixed route system to provide paratransit service to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities. The Committee intends "ride" to include both the physical ability to ride on the vehicle as well as the mental ability to understanding when to disembark from the vehicle.

The Committee specifically inserted the words "including a vision impairment" so that section 204 of the bill would unequivocally cover individuals with vision impairments. Individuals with severe vision impairments traveling in unfamiliar surroundings or recently impaired individuals often need paratransit service since they cannot board, ride, or disembark from fixed route vehicles without assistance. The bill clearly extends paratransit eligibility to the vision impaired under these conditions, so long as the impairment is sufficiently severe to substantially limit one or more of their major life activities (a component of the definition of disability under this Act).

Similarly, the Committee included the phrase "mental impairment" to ensure that mentally retarded and mentally ill individuals are also entitled to paratransit service if their mental impairment substantially limits one or more of their major life activities and they are unable to board, ride or disembark from a fixed route vehicle.

A public entity operating a fixed route system must also provide paratransit service to any individual with a disability who would otherwise be able to utilize an accessible fixed route vehicle at a time, or within a reasonable period of such time, when the individual wishes to use such a vehicle and one is not available.

In general, the Committee does not intend that the concepts of boarding and disembarking include travel to or from a boarding or disembarking location. However, the Committee included a very narrow exception in recognition of specific impairment-related conditions which certain individuals with disabilities may have. Under the bill, paratransit services must be provided to any individual with a disability who has a specific impairment-related condition that prevents the individual from traveling to a boarding location or from a disembarking location on a fixed route system. A specific condition related to the impairment of the individual with a disability such as chronic fatigue, blindness, a lack of cognitive ability to remember and follow directions, or a special sensitivity to temperature must be present.

The Committee does not intend for the existence of architectural barriers to trigger eligibility for paratransit under this section if these barriers are not the responsibility of the fixed route operator to remove. In particular, no eligibility for paratransit exists due simply to a lack of curb cuts in the path of travel of an individual with a disability since, in the short term, such barriers can often be navigated around and, more importantly, pressure to eliminate these architectural barriers must be maintained on the state and local governmental entities responsible for eliminating them. In the same way, distance from a boarding or disembarking location alone does not trigger eligibility under this section. In both of these cases, a specific condition related to the impairment of the individual with a disability such as those cited previously must also be present to trigger paratransit eligibility.

The Committee is concerned that a broad interpretation of this exception will discourage the use of fixed route transit systems by individuals with disabilities. The transportation provisions of the legislation carefully balance the increased use of fixed route transit service by individuals with disabilities against expanded, costly paratransit service for those individuals who cannot use fixed route systems. Both components must be implemented together to maintain this balance and to implement the bill cost-effectively.

The Committee is aware that special circumstances often eliminate or restrict the control that individuals with disabilities exercise over their lives. Therefore, the Committee encourages providers of special services to individuals with disabilities to locate these services near fixed route transit lines and to work with local fixed route operators to facilitate the use of their transit systems by individuals with disabilities.

Subsection (c) also specifies that paratransit service must be provided to one associate of each individual with a disability. The Committee anticipates occasions on which seats may be available on paratransit vehicles which could be used by additional associates—that is, in addition to the one associate accompanying the individual with a disability—wishing to accompany an individual with a disability. The Committee anticipates that these additional persons may be allowed to ride in the same paratransit vehicle as the individual with a disability and his or her associate, as long as the additional persons are going to the same destination, as the individual with a disability and do not use seats which would have otherwise been used by individuals with disabilities.

The Committee expects each fixed route operator to establish a local certification process to determine eligibility for paratransit service by individuals with disabilities in accordance with the provisions of this Act and the regulations issued pursuant to this section. As explicitly stated in subsection (f), a fixed route operator may regard the requirements of this section as a minimum level of paratransit service to be provided under the Act.

Section (c)(2) provides that paratransit service must be available throughout the public entity's service area, except for any area in which only commuter bus or commuter rail service is operated by the public entity. The Committee intends that any definitions of commuter bus and commuter rail service include widely accepted characteristics of commuter operations such as service almost exclusively in one direction during periods of peak demand, limited stops, use of multi-ride tickets or passes, and routes of extended length, usually from central business districts to outlying suburbs.

With regard to overlapping or contiguous service areas of fixed route systems operated by public entities, it is the Committee's expectation that, to the extent possible, the public entities providing paratransit services in these areas will coordinate the overall paratransit service provided. In fact, it is quite possible that a single public entity might provide better, coordinated paratransit service in the combined, overlapping or contiguous service areas of several fixed route operators (or better coordinate service among these operators) than if each of the operators provided a portion of the service itself.

Therefore, the regulations issued pursuant to this section should not prohibit one public entity, or a public entity in coordination with one or more fixed route operators, from providing or coordinating all of the paratransit service required under the Act in a region, or portion of a region, so long as the total level of service provided met or exceeded the combined level of service which would otherwise be required of all of the affected fixed route operators. The coordinating public entity would share joint responsibility with the fixed route operator(s) for providing the paratransit service required under the Act. This joint responsibility may include jointly fulfilling the requirements for public participation outlined in paragraph (6), so long as adequate opportunity for comment and consultation is provided to affected individuals with disabilities within a region, or portion of a region.

Subsection (c)(4) provides that if the paratransit requirements in this section would impose an undue financial burden on a public entity, the entity would not be required to provide service beyond this level of undue financial burden. The Committee intends that the determination of undue financial burden vary according to the financial constraints within which each public entity operates its fixed route system. A flexible numerical formula may be used to determine undue financial burden. Two examples of factors which may be considered when making this determination include the percentage increases in fares or reductions in levels of transit service which would be required to implement this section. Any determination of undue financial burden cannot have assumed the collection of additional revenues, such as those received through increases in local taxes or legislative appropriations, which would not have otherwise been made available to the fixed route operator.

Because a finding of undue financial burden on the part of a fixed route operator will restrict the level of paratransit service provided, the regulations issued pursuant to this section may include a requirement that each fixed route operator consider measures to improve the cost-effectiveness of the delivery of both fixed route and paratransit service provided by that operator before limiting paratransit service under the undue financial burden limitation.

Section (c)(5) specifies that the Secretary of Transportation may require a public entity to provide service beyond the undue financial burden limit. Among others, this provision addresses a potential situation in which a fixed route operator cannot provide even the most basic level of paratransit service without triggering the undue financial burden limitation. In that case, the Committee expects the regulations issued by the Secretary under this section to require a basic level of paratransit service to be provided by the fixed route operator.

Subsection (7) requires a public entity to submit, and begin implementation of, a paratransit service plan meeting the requirements of the regualtions issued pursuant to this section within 18 months after the date of the enactment of this Act. Thereafter, the plan must be revised annually.

Subsection (8) states that a public entity is not required to provide paratransit service provided by another public entity or person in a given service area. A public entity may identify in its paratransit seervice plan other entities or persons which are providing a sufficient level of paratransit service so that the public entity can state that, because of the existence of that service, it has met its obligation to provide paratransit service under the Act. However, the public entity must ensure that the paratransit service is actually being provided throughout the year.

The Committee intends that the DOT regulations issued under this section include provisions requiring adjustments in paratransit service in response to a significant occurrence in an operator's service area, such as the withdrawal from the marketplace of a private paratransit provider.

A public entity does not have to monitor private organizations that may be providing paratransit service in its service area which have not been identified in its paratransit plan. Instead, since the public entity is ultimately responsible for the provision of the paratransit service required of it under the Act, the public entity must only monitor and ensure adequate service from those entities or persons which it has identified in its paratransit plan as surrogates to meet its responsibilities under the Act.

A public entity violates the paratransit requirements of this section if it fails to submit and begin implementation of a paratransit plan or modified plan, if required; or if a modified plan fails to meet the requirements of the bill; or if the paratransit service included in the plan is not provided in accordance with the plan.

The Secretary must disapprove a paratransit plan if it does not meet the requirements of this section. If a plan is disapproved, the public entity must submit a modified plan within 90 days of the disapproval.

SECTION 205. PUBLIC ENTITIES OPERATING DEMAND RESPONSIVE SYSTEMS

This section provides that it is discrimination for purposes of this Act and Section 504 of the Rehabilitation Act of 1973 for a public entity operating a demand responsive system to fail to purchase or lease a new vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, unless the entity can demonstrate that its system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to members of the general public without disabilities.

The standard of a system viewed in its entirety providing an equivalent level of service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessible to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system.

SECTION 206. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE

This section provides for a temporary exemption from accessible bus requirements under sections 203(a) or 205 if wheelchair lifts are not available from a qualified manufacturer, a public entity has made good faith efforts to locate such a manufacturer, and any delay in purchasing new buses would significantly impair transportation services in the community served by the public entity.

The Committee understands that certain fixed route operators may be restricted from using accessible, 102" wide commuter buses for various reasons. One alternative vehicle which would meet the requirements of the Act is the 96" commuter bus, which some manufacturers are apparently unwilling to fully warranty due to the structural modifications necessary to accommodate a wheelchair lift. Another alternative is the 96" suburban bus, which does not have the structural difficulties in accommodating a lift that a commuter bus does. A fixed route operator would not qualify for a waiver under this section from wheelchair lift purchase requirements for a 96" commuter bus since an acceptable alternative—the 96" wide, lift-equipped suburban bus—exists. However, the Committee certainly encourages fixed route operators, commuter bus manufacturers, and the Secretary of Transportation to work towards the development of a fully warranted, accessible, 96" wide commuter bus, especially in light of recent improvements in lift technology.

SECTION 207. NEW FACILITIES

This section provides that it is discrimination for purposes of this title and section 504 of the Rehabilitation Act of 1973 for a public entity to fail to construct a new facility which will be used in the provision of public transportation services which is readily accessible to and usable by individuals with disabilities.

SECTION 208. ALTERATIONS OF EXISTING FACILITIES

This section provides that if an alteration to a facility used in the provision of public transportation services affects or could affect the usability of the facility, the altered portion must be readily accessible to and usable by individuals with disabilities, to the maximum extent feasible.

If the alteration affects the usability of or access to an area containing a primary function, then the path of travel to the altered area, and the restrooms, telephones and drinking fountains serving the altered area would also have to be made accessible, to the maximum extent feasible, although these alterations are required only if they are not disproportionate in cost and scope to the overall alterations.

Section 208(b) provides that key stations in rapid, commuter, and light rail systems must be made readily accessible to and usable by individuals with disabilities as soon as practicable, but in no event later than three years after the date of the enactment of the Act. This period may be extended by the Secretary up to a 30-year period for extraordinarily expensive structural changes to, or replacement of, existing facilities, provided that two-thirds of these stations requiring extraordinarily expensive structural changes have been made accessible by the end of 20 years from the date of the enactment of this Act. The Committee intends that the stations completed during this initial 20-year period be widely located throughout the service area of the fixed route operator.

The Committee intends that the criteria established by the Secretary for determining key stations include characteristics such as high ridership, transfer points (including "feeder" points of transfer from other fixed route systems), and high ridership, end-of-the-line stations. When high ridership is the sole factor in determining a key station, consideration should be given to the proximity of that station to other key stations. Each of several closely grouped, high volume stations need not be designated a key station solely due to a high volume of ridership.

The Committee finds special merit in local settlement agreements (such as those negotiated in New York and Philadelphia) regarding the identification of key stations, when they have been negotiated in good faith by public entities and representatives of the disability community. The Committee expects the criteria established by the Secretary to find that these local agreements fully meet the requirements of this subsection.

SECTION 209. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE

Subsection (a) of this section requires public transportation programs and activities to be accessible, when viewed in their entirety, other than those conducted in key stations which have not yet been made accessible in accordance with section 208(b).

Section 209(b) requires that at least one car per train on intercity, light, rapid, and commuter rail trains of at least two vehicles in length be accessible to individuals with disabilities within five years of the date of the enactment of the Act. The Committee specifically exempted one-car trains, such as streetcars, from the requirements of this subsection.

SECTION 210. REGULATIONS

This section requires the Attorney General and the Secretary of Transportation to issue regulations in an accessible format implementing the legislation within one year of the date of the enactment of the Act. The regulations issued under this section and section 204 by the Secretary must include standards applicable to facilities and vehicles which are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of the Act.

With regard to developing standards for wheelchair lifts, wheelchair restraint devices, and other devices necessary to facilitate the use of transit vehicles and facilities by individuals with disabilities, the Committee directs the Secretary to consult with, at a minimum, representatives from the disability community, transit operators, vehicle manufacturers, and wheelchair manufacturers.

The regulations issued pursuant to this section must include a requirement that wheelchair lifts and other boarding assistance devices be maintained in working order and that, when operational and when needed, they be deployed at the request of an individual with a disability.

SECTION 211. ENFORCEMENT

This section provides that the remedies, procedures and rights set forth in Section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this title, including the regulations issued under this title.

SECTION 212. EFFECTIVE DATE

This section provides that the paratransit requirement for operators of fixed route systems take effect 18 months after the date of the enactment of the Act. In general, accessible vehicle purchase requirements take effect 30 days after the date of enactment.

SECTION 213. COMMUTER RAIL SYSTEMS

Subsection (a) of this section provides a partial exemption to the accessible commuter rail vehicle purchase and remanufacturing requirements under section 203 as long as (1) the one car per train requirement under section 209 is met, (2) clear, concise, and adequate notice is provided identifying accessible vehicles and their location on a train, and (3) reasonable provision is made to ensure that additional services provided on nonaccessible vehicles are provided to individuals with disabilities traveling on accessible vehicles.

Section 213(b) requires that additional accessible vehicles must be provided if one accessible car per train is insufficient to meet actual continuing demand for accessible service.

In interpreting "continuing demand", the Committee intends that the demand be regular and consistent. If a given train's accessible car is filled daily to capacity and on any given day or days of the week an additional person in a wheelchair regularly waits for a ride and is not accommodated, that train does not meet continuing demand. A given train need not operate over capacity seven days a week to trigger the additional vehicle provisions, so long as the demand is regular or predictable. For instance, a person may have a part-time job and only ride a train three days a week. A student may ride to attend classes twice a week. A person may travel to the hospital once a week. In all cases, if the demand is continuing yet a train's accessible vehicle is sometimes filled to capacity, an additional accessible vehicle must be provided.

Regarding one-time special events which cause a sharp increase in wheelchair ridership, the Committee recognizes that all wheelchair users attending such events may not be successfully accommodated. However, if special events which occur on a regular, scheduled basis, such as sporting events or concerts, are found to attract increased ridership by individuals with disabilities, increased accessible capacity must be provided. In both cases (determining continuous demand and special events demand), the determination of whether such demand exists and what steps consistent with this subsection must be taken to meet the demand shall be made by the fixed route operator in close and good faith consultation with the disability community in the market area served by the operator. The operator must consult with individuals with disabilities, the majority of which must be individuals with disabilities who use wheelchairs. This consultation, in addition to conductors' reports on the adequacy of accessible capacity, will provide a means for the disability community to alert the operator to new, continuing demand for accessible service.

When it is determined that continuing demand cannot be met by one accessible car per train, section 213 states that the public entity must use such additional accessible cars per train as may be necessary to meet such demand. It is the Committee's intent that the rail operator do so promptly. Usually providing an additional car is a matter of operational adjustments—such as rail yard changes—to place an additional accessible car on a given train. These operational changes can and should be made promptly after a finding of unmet continucing demand is made.

Nothing in Section 213(b) is intended to preclude an operator from meeting continuing demand for accessible service by first taking reasonable steps to increase the number of wheelchair locations available in accessible cars before adding additional cars. The maximum number of wheelchair locations per car would be decided in conjunction with the advisory committee.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SECTION 301. DEFINITIONS

Section 301 defines the terms "commerce," "demand responsive system," "fixed route system," "over-the-road bus," "potential places of employment," "private entity," "public accommodation," "public transportation," and "readily achievable" for purposes of the title.

Consistent with the exemption established in Title II for "public school transportation," the Committee does not intend for the provisions of this title to apply to the transportation of school children to and from a private elementary or secondary school and school-related activities, provided that the school is a recipient of Federal assistance, subject to the provisions of section 504 of the Rehabilitation Act of 1973, and is providing bus service to children with disabilities equivalent to that provided to children without disabilities.

The term "over-the-road bus" is defined as a bus characterized by an elevated passenger deck located over a baggage compartment. The term includes most of the buses typically used in intercity, charter, or tour service.

The term "public transportation" is defined as transportation by bus or rail, or by any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

The Committee excluded transportation by aircraft because of the existence of the Air Carrier Access Act of 1986 (P.L. 99-435). However, the term public transportation does include shuttle service operations operated by commercial airlines. Title III does not apply to volunteer-driven commuter ridership arrangements.

Section 301(7) of the legislation sets forth the definition of the term "public accommodation" and lists examples of entities to be included under this definition. The list includes restaurants, hotels, movie theaters, stadiums, grocery stores, professional offices, terminals used for public transportation, museums, zoos, homeless shelters and recreational facilities. An example of an entity excluded from this list, and therefore not considered a public accommodation, would be a construction job site—which is often in a constant state of transition—such as one used in the construction of a new public transportation facility. Religious institutions or entities controlled by religious institutions are also not covered by the legislation.

SECTION 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS

Section 302(a) specifies the genreal rule that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

Section 302(b)(1) states that it is discriminatory to subject an individual or class or individuals, directly or indirectly, on the basis of disability, to any of the following:

> denying the opportunity to participate in, or benefit from, goods, services, facilities, privileges, advantages, and accommodations;
>
> affording an opportunity that is not equal to that afforded others;
>
> providng an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others; however, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Section 302(b)(2)(A) is a non-inclusive list of examples of what constitutes "discrimination." These include: imposition or application of eligibility criteria that screen out individuals with disabilities; failure to make reasonable modifications in policies, practices and procedures, failure to take such steps as may be necessary to ensure that no individual with a disability is excluded or treated differently because of the absense of auxiliary aids and services unless it would fundamentally alter the nature of the activity or would result in an undue burden; failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehcles by the installation of a hydraulic or other lift), where such removal is readily achievable; where an entity can demonstrate that the removal of a barrier is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achieveable. With respect to a facility that is altered in a manner that affects the usability of the facility, the failure to make the alterations is a manner so that, to the maximum extent feasible, the altered portion is readily accessible to and usable by individuals with disabilities. With regard to an alteration that affects the usability of an area containing a primary function, the path of travel to the altered area, and bathrooms, telephones, and drinking fountains serving the remodeled area must also be made readily accessible to and usable by individuals with disabilities, to the extent that these alterations are not disproportionate in cost and scope to the overall alterations.

Section 302(b)(2) also includes specified provisions relating to prigate entities not primarily engaged in the business of transporting people which operate transportation systems. Operations covered by the requirements include, but are not limited to: hotel and motel airport shuttle services, customer and employee shuttle but services operate by private companies and shopping centers, and shuttle operations of recreational facilities such as stadium, zoos, amusement parks and ski resorts.

Provisions in section 302(b)(2) do not apply to private entities primarily engaged in the business of transporting people—which are covered in section 304—or to over-the-road bus operations.

Section 302(b)(2)(B)(i) applies to private entities operating fixed route systems using vehicles with a seating capacity in excess of 16 passengers (including the driver). These entities must purchase or lease new vehicles for use on such systems which are readily accessible to and usable by individals with disabilities whenever a solicitation is made for such vehicles 30 days after the date of the enactment of the Act.

Section 302(b)(2)(B)(ii) applies to fixed route systems using vehicles with a seating capacity of 16 passengers or less (including the driver). If a private entity purchases or leases a new vehicle which is not accessible for use on such system, the entity must operate the system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities equivalent to the level of service provided to individuals without disabilities. The standard of a system viewed in its entirety providing an equivalent level of service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessile to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system.

For example, if a hotel near an airport provides fixed route shuttle service to the airport, the hotel need not purchase new vehicles with a seating capacity of 16 or less that are accessible so long as it makes alternative equivalent arrangements for transporting people with disabilities who cannot board the inaccessible vehicles. In addition to the hotel owning an accessible vehicles itself, the hotel may make arrangement with another hotel that has an accessible vehicles that can be made available to provide equivalent shuttle service or may use a portable boarding assistance device in concert with an otherwise inaccessible vehicle to meet the requirement of this cause of the legislation.

Section 302(b)(2)(C) specifies requirements for private entities which operate demand responsive systems. Section 302(b)(2)(C)(i) applies to operators of demand responsible systems which use vehicles with a seating capacity of 16 passengers or less (including the driver). These systems must operate, so that, when viewed in their entirety, the system ensures a level of service to individuals with disabilities equivalent to the level of service provided to individuals without disabilities.

Section 302(b)(2)(C)(ii) provides that vehicles seating more than 16 passengers must be accessible if a solicitation is made more than 30 days after the date of the enactment of the Act, unless the operator's system, when viewed in its entirety, provides an equivalent level of service to individuals with or without, disabilities.

Section 302(b)(2)(D)(i) specifies that the requirements in subparagraphs (B) and (C) relating to private entities not primarily engaged in the business of transporting people do not apply to over-the-road buses. Over-the-road buses must meet the vehicle and system requirements specified in sections 304 and 306 regardless of whether the private entity operating them is primarily, or not primarily, in the business of transporting people.

Section 302(b)(2)(D)(ii) states that over-the road buses used to provide transportation of individuals by a private entity not primarily engaged in the business of transporting people must comply with the regulations issued under section 306(a)(2).

SECTION 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT

Section 303 specifies that discrimination includes a failure to design and construct facilities for first occupancy later than 30 months after the date of the enactment of the Act readily accessible to and usable by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so.

SECTION 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

Section 304(a) states the general rule that prohibits discrimination on the basis of disability in the full and equal enjoyment of transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

Section 304(b)(1) specifies that the term "discriminated against" includes the imposition or application of eligibility criteria that screen out or tend to screen out persons with disabilities from fully enjoying public transportation services, unless such criteria can be shown to be necessary for the provision of such services.

304(b)(2) lists further examples of discrimination, including: a failure such entity to make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii); a failure to provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and a failure to remove barriers consistent with the requirements of section 302(b)(2)(A)(iv), (v), and (vi).

The examples of discrimination contained in section 304(b) are intended to address situations that are not covered in the specific vehicle and system requirements for private entities primarily engaged in the business of transporting people included in sections 304(b)(3), 304(b)(4), 304(b)(5) and 306. The general rule contained in paragraph (a) and the examples of discrimination contained in paragraph (b) are not intended to override the specific requirements contained in the sections referenced in the previous sentence. For example, an individual with a disability could not make a successful claim under section 304(a) that he or she had been discriminated against in the full and equal enjoyment of public transportation services on the grounds that an over-the-road bus was not wheechair lift-equipped, if a lift was not required under 304(b)(4) or 306(a)(2).

Section 304(b)(3) requires private entities primarily engaged in the business of transporting people to purchase new vehicles (other than automobiles, vans with seating capacities of less than 8 passengers, including the driver, or over-the-road buses) that are to be used on a fixed route system which are readily accessible to and usable by individuals with disabilities when solicitations are made 30 days after the date of the enactment of the Act. If such vehicles are to be used solely on a demand responsive system, they need not be accessible if an entity can demonstrate that its system, when viewed in its entirety, provides an equivalent level of service to individuals with disabilities as that provided to the general public.

Section 304(b)(4) requires over-the-road buses to comply with the regulations issued under section 306(a)(2) and makes it discrimination to purchase or lease an over-the-road bus which does not meet those requirements. Two sets of regulations will be issued by the Department of Transportation under section 306(a)(2) which include vehicle-specific requirements for over-the-road buses The content of these regulations is discussed in detail under section 306 of this report.

Section 304(b)(5) requires a van with a seating capacity of less than 8 passengers, including the driver, to be purchased or leased by a private entity so that it is readily accessible to an usable by an individual with a disability, unless the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public. Under this subsection, minivans are treated the same whether they are operated in a fixed route system or a demand responsive system. Owning, or having access to, an accessible minivan or a portable boarding assistance device which can be used in concert with an otherwise inaccessible minivan that will meet the needs of disabled passengers on an on-call basis is required under this subsection.

Regardless of vehicle requirements, anyone in the business of providing taxi service shall not discriminate on the basis of disability in the delivery of that service. For example, it would be discrimination under the Act to refuse to pick up a person on the basis of that person's disability. A taxicab driver could not refuse to pick up someone in a wheelchair because he or she believes that the person could not get out of their chair or because he or she does not want to lift the wheelchair into the trunk or back seat of the taxi.

SECTION 305. STUDY

Section 305(a) directs the Office of Technology Assessment (OTA) to conduct a study to determine (1) the access needs of individuals with disabilities to over-the-road buses and to over-the-road bus service; and (2) the most-cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities through all forms of boarding options.

During its hearings on the legislation, the Committee heard conflicting testimony on the cost and reliability of wheelchair lifts or other boarding assistance devices with regard to their use on over-the-road buses. Therefore, before mandating these or any other boarding options in this Act, a thorough study of the access needs of individuals with disabilities to these buses and the cost-effectiveness of different methods of providing such access is required by the Act.

Section 305(b) specifies which issues must be analyzed by the study, but is not intended to be all-inclusive. The analysis required by the legislation includes a review of accessibility issues relating to vehicle-specific aspects of over-the-road buses, as well as to system-wide aspects of over-the-road bus service. Both aspects of over-the-road bus accessibility are included so that neither is favored over the other in the organization of the study.

The contents of the study must include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service;

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities;

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities. All types of methods (including the use of boarding chairs, ramps, wheelchair lifts, and other boarding assistance devices) which may, or may not, involve the physical lifting of a boarding assistance device should be analyzed in terms of their effectiveness.

(4) The cost of providing accessible over-the-road buses and bus service to individuals and disabilities, including consideration of recent technological and cost saving developments in equipment and devices. All types of methods should be analyzed in terms of their cost.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity. The study should analyze the potential for changes in bus design to better accommodate accessibility equipment. The study should also analyze whether an accessible restroom could be added to an over-the-road bus without resulting in a loss of seating capacity. "Seating capacity" means a reduction in the number of seats on a bus in which passengers can ride comfortably. For example, if a seat were reduced in size in order to accommodate an accessible restroom, the seat would have to be capable of carrying a passenger as comfortably as an existing full seat in order to avoid a finding of a loss in seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on service to rural communities. This provision recognizes that the intercity bus industry serves approximately 9500 communities that are not served by any other form of intercity public transportation. For the reason, the study must look at the impact various

methods of providing accessibility will have on the industry's ability to continue service (particularly to rural communities) given its economic history, passenger demographics, pressure from competitors, and future economic projections.

Section 305(c) requires the OTA to establish an advisory committee for the purposes of conducting the study and specifies the committee's membership, in terms of number and representation. There are to be equal numbers of members from among (1) private operators and manufacturers of over-the-road buses and (2) individuals with disabilities who are potential riders of such buses. A third group of members are to be selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices. The total number of members from groups (1) and (2) must exceed the number of members from the third group.

Section 305(d) requires the study and OTA's recommendations, including any policy options for legislative action, to be submitted to the President and Congress within 36 months after the date of the enactment of the act. The President must extend each of the deadlines for compliance with the regulations in section 306(a)(2)(B) for one year if the President determines that such compliance will result in a significant reduction in intercity over-the-road bus service.

Section 305(e) requires OTA to provide a preliminary draft of the study to the Architectural and Transportation Barriers Compliance Board (ATBCB), to give the Board an opportunity to comment on the draft study, and to incorporate written comments from the Board received by the OTA within 120 days of the Board's receipt of the draft study as part of the final study.

SECTION 306. REGULATIONS

Section 306(a)(1) requires the Secretary of Transportation to issue regulations in an accessible format to carry out sections 302(b)(2) (B) and (C) and 304 (other than subsection (b)(4)). These regulations will apply to all providers of transportation under title III of the Act and will include all requirements for the provision of such transportation except for the vehicle-specific requirements for over-the-road buses included in section 304(b)(4).

With regard to over-the-road buses, the legislation gives the Secretary rulemaking authority under section 306(a)(1) to implement section 304 only to the extent that any regulations issued under parargaph (1) are not inconsistent with the vehicle-specific requirements for over-the-road buses contained in section 306(a)(2). An example of a general, rather than a vehicle-specific, requirement permitted under section 306(a)(1) which could be applied to over-the-road bus transportation would be a requirement that an indivual with a disability be allowed to board an over-the-road bus in spite of the fact that the bus was not readily accessible to and usable by an individual with a disability.

Section 306(a)(2) requires the Secretary of Transportation to issue regulations for providing access to over-the-road buses in two separate rulemakings.

Section 306(a)(2)(A) specifies the interim requirements for over-the-road buses, to be issued not later than one year after the date of the enactment of the Act to carry out sections 304(b)(4) and 302(b)(2)(D)(ii). Such regulations will require each private entity which uses an over-the-road bus to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access for individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals. These interim requirements will be effective until the effective date of the final regulations issued under 306(a)(2)(B).

While these interim requirements are in effect, it will not be considered discrimination for a private entity to purchase or lease an over-the-road bus which is not wheelchair lift-equipped or to which a boarding chair and/or ramp is not provided to board such bus. However, nothing in the legislation prevents an operator from using lifts, boarding chairs, ramps or other boarding assistance devices during the interim period. The regulations in effect during this period may require additions to an over-the-road bus to aid accessibility which do not require structural changes or boarding assistance devices, such as the installation of non-skid strips on stairs. The failure to equip buses with these types of aids, if required by regulations, would subject an operator to a claim of discrimination under section 304(b)(4).

Section 306(a)(2)(B) requires the Secretary of Transportation to review the OTA study and issue final regulations not later than one year after the submission of the study to the Secretary. The regulations shall require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities. These regulations will be effective 7 years after date of enactment for small providers, as defined by the Secretary, and 6 years after date of enactment for other providers.

The Secretary may define small providers using current ICC class definitions. The extra year for compliance for these providers acknowledges the increased burden that implementation of some accessibility requirements could have on operators with relatively small fleets.

Section 306(a)(2)(C) states that no regulations may require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity. The term "seating capacity" has the same meaning discussed under section 305—a reduction in the number of seats in which passengers can ride comfortably.

Section 306(a)(3) requires that the regulations issued shall include standards applicable to facilitaties and vehicles covered by sections 302(b)(2) and 304.

Section 306(b) specifies that no later than one year after the date of the enactment of the Act, the Attorney General must issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

Section 306(c) states that standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act. Section 504 of the Act requires ATBCB, within 6 months after the enactment of this Act, to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of title II and III. The guidelines shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communications, to individuals with disabilities.

The regulations issued pursuant to this section must include a requirement that wheelchair lifts and other boarding assistance devices be maintained in working order and that, when operational and when needed, they be deployed at the request of an individual with a disability.

SECTION 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS

This section exempts private clubs and religious organizations from coverage under the Act.

SECTION 308. ENFORCEMENT

This section provides that the remedies and procedures of title II of the Civil Rights Act of 1964 are available under this title and provides for enforcement by the Attorney General.

SECTION 309. EFFECTIVE DATE

This section provides that, unless specifically provided otherwise, the provisions of the Act take effect 18 months after the date of enactment of the Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SECTION 401. TELECOMMUNICATIONS SERVICES FOR HEARING IMPAIRED AND SPEECH IMPAIRED INDIVIDUALS

This section specifies that a common carrier that offers telephone services to the general public must also provide interstate or intrastate telecommunication relay services so that such services provide individuals who use non-voice terminal devices because of their disabilities opportunities for communication that are equivalent to those provided to their customers who are able to use voice telephone services.

TITLE V—MISCELLANEOUS PROVISIONS

SECTION 501. CONSTRUCTION

This section explains the relationship between section 504 of the Rehabilitation Act of 1973 and this Act and the relationship between this Act and State laws that provide greater protection for the rights of individuals with disabilities. This Act shall not be construed as regulating the underwriting, classifying or administering of insurance risks.

SECTION 502. PROHIBITION AGAINST RETALIATION AND COERCION

This section includes an anti-retaliation provision and a prohibition against interference, coercion or intimidation.

SECTION 503. STATE IMMUNITY

This section makes it clear that States are not immune under the 11th Amendment for violations of the Act.

SECTION 504. GUIDELINES BY ATBCB

This section directs the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines consistent with the Act.

SECTION 505. ATTORNEY'S FEES

This section specifies that in any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SECTION 506. TECHNICAL ASSISTANCE

This section includes a technical assistance provision which directs the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission to develop a plan to assist entities covered under the Act, along with other executive agencies and commissions, to understand their responsibilities under the Act.

SECTION 507. FEDERAL WILDERNESS AREAS

This section requires a study on wilderness designations and wilderness land management practices with regard to the use of wilderness areas by individuals with disabilities.

SECTION 508. TRANSVESTITES

This section states that the term "disability" shall not apply to an individual solely on the basis of transvestitism.

SECTION 509. MANDATING THE COVERAGE OF CONGRESS

This section mandates the coverage of Congress under the Act.

SECTION 510. ILLEGAL DRUG USE

This section makes it clear that current users of illegal drugs are not protected from actions based on their current use of illegal drugs.

SECTION 511. DEFINITIONS

This section states that under the Act, the term "disability" does not include "homosexuality", "bisexuality", "transvestitism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", "pyromania", "gender identity disorders", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SECTION 512. AMENDMENTS TO THE REHABILITATION ACT

This section includes provisions clarifying actions permitted or prohibited with regard to individuals using alcohol or illegal drugs.

SECTION 513. SEVERABILITY

This section provides severability protection for the various provisions of the Act.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, no separate findings or recommendations have been formally issued on the subject matter of this legislation by the Subcommittee on Investigations and Oversight. The Subcommittee on Surface Transportation held hearings on the subject matter which resulted in Titles II and III of the reported bill.

(2) With respect to Clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives, the bill, as reported, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) Pursuant to Clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no report has been submitted by the Committee on Government Operations pertaining to this subject matter.

(4) With respect to clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee has received the following report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act.

The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 1990.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of H.R. 2273, the Americans with Disabilities Act of 1990, as ordered reported by the Committee on Public Works and Transportation on April 3, 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2273.
2. Bill title: Americans with Disabilities Act of 1990.
3. Bill status: As orderd reported by the House Committee on Public Worls and Transportation on April 3, 1990.
4. Bill purpose: To prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	5	6	19	31	31
Estimated outlays	5	6	19	31	31

Basis of estimate

Equal Employment Opportunities Commission (EEOC). Title I—Employment—would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $1 million in fiscal year 1991, $2 million in fiscal year 1992, $15 million in fiscal year 1993, and $27 million annually in fiscal years 1994-95. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Commission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation. H.R. 2273 would direct the Secretary of Transportation to issue regulations including standards applicable to the facilities and vehicles covered by these provisions. CBO estimates that the cost to the federal government of developing these regulations would be about $0.5 million in fiscal year 1991. In addition, the federal goverment might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grant by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board. H.R. 2273 would require the board to issue minimum guidelines that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Although no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1991. This estimate assumes salaries and expense costs of $104,000 and research contract costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1992.

Office of Technology Assessment (OTA). The OTA would be required to undertake a study to determine (1) the needs of individuals with disabilities with regard to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. In conjunction with this study, the OTA is directed to establish an advisory committee to assist with and review the study. Although no specific authorization level is stated in the bill, CBO estimates the cost of the study and advisory committee would be $0.2 million in fiscal year 1991, $0.3 million in 1992, and $0.1 million in 1993. This estimate is based upon the assumption that the OTA will not have to conduct significant additional field research.

Department of Justice. H.R. 2273 also would require the Attorney General to develop regulations to prohibit discrimination in public services and to investigate alleged violations of public accommodation provisions, which would include undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. We estimate the cost of these activities would be $3 million in fiscal year 1991 and $4 million annually in fiscal years 1992–1995.

Federal Communications Commission (FCC). H.R. 2273 requires the FCC to prescribe and enforce regulations with regard to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. While no authorization level is stated, CBO estimates the cost of.developing and enforcing these regulations to be $0.1 million in fiscal year 1991, negligible in fiscal year 1992, $0.2 million in 1993, $0.2 million in 1994, and $0.1 million in 1995. The FCC anticipates a lull in fiscal year 1992 because the states would be designing telecommunication relay systems and there wouldn't be much FCC involvement. During fiscal years 1993 and 1994 the certification and evaluation of state programs would occur.

National Council on Disability. H.R. 2273 would require the council to conduct a study on the effect that wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System. Although no authorization level is stated, CBO estimates the cost of this study would be $0.2 million in fiscal year 1991 and $0.1 million in fiscal year 1992.

Other Possible Effects. In addition to the federal costs of establishing and enforcing new regulations, H.R. 2273 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

6. Estimated cost to State and local governments: Enactment of H.R. 2273 would result in substantial costs for state and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. In addition, some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements.

Public Buildings. H.R. 2273 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly-constructed, state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs if the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public Transit. CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as lift-equipped buses are acquired and would reach $15 million by 1995. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 38 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,800 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1991, increasing to $15 million in 1995, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would use the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In addition, these estimates reflect total costs for all transit operators, regardless of size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such services would not impose an "undue financial burden." Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

New regulations recently proposed by the Department of Transportation concerning bus and paratransit services include requirements much the same as those in H.R. 2273. Should these proposed rules become final in their current form, the mandates of the bill would have much less effect.

Transit Facilities—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over 30 years. The precise level of these costs would depend on future interpretations of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, (Urban Transportation for Handicapped Persons: Alternative Federal Approaches, November 1979), that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to overstate these costs severely. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO prepared an estimate of S. 933, Americans with Disabilities Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on August 2, 1989. We prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1989, as ordered reported by the Committee on Education and Labor on November 14, 1989. We also prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1990, as ordered reported by the House Committee on Energy and Commerce on March 13, 1990. The estimates in this bill are similar to those of the Education and Labor and Energy and Commerce versions of H.R. 2273 and are substantially different from those in the Senate bill.

9. Estimate prepared by: Cory Leach and Marjorie Miller.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

COST OF LEGISLATION

In accordance with rule XIII(7) of the Rules of the House of Representatives, the cost to the United States in carrying out H.R. 2273, as reported, in fiscal year 1990, and in each of the five following fiscal years, is estimated by the Committee to be costs which appear in the report of the Congressional Budget Office.

VOTE

The Committee ordered the bill reported by a vote of 45 ayes and 5 noes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

APPLICATION OF ACT

Sec. 2. (a) * * *

(b) Except as provided in [section 224] *sections 223, 224, and 225 and subject to the provisons of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).*

* * * * * * *

TITLE II— COMMON CARRIERS

* * * * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) Subject to the provisions of [section 301] *sections 225 and 301*, nothing in this Act shall be construed to apply, or give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

* * * * * * *

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICE.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICE.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communi-

cation by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

(c) PROVISION OF SERVICE.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

(d) REGULATIONS.—

(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.—

(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential

customers to recover the costs of providing interstate telecommunication relay services.

(5) Undue burden.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

(e) Enforcement.—

(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification.—

(1) State documentation.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(g) Complaint.—

(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

REHABILITATION ACT OF 1973

* * * * * * *

DEFINITIONS

SEC. 7. For the purposes of this Act:
(1) * * *

* * * * * * *

(8)(A) * * *

(B) [Subject to the second sentence of this subparagraph, the] *The* term "individual with handicaps" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. [For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.] *Notwithstanding any other provision of law, but subject to subparagraph (D) with respect to programs and activities providing education and the last sentence of this paragraph, the term "individual with a handicap" does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.*

* * * * * * *

(D) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(E) For purposes of section 503 and 504 of this Act as such sections relate to employment, the term "individual with handicaps" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employeemnt, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(22) The term "illegal drugs" means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or

other uses authorized by the Controlled Substances Act or other provisions of Federal law.

* * * * * * *

ADDITIONAL VIEWS OF MR. JOHN PAUL HAMMERSCHMIDT, MR. ARLAN STANGELAND, MR. WILLIAM F. CLINGER, JR., MR. JIM LIGHTFOOT, MR. DENNIS HASTERT, MR. JAMES M. INHOFE, MR. CASS BALLENGER, MR. BILL EMERSON, MR. JOHN J. DUNCAN, JR., MR. BILL GRANT AND MS. SUSAN MOLINARI

Legislation opening doors to opportunity and independence for millions of Americans has received its long-awaited and deserved attention in the halls of the 101st Congress. The Public Works and Transportation Committee has had a significant role in the effort, and after many months of deliberations, it is with a sense of pride and purpose that we have been able to vote in favor of reporting H.R. 2273, as amended, the Americans with Disabilities Act, to the House of Representatives.

Transportation holds the key to opportunity for millions of disabled Americans. No longer will the problem of "how to get there" prevent the disabled from participating in recreational activities, running errands, visiting friends, and most of all, taking pride in a job well done. Our avenues, subways, railways and waterways will carry the disabled all across this great nation so that they can live normal and productive lives.

The legislation we have reported represents a great effort to achieve these goals. We have worked long and hard to balance the needs of the disabled with the impacts on providers. We have tried to keep the objectives of mobility first and foremost in our minds in considering the issues raised before us. Many significant provisions of the legislation, particularly those regarding private transportation, have met those goals, and it is these provisions for which we have registered our full support. However, in the legislative process, we know that to arrive at consensus, we sometimes must forgeo all that we would like to achieve, and unfortunately, it is for certain other provisions in the bill, as well as omissions, that we must express our concerns.

The objective of the Americans with Disabilities Act is to provide mobility for all disabled Americans. The legislation, however, does not guarantee the best mobility for all the disabled. Those disabled Americans who live in smaller or rural areas may find that the Americans with Disabilities Act brings them less mobility, not more.

The bill mandates lifts on every new public transit bus. It also mandates comparable paratransit, except that with regard to response time, the service must be comparable to the extent practicable. The impact of both of these requirements, particularly on smaller transit systems, will be significant. In addition, in smaller areas, the disabled population does not exist in numbers great enough to justify the capital expenditure of lifts. Even in large metropolitan areas where disabled populations are higher, the ridership figures are low. Seattle, Washington, quotes the highest ridership: one lift use per bus every other day. Significant barriers to lift use exist in every city, whether it be the lack of curb cuts, hilly terrain, sheer distance from the nearest bus stop, or severe weather conditions. Very simply, an adequate paratransit system often provides better mobility to the disabled, particularly in less populated areas, than a lift-equipped fixed route system. It came as no surprise that many disabled across our country prefer it.

We are concerned that the bill makes no allowance for flexibility so that local communities can decide what method of accessibility works best for them. We believe a Federal mandate requiring one solution for all communities is long on theory and short on reality.

A significant amount of paratransit service is currently provided by social service agencies and private non-profit entities. The Department of Health and Human Services alone estimates that transportation represents approximately $1 billion of its total program budgets. The bill puts the legal responsibility for paratransit service on the public transit authority. We are concerned that this linkage will provide a great incentive for other paratransit providers to discontinue their service and devote their limited resources to their basis program offerings rather than transportation service. After all, the ADA lays the burden at someone else's doorstep. In fact, this has already happened to some degree under the existing 504 law and regulations. Transit agencies simply cannot feasibly pick up all of the service that is currently provided, so, once again, some unfortunate disabled Americans will find that the ADA brings them less mobility, not more.

Another concern relates to the bill's effective dates. In the public transportation title, the Department of Transportation is given 12 months to issue complex regulations governing the provision of paratransit service. The law's requirements go into effect 18 months after enactment. What will likely occur is that the effective date will arrive without the issuance of final regulations, leaving transit authorities in the dark regarding their specific responsibilities and subject to discrimination claims. Handicapped rulemakings in the Department of Transportation are traditionally handled through the administrative procedure of a regulatory negotiation rather than the normal notice and comment rulemaking process. Regulatory negotiation involves bringing all affected parties together and negotiating what the regulations should entail. The process is favored by the disability community because there is an enhanced opportunity to express views through this process. By the very nature of the process, however, more time is taken to arrive at conclusions. With the range and complexity of issues that must be addressed in a regulation governing paratransit service, and because of the desired use of a regulatory negotiation, we do not believe 12 months is a reasonable amount of time for the Department to act. The bill will penalize transit authorities for agency delay and result in unnecessary litigation, increased transit costs and less mobility and service. We do not believe this was the intent of the ADA.

A concern with the entire bill is its underlying vagueness and confusing new legal terms which will inevitably cause the law to be interpreted by the courts. With legislation that is this significant, it is unfortunate that major provisions will be decided in the judicial forum rather than by the Congress. For example, provision of paratransit service is limited by the concept of "undue financial burden". The Department of Transportation must issue regulations to determine what constitutes an undue financial burden with very little statutory guidance from the Congress. Invariably, regulations will be challenged and different courts will issue conflicting decisions. This causes even more significant compliance burdens for those attempting to comply with law that is ever changing. We believe this is an unfortunate outcome for such an important piece of legislation.

The bill contains a well reasoned approach to accessibility with the private over-the-road bus industry which we believe represents a full and fair balance of the needs of the disabled and the impacts on the provider. In the spirit of cooperation and compromise, we were able to work out a solution amenable to all parties, which we fully support.

Despite its flaws, the Americans with Disabilities Act is indeed landmark legislation. It is our hope that it will not only open doors and mainstream those who have waited too long, but will serve to topple the true divider amongst ourselves, the disabled attitudes in those of us deemed "abled".

JOHN PAUL HAMMERSCHMIDT.
ARLAN STANGELAND.
BILL CLINGER.
JIM LIGHTFOOT.
DENNIS HASTERT.
JIM INHOFF.
CASS BALLENGER.
BILL EMERSON.
BILL GRANT.
JOHN J. DUNCAN, Jr.,
SUSAN MOLINARI.

MINORITY VIEWS OF MR. BUD SHUSTER, MR. BOB McEWEN, MR. RON PACKARD, MR. MEL HANCOCK, AND MR. CHRISTOPHER COX

We strongly support increased mobility for disabled Americans, but believe the mandates and requirements found in titles II and III of this bill will have detrimental effects on transportation of all Americans, able-bodied and disabled.

This legislation will result in the loss of service to residents of small towns and rural areas as transit agencies seek to cope with the onerous financial burdens imposed upon them by the ADA, not to mention the increased costs that will be borne by all transit riders for equipment and facilities that will be used rarely or not at all. This bill will impact most adversely upon the elderly population that will grow steadily larger as the median age increases. They will be denied needed transportation services because of their ineligibility under the legislation.

We have never opposed civil rights for disabled Americans. Rather, we have supported and attempted to work for a balanced, rational approach to meeting the access needs of all Americans, disabled and able-bodied. During hearings on this legislation we sought to examine the access needs of the disabled and the shortfalls of our existing transportation systems. Testimony during the hearings brought out very real needs for disabled Americans, but it also demonstrated a commitment among many transit agencies to meet those needs without further government interference and mandates. For example, the City of St. Cloud, Minnesota is meeting the needs of their disabled population through a comprehensive paratransit service developed by the transit authority and disabled community. They testified that the ADA will require them to cut their paratransit service and install lift-equipped buses that the disabled community doesn't want.

At the mark-up of this bill several amendments were offered to address these important problems with the bill. Unfortunately, few of the issues raised in the hearings were resolved. As such, we have major concerns about this legislation which are detailed below.

TITLE II, PUBLIC SERVICES

Title II extends a general prohibition of discrimination to public services. It further requires in Section 203, that every new transit bus purchased for public use be accessible to the disabled (lift equipment). Because rural and small cities generally experience lower ridership figures and have lesser resources to draw upon than their larger cousins, this mandate wil have a negative impact on transit entities and service in these areas.

The cost of a new transit bus is approximately $150,000-$175,000. For a transit agency to equip that bus with a wheelchair lift will require an additional outlay of between $12,000-$15,000 with its attendant average annual maintenance costs of $2000, amounting to a 10 percent surcharge per bus to the transit agency. Total aggregate annual cost to transit authorities to implement the lift mandate will amount to approximately $30 million a year, when federal transit assistance has been cut 50 percent in real dollar terms in the last 10 years.

When we examine ridership figures for lift-equipped bus fleets we find that they are startlingly low. In Seattle, Washington, for example, the city with the highest reported disabled ridership figures in the nation (their fleet is 80 percent lift equipped), use of lifts averaged .6 lift use per lift-equipped bus per day. Milwaukee, Wisconsin had 50 percent of its fleet accessible and over a three year period experienced disabled ridership figures of .008 lift use per bus per day. They found that fewer than 15 different people used the accessible buses during the three year period. (Milwaukee's estimated wheelchair-bound population is estimated at 7000). New York City has the nation's largest bus fleet with 4200 buses and is nearly 100 percent lift-equipped. The city reports average disabled ridership figures of one lift use per every 19 buses; less than Seattle.

What transit authorities need is the flexibility to meet the access needs of the disabled in their community. Flexibility, rather than an absolute mandate as contained in this legislation would permit local communities—who generally know their ridership needs better than the federal government—the ability of developing a transportation system that provides accessibility to the disabled in the form they want it. A lift-equipped fixed route bus fleet does not result in mobility for all disabled Americans in all areas.

Many disabled and elderly individuals cannot travel to and from a bus stop because of distance, lack of curb cuts, hilly terrain or adverse weather conditions. This legislation, however, would exclude them from eligibility from their only transportation alternative, paratransit service. Only if a disabled person (the elderly population is excluded) cannot actually board, ride or disembark from a lift-equipped bus are they eligible for the door-to-door paratransit service. Their ability to get to the bus stop is not considered a factor.

A limited waiver for small towns and rural areas under 200,000 in population would allow areas that will be hardest hit by this legislation to have the flexibility they need to meet the access needs of the disabled and elderly without disruption and cuts in service. A waiver of this scope would be very narrow. Transit operators in urbanized areas under 200,000 in poulation represent only 2.2 percent of all transit passenger miles. In addition, a waiver would have the added benefit of requiring consultation with the disabled in the community assuring a local, acceptable approach for all parties.

Section 204 of the legislation contains a requirement that any public entity that operates a fixed route system must also provide paratransit service to eligible disabled persons. This section is one of the most important transportation provisions of the bill because there will always be those disabled that cannot use a fixed route system, even if that system is fully accessible. In fact, in many situations, paratransit meets the mobility needs of the disabled better than a lift on each and every transit bus. However, the paratransit provision contained in the ADA requires that paratransit services provided to the disabled community be comparable, except for response time, which is comparable to the extent practicable.

To require paratransit service to be truly comparable to a regular fixed-route bus service is of major concern to us. Truly comparable service is a very high standard, one which can hardly be met by the existing resources of transit authorities. No transit authority in the country will be able to meet this utopian level of service. A transit authority would have to offer paratransit service that is virtually equivalent to the regular fixed route service.

The cost of providing paratransit service at a comparable level to fixed-route service is unable to be quantified. The Congressional Budget Office and the General Accounting Office, after a request to estimate the cost of such service, reported back to the Congress that they were unable to even come up with an estimate of the cost such service would entail. We find it astounding that we are mandating requirements in the legislation for which costs are unknown. The limitation of "undue financial burden" contained in Section 204 will only result in continuous and quite likely successful suits against the transit agency to require paratransit service above their ability to provide. Moreover, the relief valve of "undue financial burden" will come into play increasingly often as transit authorities, faced with an absolute mandate of equipping every bus with a lift, attempt to shift already scarce resources from paratransit service to wheelchair lifts.

We must understand that paratransit service is not a civil right. It is a service provided to the disabled above and beyond anything an able-bodied person can receive. This service is more like an entitlement, much along the lines of the food stamp program. An able-bodied person that could not get to the bus has no right to this services, a service beyond the scope of a civil rights bill.

Recognizing that this should still be an integral part of a transit authority's commitment to service for those unable to use the fixed-route service, the addition of legislative language in the bill to limit an authority's standard of service to "comparable to the extent practicable" would certainly go far toward insuring that reasonable levels of service would be provided to those that need paratransit. While recognizing the tight fiscal constraints of many transit authorities.

Of additional concern to us is the lack of legislative language in Section 204 that would protect the transit authority, legally responsible to provide paratransit service under the ADA, from having to provide service for a discontinued private provider of paratransit services. The legal requirement that the transit authority be solely responsible for providing service, as in this legislation, places an incentive on the private provider to dump their service onto the transit authority.

In an age of tightening budgets, agencies are already looking to the local transit authorities to provide transportation for their beneficiaries so they can extend the reach of the budgets for basic programs. The result to which this dumping could potentially lead is staggering. Transportation services provided by the Department of Health and Human Services alone are estimated to approach $1 billion annually. The Urban Mass Transportation Administration's 16(b)(2) program for comparison, which provides grants to private non-profit organizations serving the elderly and disabled, has a budget of only $35 million annually with which they provide over 20,000 special service vans for 3,500 non-profit agencies.

It is clear that some remedy must be extended to transit authorities or they will be faced with requirements for service, impossible for them to meet with their current limited resources. This situation is already occurring under the Rehabilitation Act of 1973.

Of less obvious concern, but none-the-less objectionable to us, are the effective dates of the ADA. The effective dates contained in the ADA generally require that the Department of Transportation issue regulations governing implementation of specific provisions within twelve months of enactment and sets the effective date for compliance with those regulations to 18 months after enactment.

An immediate problem arises under this requirement if the provisions of the ADA become effective 18 months after the date of enactment and the Department of Transportation has not yet issued the regulation governing their implementation. The transportation authorities will be forced to comply with the legislation without the benefit of regulatory guidance, leading, obviously, to lawsuits. Considering that these regulations will be extremely complex, especially those implementing the paratransit sections, the transit authority will need a minumum of six months after the regulations are issued in order to implement the requirements. Furthermore, since the regulations will most likley be done in a regulatory negotiation that brings all parties together at the table to develop the regulations and involves considerable more time than the normal rulemaking, there is simply not enough time in the bill language for DOT to complete the regulations.

A much more reasonable approach and one which we advocate is for DOT to be subject to a citizens suit that allows a person affected by the regulations—disabled or transit agency—to file suit in the federal district court against DOT if DOT fails to issue the required regulations on time. A provision such as this would give the district court the authority to issue an order requiring DOT to issue the regulations. This approach makes more sense as it penalizes the appropriate party (DOT) rather than the transit agency which has no control over the issuance of the regulations.

TITLE III

Of interest to us in title III of the bill are the provisions relating to private entities operating over-the-road buses. The bill requires that the Office of Technology Assessment undertake a three-year study to determine the access needs of disabled individuals as they relate to over-the-road buses and the most cost-effective methods of achieving accessibility to over-the-road buses. Following the completion of the study, the Secretary of DOT will issue regulations, taking into account the findings of the OTA study, relating to the accessibility for over-the-road buses. Large providers of service will have six years and small providers seven years from the date of enactment of the legislation to comply with the regulations.

The over-the-road bus provisions of this bill represent a compromise agreement developed by many different parties, including the disabled community and the over-the-road bus industry. This final version has been accepted by everyone and is an example of what can be accomplished by a bipartisan negotiating process. We strongly support this language.

BUD SHUSTER.
BOB MCEWEN
RON PACKARD.
MEL HANCOCK.
CHRIS COX.

○

101st Congress | HOUSE OF REPRESENTATIVES | Rept. 101-485
2d Session | | Part 2

AMERICANS WITH DISABILITIES ACT OF 1990

May 15, 1990.—Ordered to be printed

Mr. Hawkins, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
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SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal

basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance

taken under supervision by a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(6) Person, etc.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) Reasonable accommodation.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) Undue hardship.—

(A) In general.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) Determination.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; the overall financial resources of the entity and the financial resources of its facility or facilities involved in the provision of the reasonable accommodation;

(ii) the type of operation or operations of the covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship, to the extent that such factors contribute to a reasonable determination of undue hardship; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) General Rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) Reasonable accommodation.—

(a) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(b) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Medical Examinations and Inquiries.—

(1) In general.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment.—

(A) Prohibited examination or inquiry.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) Examination and inquiry.—

(A) Prohibited examinations and inquiries.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable inquiries.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) In General.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) Qualification Standards.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious Entities.—

(1) In general.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Qualification standard.—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) Qualified Individual With a Disability.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, when the covered entity acts on the basis of such use.

(b) Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who (i) has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer using illegal drugs, or (ii) is participating in a supervised rehabilitation program and is no longer using illegal drugs, or (iii) is erroneously regarded as being an illegal drug user but is not using illegal drugs. Provided that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual defined in this paragraph is no longer using illegal drugs.

(c) Authority of Covered Entity.—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may require employees in sensitive positions, as defined by the Department of Transportation regulations regarding alcohol and drug use, the Department of Defense drug-free workplace regulations, and the Nuclear Regulatory Commission regulations regarding alcohol and drug use, to comply with the standards established by such regulations.

(d) Drug Testing.—

(1) In general.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) Construction.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for illegal drugs of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

(a) The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–6, 2000e–8, and 2000e–9) shall be available, with respect to the Commission, the Attorney General, or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

(b) The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. Such agencies shall establish such coordinating mechanisms in the regulations implementing this title and the Rehabilitation Act of 1973.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITION.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. DISCRIMINATION.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—

(1) IN GENERAL.—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public

transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

(2) Undue financial burden.—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

(3) Regulations.—

(A) Formula.—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) Additional paratransit services.—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) Community Operating Demand Responsive Systems for the General Public.—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) Temporary Relief Where Lifts Are Unavailable.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(f) Construction.—

(1) In general.—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) Fraudulent application.—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) New Facilities.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) Alterations of Existing Facilities.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, and Commuter Rail Systems, and Key Stations.—

(1) Existing facilities.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Intercity, rapid, light, and commuter rail systems.—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) Key stations.—

(A) In general.—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) Rapid rail, commuter rail, and light rail systems.—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) Intercity rail systems.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) Plans and milestones.—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. REGULATIONS.

(a) Attorney General.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) Secretary of Transportation.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) Conformance of standards.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 205. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

SEC. 206. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) Fixed Route Vehicles.—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) Commerce.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Public accommodation.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(4) Public transportation.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) Readily achievable.—

(A) In general.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) Determination.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; the overall financial resources of the entity and the financial resources of its facility or facilities involved in the removal of the barrier;

(ii) the type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship to the extent that such factors contribute to a reasonable determination of readily achievable; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(b) Construction.—

(1) General prohibition.—

(A) Activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) For purposes of sec. 302(b)(1)(A)(i)-(iii), the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings.—Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General), except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) EQUIVALENT SERVICE.—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) commercial facilities;

the term "discrimination" as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enact-

ment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 6 years for other providers, except as provided in section 305(d), that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 305. STUDY.

(a) Purpose.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) Content.—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;

(2) the degree to which over-the road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) Advisory Committee.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.

(e) Review.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) Accessibility Standards.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

(b) Other Provisions.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) Standards.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

(d) Interim Accessibility Standards.—Prior to the issuance of final regulations under this section, compliance with the current Uniform Federal Accessibility Standards shall suffice to satisfy the requirements that facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(A)(vi) and 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 306(a), compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) In General.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or has reasonable grounds for believing that he or she is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) Injunctive relief.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) Denial of rights.—

(A) Duty to investigate.—

(i) In general.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(ii) Attorney general certification.—On the application of a state or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which individuals with disabilities are provided an opportunity to testify against such certification, certify that a state law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of the Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such state law or local ordinance does meet or exceed the minimum requirements of the Act.

(B) Potential violation.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) In counting the number of previous determinations of violations for purposes of determining whether a "first" or "subsequent" violation has occurred, determinations in the same trial on liability that the covered entity has engaged in more than one discriminatory act are to be counted as a single violation.

(4) PUNITIVE DAMAGES.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) Provision of Services.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) Regulations.—

"(1) In general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) Jurisdictional separation of costs.—

"(A) In general.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) Recovering costs.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) Joint provision of services.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) Fixed monthly charge.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) Undue burden.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) Enforcement.—

"(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) Certification.—

"(1) State documentation.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) **Suspension or revocation of certification.**—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) **Complaint.**—

"(1) **Referral of complaint.**—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) **Jurisdiction of commission.**—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) **Conforming Amendments.**—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "sections 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) **Rehabilitation Act of 1973.**—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) **Other Laws.**—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) **Insurance.**—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance:

Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) **Retaliation.**—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **Interference, Coercion, or Intimidation.**—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) **Remedies and Procedures.**—The remedies and procedures available under sections 107, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) QUALIFIED HISTORIC PROPERTIES.—(i) The guidelines issued under subsection (a) shall include guidelines and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in the Uniform Federal Accessibility Standards 4. 1. 7(1)(a).

(ii) Regarding alterations of buildings or facilities that are covered by the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 and 36 CFR Part 800, the guidelines issued under paragraph (i) shall, at a minimum, maintain the procedures and standards established in the Uniform Federal Accessibility Standards 4. 1. 7(1) and (2).

(iii) Regarding alterations of qualified historic buildings designated as historic under a statute of the appropriate state or local government body, the guidelines issued under paragraph (i) shall establish procedures equivalent to those established by the Uniform Federal Accessibility Standards 4. 1. 7(1)(b) and (c), and shall require, at a minimum, compliance with the minimum requirements established in Uniform Federal Accessibility Standards 4. 1. 7(2).

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) In general.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) Exception.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) Title III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) Title IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals.—Each department or agency as part of its implementation responsibilities, shall ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or responsibilities under this Act, no later than six months after applicable final regulations are published for titles I, II, III, and IV of this Act.

(d) Grants and Contracts.—

(1) In general.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) Dissemination of information.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) Failure to Receive Assistance.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) Study.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of Report.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

(a) In General.—Notwithstanding any other provision of this Act or of law, the provisions of this Act shall, subject to subsection (b), apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

(b) House Employees.—

(1) In general.—The rights and protections under this Act shall apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(2) Administration.—In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied. As used in this paragraph, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 4, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

SEC. 510. ILLEGAL DRUG USE.

(a) For purposes of this Act, an individual with a disability does not include an individual who is a current user of illegal drugs, when the covered entity acts on the basis of such use.

(b) Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who (i) has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer using illegal drugs, or (ii) is participating in a supervised rehabilitation program and is no longer using illegal drugs, or (iii) is erroneously regarded as being an illegal drug user but is not using illegal drugs. Provided that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual defined in this paragraph is no longer using illegal drugs.

(c) Notwithstanding subsection (a) and section 511(d), an individual shall not be denied health or social services on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

SEC. 511. DEFINITIONS.

Under this Act, the term "disability" does not include—

(a) homosexuality or bisexuality;

(b) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders;

(c) compulsive gambling, kleptomania, or pyromania; or

(d) psychoactive substance use disorders resulting from current use of illegal drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) Definition of Handicapped Individual.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is a current user of illegal drugs, when a recipient acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer using illegal drugs;

"(II) is participating in a supervised rehabilitation program and is no longer using illegal drugs; or

"(III) is erroneously regarded as being an illegal drug user but is not using illegal drugs;

except that it shall not be a violation of this Act for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual with handicaps is no longer using illegal drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses illegal drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Definition of Illegal Drugs.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. Such term does not mean the use of a controlled substance taken under supervision by a licensed health professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) Conforming Amendments.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

I. INTRODUCTION

On November 14, 1989, the Committee on Education and Labor, by a vote of 35–0, ordered favorably reported H.R. 2273, the Americans with Disabilities Act of 1989 (the ADA), with an amendment in the nature of a substitute.

The bill is sponsored by former Congressman Tony Coelho and cosponsored by Representatives Hoyer, Fish, Hawkins, Conte, Owens of New York, Ackerman, Atkins, Beilenson, Bennett, Borski, Bosco, Boxer, Campbell of California, Cardin, Clay, Crockett, de Lugo, Donnelly, Dwyer, Dymally, Edwards of California, Fazio, Feighan, Frank, Frost, Fuster, Gejdenson, Gordon, Hayes of Illinois, Hutto, Jacobs, Jontz, Kastenmeier, Kleczka, Levin, Lewis of Georgia, Manton, Matsui, McCloskey, McDermott, McHugh, Mfume, Miller of California, Mineta, Morella, Oberstar, Pallone, Pelosi, Richardson, Rowland of Connecticut, Schneider, Shays, Smith of Vermont, Solarz, Studds, Traxler, Udall, Vento, Waxman, Weiss, Wise, Wolpe, Florio, Williams, Roybal, Morrison of Connecticut, Brown of California, Dellums, Sabo, Espy, Dixon, Miller of Washington, Young of Alaska, Foglietta, Rangel, Garcia, Saiki, Martinez, Mavroules, Conyers, Markey, Visclosky, Kildee, Collins, Towns, Kennelly, Gray, Wheat, Gephardt, Levine, Ford of Tennessee, Rahall, Akaka, Moakley, Lantos, Sawyer, McNulty, Brennan, Downey, Guarini, Yates, Gilman, Lehman, Frenzel, Unsoeld, Bryant, Boehlert, Owens of Utah, Dicks, Machtley, Schroeder, Bonior, Carper, Kennedy, Lehman of California, Durbin, Coyne, Walgren, Horton, Kolter, Berman, Bilbray, Boucher, Gonzalez, Engel, AuCoin, Fauntroy, Mrazek, Ford of Michigan, Stokes, Boggs, Lipinski, Bustamante, Hall of Ohio, Dorgan, Volkmer, Walsh, Kaptur, Poshard, Neal of Massachusetts, Roe, Derrick, Jones of Georgia, Savage, Bates, Hertel, Torricelli, Jones of North Carolina, Panetta, Ravenel, Traficant, Oakar, DeFazio, Fascell, Payne of New Jersey, Ridge, Sikorski, Stark, Torres, Hughes, Byron, Smith of Florida, Hochbrueckner, Wilson, Leland, Slaughter of New York, Costello, Evans, Darden, Skaggs, Yatron, Sangmeister, Jenkins, Johnson of South Dakota, Green, Dyson, Clement, Slattery, Kostmayer, Nowak, Scheuer, Carr, Hamilton, McMillen, Swift, Flake, Hubbard, Coleman of Texas, Chapman, Eckart, Regula, Long, Early, Rose, Tallon, Bevill, Lowey, Gibbons, Wyden, Neal of North Carolina, Sharp, Campbell of Colorado, Hoagland, Andrews, Annunzio, Aspin, Murphy, Glickman, Perkins, Skelton, Weber, Johnson of Connecticut, Rowland of Georgia, Price, Gunderson, Staggers, Porter, Leach, Anderson, Nagle, Pickle, Davis, Spratt, Bruce, Hyde, Leath of Texas, Mollohan, and Nelson of Florida.

II. SUMMARY OF THE LEGISLATION

The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.

Title I of the ADA specifies that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the business.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 (including injunctive relief and back pay). Title I goes into effect two years after the date of enactment. For the first two years after the effective date, employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered.

Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government. In addition to a general prohibition against discrimination, title II includes specific requirements applicable to public transportation provided by public transit authorities. Finally, title II incorporates by reference the enforcement provisions in section 505 of the Rehabilitation Act of 1973.

With respect to public transportation, all new fixed routine buses must be made accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on a transit authority.

Title II takes effect 18 months after the date of enactment, with the exception of the obligation to ensure that new public buses are accessible, which takes effect for solicitations made 30 days after the date of enactment.

Title III of the ADA specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity. Public accommodations include: restaurants, hotels, doctors' offices, pharmacies, grocery stores, shopping centers, and other similar establishments.

Existing facilities must be made accessible if the changes are "readily achievable", i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden. New construction and major renovations must be designed and constructed to be readily accessible to and usable by people with disabilities. Elevators need not be installed if the building has less than three stories or has less than 3,000 square feet per floor except if the building is a shopping center, shopping mall, offices for health care providers or if the Attorney General decides that other categories of buildings require the installation of elevators.

Title III also includes specific prohibitions on discrimination in public transportation services provided by private entities, including the failure to make new over-the-road buses accessible six years from the date of enactment for large providers and seven years for small providers.

The provisions of title III become effective 18 months after the date of enactment. Title III incorporates enforcement provisions in private actions comparable to the applicable enforcement provisions in title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the Attorney General, including authority to seek monetary damages and civil penalties.

Title IV of the ADA specifies that telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities (such as deaf persons) with opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.

Title V of the ADA includes miscellaneous provisions, including a construction clause explaining the relationship between the provisions in the ADA and the provisions in other Federal and State laws; a construction clause explaining that the ADA does not disrupt the current nature of insurance underwriting when based on valid classification of risk; a prohibition against retaliation; a clear statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; authority to award attorney's fees, litigation expenses and costs; a requirement for the provision of technical assistance from the Federal agencies responsible for the different sections of this Act; a provision for a study of the effect of Federal wilderness designations on the usage of such areas by persons with disabilities; certain limitations on the definition of disability; an amendment to the Rehabilitation Act of 1973; provisions concerning illegal drug use; and the application of the protections of this Act to the Congress and all of its instrumentalities.

III. HEARINGS

Hearings were held before the Subcommittee on Select Education and the Subcommittee on Employment Opportunities on legislation to establish a clear and comprehensive prohibition of discrimination on the basis of disability on September 27 and October 24, 1988, and July 18, August 28, September 13, and October 6, 1989.

Hearing witnesses whose names are listed henceforth with no designated affiliation are people with disabilities.

On September 27, 1988, a joint hearing was held in Washington, D.C., before the Subcommittee on Select Education and the Senate Subcommittee on the Handicapped on H.R. 4498 and S. 2345, the Americans with Disabilities Act of 1988. Among the witnesses testifying were: Sandra Parrino, Chairperson, National Council on the Handicapped; Admiral James Watkins, Chairperson, President's Commission on the Human Immunodeficiency Virus Epidemic; Mary Linden of Morton Grove, Illinois who lived in an institution; Dan Piper, an 18 year old with Down Syndrome and Sylvia Piper of Ankeny, Iowa; Jade Calegory, a 12 year old movie actor with Spina Bifida from Corona Del Mar, California; and Lakisha Griffin from Talladega, Alabama, who attends the Alabama School for the Blind.

Also testifying were: Judith Heumann, World Institute on Disability, Berkeley, California; Gregory Hlibok, student body president of Gallaudet University, Washington, D.C.; Belinda Mason from Tobinsport, Indiana who has AIDS; and W. Mitchell from Denver, Colorado, who uses a wheelchair and who was severely burned.

David Saks, on behalf of the Organization for Use of the Telephone, Baltimore, Maryland, also provided testimony.

On October 24, 1988, at the Lafayette Hotel in Boston, Massachusetts, the Subcommittee on Select Education held a hearing on H.R. 4498, the Americans with Disabilities Act of 1989. The Subcommittee heard testimony from the following witnesses from six New England states: Ray Atkinson, Center for Independent Living and Working; Elmer Bartels, Commissioner, Massachusetts Rehabilitation Commission; Robert E. Baton, Greater Hartford Advocates for Change; Lelia Batten, Portland Coalition for Psychiatrically Labeled; Ken Beachman.

Also testifying were: Nancy Blackmoor, Harvard Dyslexia Society; Eleanor Blake, Sarah Bloor; James Broks, Disability Law Center; Philip Campbell, Association for Retarded Citizens of Massachusetts; Joseph Caudre, AIDS Advisory Board, State of Massachusetts; William Cavanaugh, Ad Lib, Inc.; Matthew Chao, Bay State Council for the Blind; Stephen Cohen; Charles Crawford, Massachusetts Commission for the Blind.

Also testifying were: Justin W. Dart, Jr., Chairperson, Task Force on the Rights and Empowerment of Americans with Disabilities; Speed Davis, Massachusetts Office of Handicapped Affairs; Patricia Deegan, Northeast Independent Living Center; Virginia Domini, Independence Unlimited; Bill Dorfer; Susan Downie; Ilona Durkin; Nancy Durkin, CILSC; Neil Eichorn; Larry Espling; Eugenia Evans; William Fennessee; Tim Foley; Sandy Gorski.

Also testifying were: Eric Griffin, vice president, external affairs, National Council on Independent Living; Lind Hanscom, Americans Disabled for Accessible Public Transportation; Edith Harris, Volunteers Disabilities Network of Eastern Connecticut, Inc.; Jen Healy, Deaf-Blind Contact Center; Lynda Hoffman; Eileen Healy Horndt, Independence Northwest; Nancy Husted-Jensen, Governor's Commission on the Handicapped; Barbara Johnson.

Also testifying were: Jerry Johnson, Names Project New England; Philip Johnston, Massachusetts Office of Human Services; Cindy Kappe; Denise Karuth, Massachusetts Coalition of Citizens with Disabilities; Ted Kennedy, Jr.; Bill Knight, Greater Waterbury Consumer Action Forum; Stanley Koslowski, Connecticut Office of Protection and Advocacy; Janet Kyricos; Shellie Lemelin; Marilyn Levin, Massachusetts Department of Mental Health; Donald Levine, Barry Independent Living Association; Ruth Long, Vermont Center for Independent Living.

Also testifying were: Lisa Lyons; Joseph Mallen; Cathie Marshall; Melissa Marshall, Disabilities Network of Eastern Connecticut; Mary McCarthy, Massachusetts Department of Mental Retardation; Cindy Miller; Linda Mills, Kathleen Mulligan; Peter Myette, Mayor's Commission on People with Disabilities, Boston; John Nelson; Emeka Nwojke, Northeast Independent Living Program; Bonnie O'Day, Independence Center of Hampton Roads, VA; Michael Oestreicher, Challenges Unlimited; Patrick Palotto, Bridgeport Telegram; Linda Pelletier; Ed Preneta, Connecticut Developmental Disabilities Office.

Also testifying were: Marilyn Price-Spivack, National Head Injury Foundation; Julie Reisken, Connecticut Coalition of Citizens with Disabilities; Judy Rogers; Marcie Roth, We Care; Charles Sabatier; Eleanor Smith; Robert St. Larent; Rima Sutton, National Multiple Sclerosis Society; Shelley Teed-Wargo, Connecticut Union of Disability Action Groups; Ellen Telker; Larry Urban, Renaissance Club; Diana Viet, Massachusetts Office of Handicapped Affairs; Barbara Waters; Alan Wein; Bill Williams; Laurie Williams; Barbara Wood-Johnson, Massachusetts Commission for the Deaf and Hard of Hearing; Paul Zapan, Independence Unlimited.

On July 18, 1989, in Washington, D.C., the Subcommittee on Select Education and the Subcommittee on Employment Opportunities heard testimony from: the Reverend Jesse Jackson; Representative Donald M. Payne, testifying for the Congressional Black Caucus; Justin Dart, Jr., Chairman, Task Force on the Rights and Empowerment of Americans with Disabilities; Joseph Rauh and Chai R. Feldblum, Leadership Conference on Civil Rights; Sandra Parrino, Chairperson, National Council on Disability; Brother Philip Nelan, National Restaurant Association.

On August 28, 1989, at the Metropolitan Multiservice Center, Houston, Texas, the Subcommittee on Select Education heard testimony from: Kathryn J. Whitmire, Mayor, City of Houston; Nikki Van Hightower, Treasurer, Harris County; Melody Ellis, President, Board of Education, Houston Independent School District; Judith Comfort, Division Manager, External Affairs, Southwestern Bell Telephone Company; Robert C. Lanier, Chairman Metropolitan Transit Authority of Harris County and President, Landar Corporation; Howard Wolf, Chairman of the Board of Trustees of the Institute for Rehabilitation and Research, Houston, Texas, and partner, Fulbright & Jaworski; Honorable Ashley Smith, Texas House of Representatives; Honorable Chet Brooks, Texas State Senate.

On September 13, 1989, in Washington, D.C., the Subcommittee on Select Education and the Subcommittee on Employment Opportunities heard testimony from: Evan Kemp, Commissioner, Equal Employment Opportunities Commission; Jay Rochlin, Executive Director, President's Committee on Employment of People with Disabilities; Arlene Mayerson, Directing Attorney, Disability Rights Education and Defense Fund; Mark Donovan, Manager, Community Employment and Training Programs, Marriott Corporation; Duane Rasmussen, President, Sell Publishing Company; Paul Wharen, Project Manager, Thomas P. Harkins, Inc.

On October 6, 1989, at University Place Conference Center, Indianapolis, Indiana, the Subcommittee on Select Education heard testimony from: Greg Fehribach, Chairman, Indiana Governor's Council on People with Disabilities and attorney, Timmons, Endsley, Chavis, Baker and Lewis; Barry Chambers, Commissioner, Indiana Department of Human Services; Deanna Durrett for Joseph Reum, Indiana Department of Mental Health; Muriel Lee, Governor's Planning Council for Persons with Disabilities; Jack Lewis, Professor of Sociology and Social Work, Anderson University, Indiana; David Reynolds, Indiana School for the Deaf, Janna Shishler, law clerk for United States Magistrate John Paul Godich.

Also testifying were Nanette Bowling, Staff Liaison to the Mayor's Advisory Council for Handicapped Individuals, Office of Mayor Bob Sargent, Kokomo, Indiana; John Turney, Member, Mayor's Advisory Council for Handicapped Individuals, Kokomo, Indiana; Michael Williams, Vice President for Ancillary Services, St. Joseph's Hospital, Kokomo, Indiana, Kokomo Employer of the Year; Rick Edwards, Program Consultant, Indiana Office of Vocational Rehabilitation; Jeff Myers, former Police Officer, Indianapolis; Marchell Hunt, Chairperson, Common Concerns, the Disability Advocacy Organization; David Scott, Indianapolis Resource Center for Independent Living; Gary May, Commissioner, Indiana Department of Veterans' Affairs.

In order to gather information on the extent and nature of disability discrimination in America, Major R. Owens, Chairman of the Subcommittee on Select Education established the Task Force on the Rights and Empowerment of Americans with Disabilities in May, 1988, appointing Justin Dart, Jr. as Chair. Elizabeth Boggs, cofounder, Association for Retarded Citizens of the United States was appointed as Co-Chairperson. Appointed as Coordinator was Lex Frieden, currently Executive Director of the Institute for Rehabilitation Research and former Executive Director of the National Council on the Handicapped at the time the Council recommended the enactment of ADA and drafted the initial bill.

Mr. Dart chaired 63 Task Force public forums involving people with disabilities, advocates, service providers, government officials in all 50 states, the District of Columbia and the territories. In all, an estimated 8,000 individuals attended these forums. The Task Force submitted a report to the Congress outlining its findings and recommendations.

The other distinguished members of the Task Force, who were selected in order to ensure its representativeness, were: Elmer Bartels, Massachusetts Rehabilitation Commission, Wade Blank, Atlantis Community; David Bodenstein, National Association of People with AIDS; Frank Bowe, Hofstra University; Marca Bristo Kettlewell, National Council on Independent Living; Dale Brown, President's Committee on Employment of People with Disabilities; Philip Calkins, President's Committee on Employment of People with Disabilities; David Capozzi, Project ACTION; Julie Clay, University of Montana; Susan Daniels, President's Committee on Employment of People with Disabilities; James DeJong, Illinois Coalition of Citizens with Disabilities; Eliot Dober, Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons; Don Galloway, Keith Gann, P.W. Alive; James Havel, National Alliance for the Mentally Ill; I. King Jordan, Gallaudet University; Paul Marchand, Association for Retarded Citizens; Connie Martinez, California State Council on Developmental Disabilities; Celane McWhorter, The Association for Persons with Severe Handicaps; Oral Miller, American Council of the Blind; Gary Olsen, National Association of the Deaf; Mary Jane Owen, Disability Focus; Sandra Parrino, National Council on Disability; Ed Roberts, World Institute on Disability; Joseph Rogers, National Mental Health Consumers Association; Liz Savage, Epilepsy Foundation of America; William A. Spencer, The Institute for Rehabilitation and Research; Marilyn Price Spivack, National Head Injury Foundation; Ann Vinup, Association for Children and Adults with Learning Disabilities; Sylvia Walker, Howard University; Patrisha Wright, Disability Rights Education and Defense Fund, Inc.; and Tony Young, Fairfax Opportunities Unlimited. The Committee would like also to recognize the special contributions of the volunteer support staff which included Douglas Burleigh, Yoshiko Dart, Tsuneka Gozu, Marcia Lee Nelson, Gwyneth Rochlin, Marnie Sweet, and Hisako Takei.

IV. Need for the Legislation

The Committee, after extensive review and analysis over a number of Congressional sessions, concludes that there exists a compelling need to establish a clear and comprehensive Federal prohibition of discrimination on the basis of disability in the areas of employment in the private sector, public accommodations, public services, transportation, and telecommunications.

NATURE AND EXTENT OF DISCRIMINATION ON THE BASIS OF DISABILITY IN GENERAL

Testimony presented to the Subcommittees on Select Education and Employment Opportunities, two recent reports by the National Council on Disability (*Toward Independence* (1986) and *On the Threshold of Independence* (1988)), a report by the U.S. Civil Rights Commission (*Accommodating the Spectrum of Individual Abilities* (1983)), polls taken by Louis Harris and Associates (*The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream*" (March, 1986) and *The ICD Survey II: Employing Disabled Americans* (1987)), a report of the Presidential Commission on the Human Immunodeficiency Virus Epidenic (1988), and the report by the Task Force on the Rights and Empowerment of Americans with Disabilities all reach the same fundamental conclusions:

(1) historically, individuals with disabilities have been isolated and subjected to discrimination and such isolation and discrimination is still pervasive in our society;

(2) discrimination still persists in such critical areas as employment in the private sector, public accommodations, public services, transportation, and telecommunications;

(3) current Federal and State laws are inadequate to address the discrimination faced by people with disabilities in these critical areas;

(4) people with disabilities as a group occupy an inferior status socially, economically, vocationally, and educationally; and

(5) discrimination denies people with disabilities the opportunity to compete on an equal basis with others and costs the United States, State and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

Discrimination against people with disabilities includes segregation, exclusion, or other denial of benefits, services, or opportunities to people with disabilities that are as effective and meaningful as those provided to others.

Discrimination against people with disabilities results from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also includes harms resulting from the construction of transportation, architectural, and communication barriers or the adoption or application of standards, criteria, practices or procedures that are based on thoughtlessness or indifference—that discrimination resulting from benign neglect.

The testimony presented by Judith Heumann, World Institute on Disability, illustrates several of these forms of discrimination:

> When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. I was forced to go into home instruction, receiving one hour of education twice a week for 3½ years. My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.
>
> When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time, I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was "because of." So it was obviously because of my disability that I was discriminated against.
>
> At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forcibly remove me and another disabled friend

> from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchair.
>
> These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life. (Testimony before House Committee on Education and Labor and Senate Committee on Labor and Human Resources, September 27, 1988, pp. 74–75.)

Discrimination against people with disabilities also includes adverse actions taken against individuals with histories of a disability, and adverse actions taken against those regarded by others as having a disability. It also includes discrimination against persons associated with individuals with disabilities. Such discrimination often results from false presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and pernicious mythologies.

Discrimination also includes the effects a person's disability may have on others. For example, in March, 1988, the *Washington Post* reported the story of a New Jersey zoo keeper who refused to admit children with Down's Syndrome because he feared they would upset the chimpanzees. The Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985) cited as an example of improper discrimination on the basis of handicap a case in which "a court ruled that a cerebral palsied child, who was not a physical threat and was academically competitive, should be excluded from public school, because his teacher claimed his physical appearance 'produced a nauseating effect' on his classmates." 117 Cong. Rec. 45974 (1971).

The Supreme Court in *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987) cited remarks of Senator Mondale describing a case in which a woman "crippled by arthritis" was denied a job not because she could not do the work but because "college trustees [thought] 'normal students shouldn't see her.' " 118 Cong. Rec. 36761 (1972), quoted in *Arline*, 480 U.S. at 283 n. 9.

The Committee heard testimony about a woman from Kentucky who was fired from the job she had held for a number of years because the employer found out that her son, who had become ill with AIDS, had moved into her house so she could care for him. In that case, the women was discriminated against simply because of her association with a person with a disability. Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, pp. 76–77.

With respect to the pervasiveness of discrimination in our nation, the National Council on Disability explained:

> A major obstacle to achieving the societal goals of equal opportunity and full participation of individuals with disabilities is the problem of discrimination . . . The severity and pervasiveness of discrimination against people with disabilities is well documented. (Appendix to *Toward Independence*, a report to the President and Congress of the

> United States by the National Council on Disability, February, 1986, p. A-3.)

The U.S. Commission on Civil Rights recently concluded, with respect to people with disabilities, that:

> Despite some improvements . . . [discrimination] persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation. (U.S. Commission on Civil Rights, *Accommodating the Spectrum of Individual Abilities*, p. 159.)

The Commission further observed that "discriminatory treatment of handicapped people can occur in almost every aspect of their lives." Ibid., p. 40.

The Louis Harris polls found that:

> By almost any definition, Americans with disabilities are uniquely underprivileged and disadvantaged. They are much poorer, much less well educated and have much less social life, have fewer amenities and have a lower level of self-satisfaction than other Americans. (Testimony before Senate Subcommittee on the Handicapped by Humphrey Taylor, Louis Harris and Associates, S. Hrng. 100-166, part 2, April 28, 1987, p. 9.)

Admiral James Watkins, former chairperson of the President's Commission on the Human Immunodeficiency Virus Epidemic, testified that after 45 days of public hearings and site visits, the Commission concluded that discrimination against individuals with HIV infection is widespread and has serious repercussions for both the individual who experiences it and for this nation's efforts to control the epidemic. The Report concludes:

> As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination . . . will undermine our efforts to contain the HEV epidemic and will leave HIV-infected individuals isolated and alone. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 40.)

Justin Dart, the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, testified that after 63 public forums he chaired in every state, there is overwhelming evidence that:

> Although America has recorded great progress in the area of disability during the past few decades, our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully human and therefore are not fully eligible for the opportunities, services, and support systems which are available to other people as a matter of right. The result is massive, so-

ciety-wide discrimination. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, July 18, 1989, p. 62.)

The U.S. Attorney General, Dick Thornburgh, on behalf of President Bush has testified that:

> Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence. (Testimony before House Subcommittee on Civil and Constitutional Rights, Ser. No. 58, October 11, 1989, p. 191.)

EMPLOYMENT

Individuals with disabilities experience staggering levels of unemployment and poverty. According to a recent Louis Harris poll "not working" is perhaps the truest definition of what it means to be disabled in America. Two-thirds of all disabled Americans between the age of 16 and 64 are met working at all; yet, a large majority of those not working say that they want to work. Sixty-six percent of working-age disabled persons, who are not working, say that they would like to have a job. *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream*, p. 50. Translated into absolute terms, this means that about 8.2 million people with disabilities want to work but cannot find a job. *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Maintream*, pp. 47–50.

Despite the enactment of Federal legislation such as the Education for all Handicapped Children Act of 1975 and the Rehabilitation Act of 1973, a U.S. Census Bureau Report issued in July, 1989 reported the following findings:

(A) The percentage of men with a work disability working full time fell 7 percent from 20 percent in 1981 to 23 percent in 1988. U.S. Department of Commerce, Bureau of the Census, *Labor Force Status and other Characteristics of Persons with Work Disabilities: 1981-1988.* Current Population Reports, Special Studies Series P-23, No. 160, Table C, p. 4.

(B) The income of workers with disabilities dropped sharply compared to other workers. In 1980, men with disabilities earned 23 percent less than men with no work disability, and by 1988 this had dropped to 36 percent less than their counterparts. In 1980, women with disabilities earned 30 percent less than women with no disabilities, and by 1988 this had dropped to 38 percent less than their counterparts. Ibid., Table D, p. 5.

Forty percent of all adults with disabilities did not finish high school—three times more than non-disabled individuals. In 1984, fifty percent of all adults with disabilities had household incomes of $15,000 or less. Among non-disabled persons, only twenty-five percent had household incomes in this wage bracket. Ibid., p. 2.

President Bush has stated:

> The statistics consistently demonstrate that disabled people are the poorest, least educated and largest minority

> in America. (Statement of Vice President George Bush on Disabled Americans, March 31, 1988, p. 2.)

According to the Louis Harris poll, the majority of those individual with disabilities not working and out of the labor force must depend on insurance payments or government benefits for support.

Louis Harris' poll also found that large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people. *The ICD Survey II: Employing Disabled Americans*, p. 23.

According to testimony presented to the Subcommittees by Arlene Mayerson of the Disabilities Rights Education and Defense Fund, the major categories of job discrimination faced by people with disabilities include: use of standards and criteria that have the effect of denying such individuals equal job opportunities; failure to provide or make available reasonable accommodations; refusal to hire based on presumptions, stereotypes and myths about job performance, safety, insurance costs, absenteeism, and acceptance by others; placement into dead-end jobs; under-employment and lack of promotion opportunities; and use of application forms and other pre-employment inquiries that inquire about the existence of a disability rather than about the ability to perform the essential functions of a job. Testimony before the House Subcommittees on Select Education and Employment Opportunities, September 13, 1989, No. 101-51, pp. 53-73.

Several witnesses also explained that title I of the ADA (employment discrimination) is modeled after regulations implementing the Rehabilitation Act of 1973, which prohibits discrimination by recipients of Federal assistance and requires affirmative action by Federal contractors and that compliance with these laws has not been onerous.

Reasonable accommodation is a key requirement of the Rehabilitation Act and of this Act. These accommodations will be more or less expensive, depending on the need of the individual and the job.

Jay Rochlin, Executive Director of the President's Committee on Employment of People With Disabilities, testified that a 1982 study showed that a majority of accommodations provided by Federal contractors involved little or no cost. Testimony before the House Subcommittees on Select Education and Employment Opportunities, September 13, 1989, No. 101-51, p. 35. According to the President's Committee, which operates the Job Accommodation Network, some typical accommodations include:

> A timer with an indicator light which allowed a medical technican who was deaf to perform the laboratory tests required for her job;
>
> A light probe which allowed a receptionist who was visually impaired to determine which lines on a telephone were ringing, on hold, or in use at her company;
>
> A headset for a phone which allowed an insurance salesperson with cerebral palsy to write while talking.

Witnesses also explained that there will be a need for more expensive accommodations as well, including readers for blind persons, interpreters for deaf persons, and physical accommodations for those with mobility impairments. But even costs for these accommodations are frequently exaggerated. Evan Kemp, Commissioner of the Equal Employment Opportunity Commission, explained to the Committee:

> Sears and Roebuck made their whole national headquarters accessible for $7,600 with TTY's, ramps, this and that and the other thing. It is hard to believe that they could do it for that cheap a price. But if a person wants disabled people, the accommodations really don't become a burden. If they don't, they always do. (Testimony before House Subcommittees on Select Education and Employment Opportunities, September 13, 1989, No. 101-51, p. 20.)

Charles Crawford, Commissioner for the Massachusetts Commission for the Blind, stated:

> . . . I think that the application of technology for disabled persons will bring down the cost of a number of accommodations. For example, with the blind community, it is possible through microcomputer networks and braille production to produce accessible materials and with very little cost to that. (Testimony before House Subcommittee on Select Education, October 24, 1988, No. 100-109, p. 29.)

In sum, testimony indicates that the provision of various types of reasonable accommodations for individuals with various types of disabilities is essential to accomplishing the critical goal of this legislation—to allow individuals with disabilities to be part of the economic mainstream of our society.

PUBLIC ACCOMMODATIONS

Based on testimony presented at the hearings and recent national surveys and reports, it is clear that an overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation.

The National Council on Disability summarized the findings of a recent Louis Harris poll:

> The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue . . . The extent of non-participation of individuals with disabilities in social and recreational activities is alarming. (National Council on Disability, *Implications for Federal Policy of the 1986 Harris Survey of Americans with Disabilities*, p. 37.)

Several witnesses addressed the obvious question: "Why don't people with disabilities frequent places of public accommodations and stores as often as other Americans?" Three major reasons were given by witnesses.

The first reason is that people with disabilities do not feel that they are welcome and can participate safely in places of public accommodation because of discriminatory actions that have occurred in the past. The second reason is fear and self-consciousness about their disabilities—also stemming from degrading and discriminatory experiences that they or their friends with disabilities have experienced in the past. The third reason is architectural, communication, and transportation barriers.

Former Senator Lowell Weicker quoted the 1986 report of the National Council on the Handicapped report *Toward Independence:*

> People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, September 27, 1988, S. Hrng. 100-926, p. 3.)

It is critical to define places of public accommodations to include all places open to the public, not simply restaurants, hotels, and places of entertainment (which are the types of establishments covered by title II of the Civil Rights Act of 1964) because discrimination against people with disabilities is not limited to specific categories of public accommodations. The Attorney General has stated that we must bring Americans with disabilities into the mainstream of society "in other words, full participation in and access to all aspects of society." Testimony before House Subcommittee on Civil and Constitutional Rights, Ser. No. 58, October 11, 1989, p. 192.

Robert Burgdorf, Jr., currently a Professor of Law at the District of Columbia School of Law, testifying on behalf of the National Easter Seal Society, has stated:

> . . . it makes no sense to bar discrimination against people with disabilities in theaters, restaurants, or places of entertainment but not in regard to such important things as doctor's offices. It makes no sense for a law to say that people with disabilities cannot be discriminated against if they want to buy a pastrami sandwich at the local deli but that they can be discriminated against next door at the pharmacy where they need to fill a prescription. There is no sense to that distinction. (Testimony before Senate Subcommittee on the Handicapped, S. Hrng. 101-156, May 10, 1989, p. 100.)

Witnesses identified the major areas of discrimination that need to be addressed. The first is lack of physical access to facilities. Witnesses recognized that it is probably not feasible to require that existing facilities be completely retrofitted to be made accessible. However, it is appropriate to require modest changes. Numerous inexpensive changes can be made to make a facility accessible, including installing a permanent or portable ramp over an entrance step; installing offset hinges to widen a doorway; relocating a vending machine to clear an accessible path; and installing signage to indicate accessible routes and features within facilities.

Several witnesses also recognized that newly constructed buildups should be fully accessible because the additional costs for making new facilities accessible are often nonexistent or negligible. According to Michael Oestreicher, who directs an architectural firm that designs barrier-free environments, there is absolutely no reason why new buildings constructed in America cannot be barrier-free since additional cost is not a significant factor. He testified that:

> If accessibility is part of the planning from the onset of a project, then that access costs no more or at the most marginally more than a project with no access. (Testimony before House Subcommittee on Select Education, Ser. No. 100–109, October 24, 1988, p. 99.)

The lack of training provided for designers in our country on how to design for children, older people and people with disabilities, plus the lack of strong, specific, enforceable legislation requiring accessibility, are major impediments to accomplishing barrier free environments, according to witnesses. Oestreicher states that:

> With good common sense, solid design precepts, and most importantly, strong input from disabled people, we can create barrier-free environments. (Testimony before House Subcommittee on Select Education, Ser. No. 100–109, October 24, 1988, p. 100.)

Evan Kemp noted that there is a cost to businesses of lost sales revenues from potential disabled customers who cannot make purchases because of inaccessible premises or practices. Joseph Rauh testified that:

> Accessible design does not cost more money—the human costs of inaccessible design are tremendous. Our society must open its doors to all. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101–37, July 18, 1989, p. 49.)

Additional areas of discrimination that witnesses identified include: the imposition or application of standards or criteria that limit or exclude people with disabilities; the failure to make reasonable modifications in policies to allow participation, and a failure to provide auxiliary aids and services.

William Cavanaugh provided the Committee with an example of discriminatory practice when he described "the time a friend of mine, Michael, whose disability is cerebral palsy, attempted to go to a movie with me only to be denied admittance by the theater manager who said that Michael presented a liability risk." Testimony before House Subcommittee on Select Education, Ser. No. 100–109, October 24, 1988, p. 38.

Another example was provided by Greg Hlibok of Gallaudet University who testified about the need for places of public accommodations to take steps to enhance safety for persons with hearing impairments.

PUBLIC SERVICES

Currently, Title V of the Rehabilitation Act of 1973 prohibits recipients of Federal assistance from discriminating against individuals with disabilities. Many agencies of State and local government receive Federal aid and thus are currently prohibited from engaging in discrimination on the basis of disability. However, where there is no state law prohibiting discriminatory practices, two programs that are exactly alike, except for funding sources, can treat people with disabilities completely differently than others who don't have disabilities. The resulting inconsistent treatment of people with disabilities by different State or local government agencies is both inequitable and illogical for a society committed to full access for people with disabilities.

TRANSPORTATION

Transportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society. The National Council on Disability has declared that "accessible transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities. People who cannot get to work or to the voting place cannot exercise their rights and obligations as citizens. Accessible transportation will become increasingly important in coming decades as the baby-boom population grows older and experiences the increased transportation handicaps associated with aging." *Toward Independence*, National Council on the Handicapped, February, 1986, p. 33.

Jay Rochlin, Executive Director of the President's Committee on Employment of People with Disabilities, made the same point when he stated:

> It makes little sense to protect an individual from discrimination in employment if, for example, they have less than adequate accessible public transportation services. We have conducted surveys in 45 communities over the last seven years, and, consistently, inaccessible transportation has been identified the major barrier, second only to discriminatory attitudes. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-51, p. 29.)

Speed Davis, Assistant Director of the Massachusetts Office of Handicapped Affairs, said:

> We regularly talk to individuals who have been forced to turn down job offers or have been fired or have otherwise left jobs because they could not arrange reliable transportation. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 222.)

Witnesses testified about the need to pursue a multi-modal approach to ensuring access for people with disabilities which provides that all new vehicles used for fixed routes are accessible and paratransit is made available for those who cannot use the fixed route accessible vehicles.

Robert Lanier, Chairman of the transit authority serving Houston, Texas, when asked if federal legislation should require all transit systems in the country to provide both paratransit and mainline bus accessibility, said:

> I think you need to provide both . . . because if you do not, there will be an equally significant segment of the handicapped community . . . for whom the lifts are not appropriate. (Testimony before House Subcommittee on Select Education, Ser. No. 101-56, August 28, 1989, pp. 77-78.)

For some people with disabilities who lead or would like to lead spontaneous, independent lives integrated into the community, paratransit is often inadequate or inappropriate for the following reasons, among others: the need to make reservations in advance often conflicts with one's work schedule or interests in going out to restaurants and the like; the cost of rides when used frequently is often exorbitant; limitations on time of day and the number of days that the paratransit operates; waiting time; restrictions on use by guests and nondisabled companions who are excluded from accompanying the person with a disability; the expense to the public agency; and restrictions on eligibility placed on use by social service agencies.

Marchell Hunt, Chairperson of an Indianapolis disability organization, prefers to use the city's buses but was forced to rely on its paratransit services because the city had only six lift-equipped buses:

> The day I was released from the hospital, Metro called to say that they could not pick me up even though I had scheduled my ride three weeks in advance. Currently, there are more than 100 persons on a waiting list to utilize this very limited form of accessible public transportation. (Testimony before House Subcommittee on Select Education, Ser. No. 101-57, October 6, 1989, p. 71.)

However, witnesses also stressed that there are some people with disabilities who are so severely disabled that they cannot use accessible mainline transit and thus there is a need to have a paratransit system for these people.

Several communities which have committed to achieving mainline accessibility have done so with the full involvement of people with disabilities both within and outside transit authorities. The results they have attained are impressive and serve to illustrate that reasons commonly provided as to why mainline accessibility cannot be accomplished reflect myths.

Cambria County Transit Authority in Johnstown, Pennsylvania is 100 percent accessible and operates without problems, notwithstanding hilly terrain and inclement weather, including snow, flooding, and significant extremes in temperatures.

When the decision was intitially made to make the fleet 100 percent accessible there was fear and reluctance on the part of the disability community, the drivers, and the general public. That fear and reluctance has now disappeared. The General Manager of the Cambria County Transit Authority concludes that mainline access works in his community because of the commitment of everyone to make it work. This includes a need to train and educate top management, drivers and the general public as well as the local disability community.

The new generation of lifts are not having the maintenance problems experienced in the past and they can operate in inclement weather. The Architectural Transportation Barriers Compliance Board has reported that currently most problems with lift operation are the direct result of driver error and that lift maintenance is but one facet of a good maintenance program. Thus, transit, authorities reporting problems with lifts are generally those that also report problems with general maintenance.

With respect to intercity transportation, the Committee learned about reasonably priced lifts that can be installed on buses which will enable people using wheelchairs to have access to these buses. This is particularly critical in rural areas where these buses are often the only mode of transportation that is available.

TELECOMMUNICATIONS

Gregory Hlibok, President of the Student Body Government at Gallaudet University, described some of the obstacles to daily living faced by hearing impaired people:

> Many of us confront discrimination every day. We have experienced the disappointment of being turned down for a job or promotion because we were told the communication barriers were too great. My own deaf brother was told he had to pay for his own interpreter on his job. We have tried to call the police for help using our telecommunications devices for the deaf, but the police hang up on us, because they had no TDD's. I remember when I was fifteen I left school without money to take the bus home. I had no way to call my parents or the police. I had to walk the 3 miles home in the snow. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 80.)

Mr. Hlibok concluded that accessible communications systems are necessary for deaf and hearing impaired people to participate equally and effectively in society.

Currently, 19 States have intrastate TDD relay systems in place which enable hearing impaired and communication impaired persons who use telecommunication devices for the deaf (TDD's) to make calls to and receive calls from individuals using voice telephones. Ten more states are scheduled to begin intrastate service within the next year. The requirement for nationwide intrastate and interstate relay services will enable deaf and hearing impaired people who use TDD's to make calls to and receive calls from individuals using voice telephones in any part of the United States, which enhance both their personal lives and employment opportunities.

ENFORCEMENT

Several witnesses emphasized that the rights guaranteed by the ADA are meaningless without effective enforcement provisions. Elmer Bartels, Commissioner of the Massachusetts Rehabilitation Commission, stated "We know that any law is not self enforcing and that continued efforts to educate and press for policy implementation and support will be necessary." Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 24.

Sandy Parrino related her personal experiences as the mother of two disabled children in lamenting the poor enforcement of existing federal disability rights legislation requiring school buildings to be accessible:

> There is not enough compliance. The village I live in, in Westchester County (N.Y.), Briar Cliff Manor . . . could not see fit to put a ramp in until just this year. Therefore . . . physically disabled people were never able to get into that town hall. That is just one example that has certainly irritated me for many years . . . There has not been enough compliance with the 504 regulations . . . It is not enough to just have it down on the books . . . Many schools do not have the elevators or the accessibilities, to this day, 13 years after the bill was enacted. They still are not accessible and the classrooms are not accessible. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 38.)

Howard Wolf, Chairman of the Board of The Institute of Rehabilitation and Research and a practicing attorney in Houston, Texas, stated that successful attempts to weaken the remedies available under the ADA would make the ADA an "empty promise of equality." Testimony before House Subcommittee on Select Education, Ser. No. 101-56, August 28, 1989, p. 64.

SUMMARY

As the summary of the testimony before the Committee demonstrates, the unfortunate truth is that individuals with disabilities are a discrete, specific minority who have been insulated in many respects from the general public. Such individuals have been faced with a range of restrictions and limitations in their lives. Further, they have been subjected to unequal and discriminatory treatment in a range of areas, based on characteristics that are beyond the control of such individuals and resulting from stereotypical assumptions, fears and myths not truly indicative of the ability of such individuals to participate in and contribute to society. Finally, such individuals have often not had the political power and muscle to demand the protections that are rightfully theirs. The simple fact that this Act has taken this long to pass Congress, twenty-five years after other civil rights legislation has been passed, is a testament to that fact. This Act will finally set in place the necessary civil rights protections for people with disabilities.

THE EFFECTS OF DISCRIMINATION ON INDIVIDUALS WITH DISABILITIES

Discrimination has many different effects on individuals with disabilities. Arlene Mayerson of the Disability Rights Education and Defense Fund testified about the nature of discrimination against people with disabilities:

> The discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured by the unchallenged equation of disability with incapacity and by the gloss of "good intentions." The innate biological and physical 'inferiority' of disabled people is considered self-evident. This "self-evident" proposition has served to justify the exclusion and segregation of disabled people from all aspects of life. The social consequences that have attached to being disabled often bear no relationship to the physical or mental limitations imposed by the disability. For example, being paralyzed has meant far more than being unable to walk—it has meant being excluded from public schools, being denied employment opportunities, and being deemed an "unfit parent." These injustices coexist with an atmosphere of charity and concern for disabled people. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-51, September 13, 1989, pp. 78-79.)

Sandy Parrino, Chairperson of the National Council on Disability explained that:

> Disability does not mean incompetence. The perception that persons with disabilities are dependent by nature is the result of discriminatory attitudes, not the result of disability. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, July 18, 1989, p. 71.)

Charles Crawford, Commissioner of the Massachusetts Commission for the Blind, explained that:

> For far too long and far too many centuries, disabled people have felt the pain of discrimination, of being held separate, at being looked at as different, as somehow being viewed as lesser . . . I personally have felt the discrimination, the isolation, the sense of helplessness and the sense of no ability to relate to other people because they have shut me out. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 27.)

Charles Sabatier stated:

> Sometimes we get robbed of our dignity, our self-respect, we swallow insults on a daily basis to continue to get along in our society. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 36.)

Emeka Nwojke made the same point when he said:

> It is the elimination of dignity associated with being a human being that I am talking about. (Testimony before

> House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 36.)

Judith Heumann explained that:

> In the past disability has been a cause of shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity . . . This stigma scars for life. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 74.)

Larry Espling stated:

> At the ethnic festival in Waltham in 1986, I wanted to buy a book on Lithuania at one of the booths. The person sitting thee said, "Why do you want this book? You can't read." Another misconception is that if a person with cerebral palsy marries, any children will have C.P. I know of two C.P. couples with normal children. It's not hereditary . . . People say things sometimes as if you can't hear them. I was on a bus and two men near me said, "He'll be put away." I've had things like that happen before. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 188.)

Virginia Domini explained:

> You know the general public doesn't want to see you doing your laundry, being a case worker, a shopper, or a Mom. It is difficult to see yourself as a valuable member of society, and sometimes it is hard to see yourself as a person worthy of so much more respect than you get from the general public. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 87.)

Discrimination produces fear and reluctance to participate on the part of people with disabilities. Fear of mistreatment and discrimination, and the existence of architectural, transportation, and communication barriers, are critical reasons why individuals with disabilities do not participate to the same extent as nondisabled people in public accommodations and transportation.

Ruth Long, Peer Advocate Counselor for the Vermont Center for Independent Living testified about the factors that isolate people with disabilities, and how they are amplified by the rural factor. "Nobody believes that there is really a disabled community in the State of Vermont because they are invisible," she stated. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 185.)

Discrimination results in social isolation and in some cases suicide.

Justin Dart testified before the Committee about how his brother and two other family members had committed suicide because of their disabilities and about a California woman, a mother and a TV director before becoming disabled, who said to him:

> We can go just so long constantly reaching dead ends. I am broke, degraded, and angry, have attempted suicide three times. I know hundreds. Most of us try but which way and where can we go? What and who can we be? If I were understood, I would have something to live for. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37 July 18, 1989, p. 58.)

The frustration experienced by many Americans with disabilities was expressed by Cindy Miller:

> I am tired of being tired, fighting angry, and depressed every day fighting for my rights . . . I do not want to be Rosa Parks, I just want to be Cindy Miller. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1989, p. 161.)

THE EFFECTS OF DISCRIMINATION ON SOCIETY

The Committee also heard testimony and reviewed reports concluding that discrimination results in dependency on social welfare programs that cost the taxpayers unnecessary billions of dollars each year. Sandy Parrino, the chairperson of the National Council on Disability, testified that discrimination places people with disabilities in chains that:

> . . . bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 27.)

She added that:

> It is contrary to sound principles of fiscal responsibility to spend billions of federal tax dollars to relegate people with disabilities to positions of dependency upon public support. (Id. at p. 28.)

President Bush has stated:

> On the cost side, the National Council on the Handicapped states that current (federal) spending on disability benefits and programs exceeds $60 billion annually. Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues. (Statement by Vice President George Bush on Disabled Americans, March 31, 1988, p. 2.)

Attorney General Thornburgh has stated that:

> We must recognize that passing comprehensive civil rights legislation protecting persons with disabilities will have direct and tangilble benefits for our country . . . Certainly, the elimination of employment discrimination and the mainstreaming of persons with disabilities will result

> in more persons with disabilities working, in increasing earnings, in less dependence on the Social Security system for financial support, in increased spending on consumer goods, and increased tax revenues. (Testimony before House Subcommittee on Civil and Constitutional Rights, Ser. No. 101-58, October 11, 1989, p. 811.)

Justin Dart testified that it is discrimination and segregation that are preventing persons with disabilities from becoming self-reliant:

> . . . and that are driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracies. We already paying unaffordable and rapidly escalating billions in public and private funds to maintain ever-increasing millions of potentially productive Americans in unjust, unwanted dependency. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, p. 65.)

Thus, discrimination makes people with disabilities dependent on social welare programs rather than allowing them to be taxpayers and consumers.

Discrimination also deprives our nation of a critically needed source of labor in a period where demographic and other changes in our society are creating shortages of qualified applicants in many jobs.

President Bush has stated:

> The United States is now beginning to face labor shortages as the baby boomers move through the work force. The disabled offer a pool of talented workers whom we simply cannot afford to ignore, especially in connection with the high tech growth industries of the future. (Statement of Vice President George Bush on Disabled Americans, March 31, 1988, p. 2.)

Jay Rochlin, the executive director of the President's Committee on Employment of People with Disabilities, explained why the needs of people with disabilities for employment opportunities and the needs of businesses for qualified employees make for what he calls a "win-win" situation:

> The . . . (Department of Labor's) *Opportunity 2000* concluded that businesses will be able to satisfy their labor needs only if they successfully confront . . . barriers and empower individuals presently outside the economic mainstream to take advantage of meaningful employment opportunties. ". . . While comprehensive civil rights legislation can provide protections from employment discrimination for persons with disabilities, it will also enhance the private sector's access to an additional resource of human capital—qualified individuals with disabilities." (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-51, September 13, 1989, p. 33.)

Mr. Rochlin related the story of Tina Saenger, who became quadriplegic as the result of an auto accident. She used a wheelchair but access was not a problem at her job at AT&T where whe worked as a long distance phone operator, because the office was fully accessible. The fact that Tina had limited use of her fingers might have prevented her from being able to perform her job because the office had a policy prohibiting the use of pencils by phone operators to punch in numbers. Under rights provided under section 503 of the Rehabilitation Act, however, Tina was able to have this rule modified as a reasonable accommodation to her disability. Her job performance to this day is outstanding. As Mr. Rochlin says:

> Consider the economic impact of that simple accommodation. It enables Tina to have a job which pays well. She owns both a home and a car and supports her mother in addition to herself. The alternative is no longer acceptable. We should not spend our tax dollars to support someone who is able to be an independent and productive taxpaying citizen, particularly when we can do so, so easily. (Id. at pp. 36-37.)

Justin Dart, Jr. stated:

> As a former CEO of both large and small enterprises, employing persons with severe disabilities and constructing accessible facilities, I know that ADA is affordable for business and that ADA is good business and this is not simply my personal opinion. Every significant requirement of ADA is now being implemented successfully by progressive public and private entities somewhere. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, July 18, 1989, p. 57.)

In the increasingly competitive international economy, our nation must adopt policies which result in a bridging of the vast gulf separating the actual from the potential contributions of people with disabilities to the health of our economy. To remove the unnecessary barriers shackling people with disabilities is to avail our society of the full range of their talents and abilities. Robert Mosbacher, Jr. stated:

> From the perspective of a private sector employer, this legislation is also extremely important. If we are to remain competitive as a nation in the international marketplace, we must have a well trained, well educated and highly motivated workforce. Millions of disabled Americans who have been denied access to the workplace are well educated and can be easily trained. What is more, they are some of the most highly motivated people in our society today. (Testimony before House Subcommittee on Select Education, Ser. No. 101-56, August 28, 1989, p. 62.)

Our nation's most precious resource is our people. To the extent that the changes in practices and attitudes brought about by implementation of the Act ultimately assist people with disabilities in becoming more productive and independent members of society, both they and our entire society benefit.

Mark Donovan, Manager of Community Employment and Training Programs for the Marriott Corporation testified:

> . . . Marriott is recognized as a leader in the area of employment of people with disabilities . . . I raise that issue because I think it's important to note why Marriott has so aggressively assumed this position. The reason is simple: it makes good, bottom line, business sense. As a corporation operating in the hospitality industry, our employees are our life blood. It is only to the degree to which we can find, attract, train, and retain able and motivated people that we will be successful . . . From our perspective, not to draw upon the resources represented by people with disabilities would be absurd. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-51, September 13, 1989, pp. 45-46.)

Discrimination also negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities Howard Wolf, Chairman of the Board of the Institute on Rehabilitation and Research, stated:

> . . . Have we accomplished enough when we educate, rehabilitate and care for people with disabilities only to ignore discrimination against them in the workforce, in transportation, in public accommodations? How many well educated and highly capable people with disabilities must sit down at home every day, not because of their lack of ability, but because of the attitudes of employers, service providers, and government officials? (Testimony before House Subcommittee on Select Education, Ser. No. 101-56, August 28, 1989, p. 67.)

Sylvia Piper, a parent of a child with developmental disabilities testified that:

> We have invested in Dan's future. And the Ankeny public school District has made an investment in Dan's future . . . Are we going to allow this investment of time, energy, and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21? (Testimony before House Subcommittee on Select Education and Senate Subcommiteee on the Handicapped, S. Hrg. 100-926, September 27, 1988, pp. 68-69.)

Attorney General Thornburgh has made the same point:

> The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives. (Testimony before House Subcom-

mittee on Civil and Constitutional Rights, Ser. No. 58, October 11, 1989, p. 199.)

Apart from the economic benefits to individuals with disabilities and to the nation that this legislation is expected to bring about, its non-economic improvements in the quality of life of millions of Americans are no less important. The deaf person who can, because of the mandated nationwide TDD hookup, now spontaneously communicate with hearing friends in or out of their state; the woman who uses a wheelchair who can now accompany her children to the newly accessible museum using an accessible bus, or visit her sick mother in another state using a newly accessible intercity bus, or enter the supermakret; the blind individual who can, using newly marked elevator buttons, conveniently get to her sixth floor office appointment; the woman with cerebal palsy now allowed to enter the movie theater—the value of such benefits to individuals who seek to live a full life, free from arbitrary, confining, and humiliating treatment, cannot be calculated. The commitment to promote greater dignity and an improved quality of life for people with disabilities evinced in the provisions of the Act provide further powerful justification for its enactment.

CURRENT FEDERAL AND STATE LAWS ARE INADEQUATE; NEED FOR COMPREHENSIVE FEDERAL LEGISLATION

State laws are indaequate to address the pervasive problems of discrimination that people with disabilities are facing. As Admiral Watkins said:

> My predecessor [Sandy Parrino] here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 39.)

The fifty State Governor's Committees, with whom the President's Committee on Employment of People with Disabilities works, report that existing state laws do not adequately counter acts of discrimination against people with disabilities.

Current Federal law is also inadequate. Currently, Federal antidiscrimination laws only address discrimination by Federal agencies, entities that have contracts with the Federal government, and recipients of Federal financial assistance. Last year, Congress amended the Fair Housing Act to prohibit discrimination against people with disabilities in the sale and rental of private housing. However, there are still no protections against discrimination by employers in the private sector, by places of public accommodation, by State and local government agencies that do not receive Federal aid, and with respect to the provision of telecommunication services. With respect to the provisions of accessible transportation services, there have been misinterpretations by executive agencies and some courts regarding the prohibition against discrimination by public entities under the Rehabilitation Act and there has been no protection from discrimination by private transportation companies not otherwise covered under federal laws.

The need to enact omnibus rights legislation for individuals with disabilities was one of the major recommendations of the National Council on Disability in its two most recent reports to Congress. In fact, H.R. 4498, the Americans With Disabilities Act of 1988, introduced during the 100th Congress, was developed by the Council.

The need for omnibus civil rights legislation was also one of the major recommendations of the Presidential Commission on the HIV Epidemic:

> Comprehensive Federal anti-discrimination legislation, which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations and participation in government programs should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation. (*Report of the Presidential Commission on the Human Immunodeficiency Epidemic,* June, 1988, p. 123.)

Attorney General Thornburgh, on behalf of President Bush, has spoken of the importance of enacting comprehensive civil rights legislation for people with disabilities:

> One of the (the ADA bill's) most impressive strengths is its comprehensive character. Over the last 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections. (Testimony before House Subcommittee on Civil and Constitutional Rights, Ser. No. 101-58, October 11, 1989, p. 812.)

As Jay Rochlin said:

> A break in any link in the chain that connects individuals with disabilities to the workplace or prevents them from functioning independently creates a barrier which many times cannot be bridged. (Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-51, September 13, 1989, p. 29.)

VISION FOR THE FUTURE

Many of the witnesses described the vision of the Americans With Disabilities Act.

Sandy Parrino testified that:

> Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities. (Testimony before House Subcommittee on Select

> Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 27.)

Tony Coelho shared the following observation with the Committee:

> While the charity model once represented a step forward in the treatment of person with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, it for good reason—they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 15.)

Judith Heumann stated that:

> The passage of this monumental legislation will make it clear that our Government will no longer allow the largest minority group in the United States to be denied equal opportunity. (Testimony before the House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, S. Hrng. 100-926, September 27, 1988, p. 75.)

Perry Tillman, a Vietnam veteran, has stated that:

> I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs I didn't lose my ability to achieve my dreams. Myself and other veterans before me fought for freedom for all Americans. But when I came home and I found out that what I fought for applied to everyone but me and other handicapped people, I couldn't stop fighting. I have fought since my injury in Vietnam to regain my rightful place in society. I ask that you now join me in ending this fight and give quick and favorable consideration to the ADA in order to allow all Americans, disabled or not, to take part equally in American life. (Testimony before Senate Subcommittee on the Handicapped, S. Hrng. 101-156, May 10, 1989, p. 454.)

Justin Dart testified:

> The economic and moral greatness of America is based on providing equal opportunity to wave after wave of previously oppressed and dependent groups. Providing such opportunity to Americans with disabilities will result in yet another period of dynamic growth in the productivity, prosperity, quality of life, and international moral leadership of this nation. (Testimony before the House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, July 18, 1989, p. 67.)

CONCLUSION

In conclusion, there is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabilities into the economic and social mainstream of American life. Further, there is a need to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities. Finally, there is a need to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The difficult task before the Committee and, indeed, before the Congress, is to establish standards that fulfill this mandate in a clear, balanced, and reasonable manner. The Committee believes that this legislation has done that. This report explains in detail how that balance has been struck.

V. Summary of Committee Action

H.R. 2273 was brought before the Education and Labor Committee for open markup on November 9, 1989. The markup was commenced but not concluded on that date. Mr. Owens offered an amendment in the nature of a substitute prior to the adjournment of the session.

The markup was resumed on November 15, 1989, at which time Mr. Owens offered an amendment in the nature of a substitute to be considered as an original bill for the purpose of amendment. Twelve amendments to this substitute were offered, all of which were defeated. The Committee voted to adopt and report H.R. 2273, as an amendment in the nature of a substitute, by a roll call vote of 35–0.

VI. Explanation of the Legislation

DEFINITION OF THE TERM "DISABILITY"

Section 3(2) of the legislation defines the term "disability" for purposes of this legislation. The definition of the term "disability" included in the bill is comparable to the definition of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act of 1973 and section 802(h) of the Fair Housing Act.

It is the Committee's intent that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare of the regulations implementing section 504 (42 Fed. Reg. 22685 et seq. (May 4, 1977)) and the analysis by the Department of Housing and Urban Development of the regulations implementing the Fair Housing Amendments Act of 1988 (54 Fed. Reg. 3232 et seq. (Jan. 23, 1989)) apply to the definition of the term "disability" included in this legislation.

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Committee to make use of up-to-date, currently accepted terminology. In regard to this legislation, as well as in other contexts, the Congress has been apprised of the fact that to many individuals with disabilities the terminology applied to them is a very significant and sensitive issue.

As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." [In recent legislation, Congress has begun to recognize this shift in terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability, Public Law 100-630.]

The Committee concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

Finally, this Act is entitled the "Americans with Disabilities Act" to underscore the fact that people with disabilities are part of the tradition and heritage of this great country, and have as much of a right to equal access and opportunity in this country as all other individuals. However, the Committee wishes to emphasize that the title of the Act should not be construed to mean that only "Americans" with disabilities are protected under this Act. The Act protects all individuals with disabilities who are in this country—regardless of their ethnic or national origin and regardless of their status.

The term "disability" means, with respect to an individual—

(1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

The first prong of the definition includes any individual who has a "physical or mental impairment." A physical or mental impairment means—(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

It is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. The term includes, however, such conditions, diseases and infections as: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, infection with the Human Immunodeficiency Virus, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism.

The term "physical or mental impairment" does not include simple physical characteristics, such as blue eyes or black hair. Further, because only physical or mental impairments are included, environmental, cultural, and economic disadvantages are not in themselves covered. For example, having a prison record does not constitute having a disability. Age is not a disability, nor is homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental impairment, the person may be considered as having a disability for purposes of this legislation.

A physical or mental impairment does not constitute a disability under the first prong of the definition for purposes of the ADA unless its severity is such that it results in a "substantial limitation of one or more major life activities." A "major life activity" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities.

For example, a person who is paraplegic will have a substantial difficulty in the major life activity of walking; a deaf person will have a substantial difficulty in hearing aural communications; and a person with lung disease will have a substantial limitation in the major life activity of breathing. As noted by the U.S. Department of Justice, "Application of Section 504 of the Rehabilitation Act to HIV-Infected Individuals," September 27, 1988, at 9–11, a person infected with the Human Immunodeficiency Virus is covered under the first prong of the definition of the term "disability" because of a substantial limitation to procreation and intimate sexual relationships.

A person with a minor, trivial impairment, such as a simple infected finger is not impaired in a major life activity. A person is considered an individual with a disability for purposes of the first prong of the definition when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort.

Whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids. For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, which substantially limit a major life activity are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

The second prong of the definition of the term "disability" includes an individual who has a record of such impairment, i.e., an individual who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment which previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment would be prohibited under this legislation. Frequently occurring examples of the first group (i.e., those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (i.e., those who have been misclassified as having an impairment) are persons who have been misclassified as mentally retarded.

The third prong of the definition includes an individual who is regarded as having a covered impairment. This third prong includes an individual who has physicial or mental impairment that does not substantially limit a major life activity, but that is treated by a covered entity as constituting such a limitation. The third prong also includes an individual who has a physical or mental impairment that substantially limits a major activity only as a result of the attitudes of others toward such impairment or has no physical or mental impairment but is treated by a covered entity as having such an impairment.

The rational for this third prong was clearly articulated by the U.S. Supreme Court in *School Board of Nassua County* v. *Arline,* 480 U.S. 273 (1987). The Court noted that Congress included this third prong because it was as concerned about the effect of an impairment on others as it was about its effect on the individual. As the Court noted, the third prong of the definition is designed to protect individuals who have impairments that do not in fact substantially limit their functioning. The Court explained: "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." 480 U.S. at 283.

The Court went on to conclude that:

> By amending the definition of "handicaped individual" to include not only those who are actually physically impaired but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment. (Id., at 284.)

This third prong is particularly important for individuals with stigmatic conditions that are viewed as physical impairments but do not in fact result in a substantial limitation of a major life activity. For example, severe burn victims often face discrimination. In such situations, these individuals are viewed by others as having an impairment which substantially limits some major life activity (e.g., working or eating in a restaurant) and are discriminated against on that basis. Such individuals would be covered under the Act under the third prong of the definition.

A person who is excluded from any basic life activity, or is otherwise discriminated against, because of a covered entity's negative attitudes toward that person's impairment is treated as having a disability. Thus, for example, if an employer refuses to hire someone because of a fear of the "negative reactions" of others to the individual, or because of the employer's perception that the applicant has an impairment which prevents that person from working, that person is covered under the third prong of the definition of disability. See, e.g., *Arline,* 480 U.S. at 284; *Doe* v. *Centinela Hospital,* 57 U.S.L.W. 2034, No. CV-87-2514-P AR (C.D.Cal., June 30,

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1988), *Thornhill* v. *Marsh*, 49 FEP Cases 6 (Feb. 2, 1989) (9th Cir. 1989).

TITLE I—EMPLOYMENT

Title I of the legislation sets forth prohibitions against discrimination on the basis of disability by employers, employment agencies, labor organizations, or joint labor-management committees (hereinafter referred to as "covered entities") with respect to hiring and all terms, conditions, and privileges of employment.

Scope of coverage

The bill covers employers (including governments, governmental agencies, and political subdivisions) who are engaged in an industry affecting commerce and who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person; except, for the two years following the effective date of title I, only entities with 25 or more employees are covered. Additional entities covered by title I of the legislation are employment agencies, labor organizations, and joint labor-management committees.

Consistent with title VII of the Civil Rights Act of 1964, the term "employer" under this legislation does not include (i) the United States, or an Indian tribe; or (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986. The United States government, of course, continues to be covered under the Rehabilitation Act of 1973.

Definitions

Several of the definitions set out in title VII of the Civil Rights Act of 1964 are adopted or are incorporated by reference in this legislation—i.e., the terms Commission, employer, person, labor organization, employment agency, commerce, and industry affecting commerce. The term "employee" means an individual employed by an employer. The exception set out in title VII of the Civil Rights Act of 1964 for elected officials and their employees and appointees has been deleted.

Several of the other items, including "reasonable accommodation" and "undue harship" are discussed in detail later in this report.

Actions covered by this legislation

Section 102(a) of the legislation specifies that no covered entity shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

This section in intended to include the range of employment decisions. Consistent with regulations implementing section 504 of the Rehabilitation Act of 1973, see 45 CFR 84.11(b), the decisions covered include: (1) recruitment, advertising, and the processing of applications for employment; (2) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring; (3) rates of pay or any other form of compensation and changes in compensation; (4) job assignment, job classification, organizational structures, position descriptions, lines of progression, and seniority lists; (5) leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether or not administered by the covered entity; (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; and (8) employer-sponsored activities, including social or recreational programs.

Qualified individual with a disability

The term "qualified individual with a disability" is defined in section 101(7) of the bill to mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

This definition is comparable to the definition used in regulations implementing section 501 and section 504 of the Rehabilitation Act of 1973. The phrase "essential functions" means job tasks that are fundamental and not marginal. The point of including this phrase within the definition of a "qualified individual with a disability" is to ensure that employers can continue to require that all applicants and employees, including those with disabilities, are able to perform the essential, i.e., the non-marginal functions of the job in quesiton.

As the 1977 regulations issued by the Department of Health, Education, and Welfare pointed out "inclusion of this phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job." 42 Fed. Reg. 22686 (1977). For example, many employers have a policy that, in order to qualify for a job, an employee must have a driver's license—even though the job does not involve driving. The employer may believe that someone who drives will be on time for work or may be able to do an occasional errand. This requirement, however, would be marginal and should not be used to exclude persons with disabilities who can do the esential functions of the job that do not include driving. In determining what constitutes the essential functions of the job, consideration should be given to the employer's judgment regarding what functions are essential.

The basic concept is that an employer may require that every employee be qualified to perform the essential functions of a job. The term "qualified" refers to whether the individual is qualified at the time of the job action in question; the possibility of future incapacity does not by itself render the person not qualified.

By including the phrase "qualified individual with a disability," the Committee intends to reaffirm that this legislation does not undermine an employer's ability to choose and maintain qualified workers. This legislation simply provides that employment decisions must not have the purpose or effect of subjecting a qualified individual with a disability to discrimination on the basis of his or her disability.

Thus, under this legislation an employer is still free to select applicants for reasons unrelated to the existence or consequence of a disability. For example, suppose an employer has an opening for a typist and two persons apply for the job, one being an individual with a disability who types 50 words per minute and the other being an individual without a disability who types 75 words per minute. The employer is permitted to choose the applicant with the higher typing speed, if typing speed is necessary for successful performance on the job.

On the other hand, if the two applicants are an individual with a hearing impairment who requires a telephone headset with an amplifier and an individual without a disability, both of whom have the same typing speed, the employer is not permitted to choose the individual without a disability because of the need to provide the needed reasonable accommodation to the person with the disability.

In the above example, the employer would be permitted to reject the applicant with a disability and choose the other applicant for reasons not related to the disability or to the accommodation or otherwise not prohibited by this legislation. In other words, the employer's obligation is to consider applicants and make decisions without regard to an individual's disability, or the individual's need for a reasonable accommodation. But, the employer has no obligation under this legislation to prefer applicants with disabilities over other applicants on the basis of disability.

Under this legislation an employer may still devise physical and other job criteria and tests for a job so long as the criteria or tests are job-related and consistent with business necessity. Thus, for example, an employer can adopt a physical criterion that an applicant be able to lift fifty pounds, if that ability is necessary to an individual's ability to perform the essential functions of the job in question. Or, for example, security concerns may constitute valid job criteria. For example, jewelry stores often employ security officers because of the frequency of "snatch and run" thefts. Mobility and dexterity may be essential job criteria functions in such jobs.

Moreover, even if the criteria is legitimate, the employer must still determine whether a reasonable accommodation would enable the person with the disability to perform the essential functions of the job without imposing an undue hardship on the business.

It is also acceptable to deny employment to an applicant or to fire an employee with a disability on the basis that the individual poses a direct threat to the health or safety of others or poses a direct threat to property. The determination that an individual with a disability will pose a safety threat to others must be made on a case-by-case basis and must not be based on generalizations, misperceptions, ignorance, irrational fears, patronizing attitudes, or pernicious mythologies.

The employer must identify the specific risk that the individual with a disability would pose. The standard to be used in determining whether there is a direct threat is whether the person poses a significant, risk to the safety of others or to property, not a speculative or remote risk, and that no reasonable accommodation is available that can remove the risk. See section 102(b)(5) requiring reasonable accommodation; *School Board of Nassau County* v.

Arline, 480 U.S. 273 (1987). For people with mental disabilities, the employer must identify the specific behavior on the part of the individual that would pose the anticipated direct threat. This determination must be based on the behavior of the particular disabled person, not merely on generalizations about the disability.

Making such a determination requires a fact-specific individualized inquiry resulting in a "well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives." *Hall* v. *U.S. Postal Service*, 857 F.2d 1073, 1079 (6th Cir. 1988), quoting *Arline*. See also *Mantolete* v. *Bolger*, 757 F.2d 1416 (9th Cir. 1985) and *Strathie* v. *Dept. of Transportation*, 716 F.2d 227 (3d Cir. 1983).

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy any physical qualification standard that is job related and consistent with business necessity in order to be considered a qualified individual with a disability under title I of this legislation.

In light of this legislation, the Committee expects that within two years from the date of enactment (the effective date of title I of this legislation), the Secretary of Transportation will undertake a thorough review of these regulations to ascertain whether the standards conform with current knowledge about the capabilities of persons with disabilities and currently available technological aids and devices and whether such regulations are valid under this Act. The Committee expects that the agency will make any necessary changes within the two year period to bring such regulations into compliance with the law. (Of course, a non-discrimination obligation on the part of the Department of Transportation also exists currently under section 504 of the Rehabilitation Act of 1973.)

The Committee also notes that the federal government, in granting national security clearances, takes into account current or former drug or alcohol use in denying or terminating such clearances. The Committee recognizes that any function of an employment position that requires a security clearance is an essential function of the employment position.

Reasonable accommodation

The definition of "reasonable accommodation" in section 101(8) sets forth examples of types of accommodations that could ensure that a person with a disability will be able to perform the essential functions of a job. These include making existing facilities used by an employee or applicant readily accessible to and usable by an individual with a disability; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. As set forth in the substantive section of the Act, of course, the legal obligation of an entity to provide such an accommodation is depending on whether the accommodation would impose an undue hardship on the entity's business. See section 102(5)(A). The term "undue hardship" is defined in section 101(9) and is discussed later in this report.

Specific forms of discrimination prohibited

As explained above, section 102(a) of the bill includes a general prohibition against discrimination on the basis of disability against a qualified individual with a disability. Section 102(b) of the bill describes specific forms of discrimination that are included within the prohibition of section 102(a).

Section 102(b)(1) of the legislation specifies that the term "discrimination" includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.

Thus, covered entities are required to make employment decisions based on facts applicable to individual applicants or employees, and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

The Act is premised on the obligation of employers to consider people with disabilities as individuals and to avoid prejudging what an applicant or employee can or cannot do on the basis of that individual's appearance or any other easily identifiable characteristic, or on a preconceived and often erroneous judgment about an individual's capabilities based on "labeling" of that person as having a particular kind of disability.

For example, it would be a violation of this legislation if an employer were to limit the duties of an individual with a disability based on a presumption of what was best for such individual or based on a presumption about the ability of that individual to perform certain tasks. Similarly, it would be a violation for an employer to adopt separate lines of progression for employees with disabilities based on a presumption that no individual with a disability would be interested in moving into a particular job.

Employment activities must take place in an integrated manner. Employees with disabilities must not be segregated into particular work areas. Moreover, non-work activities offered by the employer should also be integrated, such as break-rooms or lunch rooms. If a break-room is located on the second floor of an existing building which is inaccessible, comparable amenities should be made available to the worker who uses a wheelchair on the first floor, such as a coffee pot, table, chairs for co-workers, refrigerator, etc. The actual size of the alternative break room does not have to be comparable, so long as the employee who uses a wheelchair has equivalent opportunities to other workers, including the opportunity to take a break or eat lunch with a co-worker.

It would also be a violation to deny employment to an applicant based on generalized fears about the safety of the applicant or higher rates of absenteeism. By definition, such fears are based on averages and group-based predictions. This legislation requires individualized assessments which are incompatible with such an approach. Often, group-based fears are erroneous as demonstrated in a study conducted in 1973 which examined the job performance, safety record and attendance of 1,452 physically impaired employees of the E.I. du Pont de Nemours and Company. See Wolfe, "Disability is No Hardship for du Pont". Various concerns that had been anticipated (such as concerns regarding safety and absenteeism) were disproved by the study. Indeed, the study showed that disabled workers performed as well as or better than the non-disabled co-workers.

In addition, employers may not deny health insurance coverage completely to an individual based on the person's diagnosis or disability. For example, while it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments, e.g., only a specified number of blood transfusions per year, a hemophiliac who exceeds this treatment limit may not be denied coverage for other conditions, such as for a broken leg or for heart surgery, because of the existence of the hemophilia. A limitation may be placed on reimbursements for a procedure or the types of drugs or procedures covered, e.g., a limit on the number of x-rays or non-coverage of experimental drugs or procedures; but, that limitation must apply to persons with or without disabilities. All people with disabilities must have equal access to the health insurance coverage that is provided by the employer to all employees.

The Act does not, however, affect pre-existing condition clauses included in insurance policies offered by employers. Thus, employers may continue to offer policies that contain preexisting condition exclusions, even though such exclusions adversely affect people with disabilities, so long as such clauses are not used as a subterfuge to evade the purposes of this legislation.

For additional explanations of the treatment of insurance under this legislation, see the discussion in the report on insurance under title V of the legislation.

Section 102(b)(2) of the legislation specifies that "discrimination" includes participating in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's qualified applicants or employees with disabilities to the discrimination prohibited by this title. Such relationships include a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs.

The phrase "the covered entity's" qualified applicants or employees was added to the Act in order to avoid any possible misunderstanding regarding this provision. This provision is intended to apply to a situation in which a covered entity enters into a contractual relationship with another entity, which has the effect of subjecting the first entity's *own* employees or applicants to discrimination. It does not apply to a situation in which a covered entity enters into a contractual relationship with another entity that is engaging in some form of discrimiantion against its own employees or applicants. The first entity has no liability in such a situation for the discrimination of the second entity. (Of course, the second entity may be separately liable to suit under this Act.)

Section 102(b)(2) further provides that a covered entity may not participate in a contractual relationship that has the effect of subjecting the covered entity's qualified applicants or employees *"to the discrimination prohibited by this title."* The basic intent of this provision is that any entity may not do through a contractual provision what it may not do directly. The type of discrimination prohibited is that "prohibited by this title"—i.e., that set forth in the substantive provisions of the bill. Thus, if the contractual relationship having the effect of discrimination occurs in any of the areas covered by the Act, for example, in hiring, training or promotion of employees, to the extent that the requirement of reasonable accommodation, and the limitation of "undue hardship," applies if the entity were acting directly, these requirements and limitations would apply as well when the entity is acting in a contractual relationship. The contractual relationship adds no new obligations in and of itself beyond the obligations imposed by the Act, nor does it reduce the obligations imposed by the Act.

For example, assume that an employer is seeking to contract with a company to provide training for the first entity's employees. Whatever responsibilities and limitations of reasonable accommodation that would apply to the employer if it provided the training itself would apply as well in the contractual situation. Thus, if the training company were planning to hold its program in a physically inaccessible location, thus making it impossible for an employee who used a wheelchair to attend the program, the employer would have a duty to consider various reasonable accommodations. These *could* include, for example, (1) asking the training company to identify other sites for the training that are accessible; (2) identifying other training companies that use accessible sites; (3) paying to have the training company train the disabled employee (either one-on-one or with other employees who may have missed the training for other reasons), or any other accommodation that might result in making the training available to the employee.

If no accommodations were available that would make the training program accessible, or if the only options that were available would impose an undue hardship on the employer, the employer would then have met its requirements under the Act. The Committee anticipates, however, that certainly some form of accommodation could be made such that the disabled employee would not be completely precluded from receiving training that the employer may consider necessary.

As a further example, assume that an employer contracts with a hotel for a conference held for the employer's employees. Under the Act, the employer has an affirmative duty to investigate the accessibility of a location that it plans to use for its own employees. Suggested approaches for determining accessibility would be for the employer to check out the hotel first-hand, if possible, or to ask a local disability group to check out the hotel. In any event, the employer can always protect itself in such situations by simply ensuring that the contract with the hotel specifies that all rooms to be used for the conference, including the exhibit and meeting rooms, be accessible in accordance with applicable standards. If the hotel breaches this accessibility provision, the hotel will be liable to the employer for the cost of any accommodation needed to provide access to the disabled individual during the conference, as well as for any other costs accrued by the employer. Placing a duty on the employer to investigate accessibility of places that it contracts for will, in all likelihood, be the impetus for ensuring that these types of contractual provisions become commonplace in our society.

Finally, as a last example, assume that a store is located in an inaccessible mall, and a disabled person wished to apply for a job in the store. The following approach would be followed. The store should take the person's application and determine if the person is qualified for the job. The question then becomes whether, with reasonable accommodation, the person can get to the job site. This reasonable accommodation, of course, has an undue hardship limitation.

Section 102(b)(2)(3) of the legislation specifies that "discrimination" includes utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.

Paragraphs 102(b)(2) and (3) of the legislation are derived from provisions that had been part of H.R. 2273 as originally introduced (which has now been superseded by the Substitute) and from general forms of discrimination that were set out in regulations implementing section 504 of the Rehabilitation Act of 1973 (see 45 CFR Part 84). The substitute, therefore, should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA, as these concepts have been subsumed within the provisions of the subsequent titles of the legislation. Further, this legislation in no way is intended to diminish the continued viability of programs implementing the Javits-Wagner-O'Day Act.

Subparagraph 102(b)(3) incorporates a disparate impact standard to ensure that the legislative mandate to end discrimination does not ring hollow. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court in *Choate* explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discrimination by effect as well as by design." 469 U.S., at 297.

Section 102(b)(4) of the legislation specifies that "discrimination" includes excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Thus, assume, for example that an applicant applies for a job and discloses to the employer that his or her spouse has a disability. The employer believes the applicant is qualified for the job. The employer, however, assuming without foundation that the applicant will have to miss work or frequently leave work early or both, in order to care for his or her spouse, declines to hire the individual for such reasons. Such a refusal is prohibited by this subparagraph.

In contrast, assume that the employer hires the applicant. If he or she violates a neutral employer policy concerning attendance or tardiness, he or she may be dismissed even if the reason for the absence or tardiness is to care for the spouse. The employer need not provide any accommodation to the nondisabled employee. The individuals covered under this section are any individuals who are discriminated against because of their known association with an individual with a disability. This protection is not limited to those who have a familial relationship with the individual. Indeed, one of the amendments defeated by the Committee was an amendment that would have limited the provision to only certain associations and relationships.

Section 102(b)(5)(a) of the legislation specifies that discrimination includes the failure by a covered entity to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

The duty to make reasonable accommodations applies to all employment decisions, not simply to hiring and promotion decisions. This duty has been included as a form of non-discrimination on the basis of disability for almost fifteen years under section 501 and section 504 of the Rehabilitation Act of 1973 and under the nondiscrimination section of the regulations implementing section 503 of that Act.

The term "reasonable accommodation" is defined in section 101(8) of the legislation. The definition includes illustrations of accommodations that may be required in appropriate circumstances. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation. Furthermore, the list is not meant to suggest that employers must follow all of the actions listed in each particular case. Rather, the decision as to what reasonable accommodation is appropriate is one which must be determined based on the particular facts of the individual case. This fact-specific, case-by-case approach to providing reasonable accommodations is generally consistent with interpretations of this phrase under sections 501, 503, and 504 of the Rehabilitation Act of 1973.

The first illustration of a reasonable accommodation included in the legislation is making existing facilities used by an employee readily accessible to and usable by an individual with a disability.

The legislation also specifies, as examples of reasonable accommodation, job restructuring, part-time or modified work schedules and reassignment to a vacant position.

Job restructuring means modifying a job so that a person with a disability can perform the essential functions of the position. Barriers to performance may be removed by eliminating nonessential elements of the job; redelegating assignments; exchanging assignments with another employee; and redesigning procedures for task accomplishment.

Part-time or modified work schedules can provide useful accommodations. Some people with disabilities are denied employment opportunities because they cannot work a standard schedule. For example, persons who need medical treatment may benefit from flexible or adjusted work schedules. A person with epilepsy may require constant shifts rather than rotation from day to night shifts. Other persons who may require modified work schedules are persons with mobility impairments who depend on a public transportation system that is not currently fully accessible. Allowing constant shifts or modified work schedules provide ways of accommodating an individual with a disability to allow him or her to do the same job as a nondisabled individual. Reasonable accommodation may also include providing additional unpaid leave days, if such provision does not result in an undue hardship for the employer.

Reasonable accommodation may also include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and employer from losing a valuable worker. Efforts should be made, however, to accommodate an employee in the position that he or she was hired to fill before reassignment is considered. The Committee also wishes to make clear the reassignment need only be to a vacant position—"bumping" another employee out of a position to create a vacancy is not required.

The section 504 regulations provide that "a recipient's obligation to comply with this subpart [employment] is not affected by any inconsistent term of any collective bargaining agreement to which it is a party." 45 CFR 84.11(c). The policy also applies to the ADA. Thus, an employer cannot use a collective bargaining agreement to accomplish what it otherwise would be prohibited from doing under this Act. For example, a collective bargaining agreement that contained physical criteria which caused a disparate impact on individuals with disabilities and were not job-related and consistent with business necessity could be challenged under this Act.

The collective bargaining agreement could be relevant, however, in determining whether a given accomodation is reasonable. For example, if a collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, it may be considered as a factor in determining whether it is a reasonable accommodation to assign an employee with a disability without seniority to the job. However, the agreement would not be determinative on the issue.

In other situations, the relevant question would be whether the collective bargaining agreement articulates legitimate business criteria. For example, if the collective bargaining agreement lists job duties, such a list may be taken into account in determining whether a given task is an essential function of the job. Again, however, the agreement would not be determinative on the issue.

Conflicts between provisions of a collective bargaining agreement and an employer's duty to provide reasonable accommodations may be avoided by ensuring that agreements negotiated after the effective date of this title contain a provision permitting the employer to take all actions necessary to comply with this legislation.

Additional forms of reasonable accommodation included in the legislation are acquisition or modification of equipment or devices. The Job Accommodation Network (JAN), operated by the President's Committee on Employment of People with Disabilities, reports that it is possible to accommodate many employees with relatively simple and inexpensive assistive technology. Since the service began in 1984, the Job Accommodation Network has accumulated a total of 16,585 available solutions from which businesses may draw. It currently handles about 500 cases per month. The toll free phone number for JAN is 800-526-7234.

For blind and visually-impaired persons, reasonable accommodations may include adaptive hardware and software for computers, electronics visual aids, braille devices, talking calculators, magnifiers, audio recordings and brailled material.

For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids, and telecommunication devices for deaf persons. For persons with limited physical dexterity, this may include goose neck telephone headsets, mechanical page turners, and raised or lowered furniture.

The Committee wishes to make it clear that personal use items, such as hearing aids or eyeglasses, are not included in this provision, and therefore are not required to be provided by employers as reasonable accommodations.

The legislation also lists appropriate adjustment or modifications of examinations, training materials or policies. For example, training sessions should be offered at accessible locations and materials should be made available in an accessible format.

The Committee wishes to emphasize again that this legislation does not require an employer to make any modification, adjustment, or change in a job description or policy that an employer can demonstrate would fundamentally alter the essential functions of the job in question.

The legislation also explicitly includes provision of qualified readers or interpreters as examples of reasonable accommodations. As with readers and interpreters, the provision of an attendant to assist a person with a disability during parts of the workday may be a reasonable accommodation depending on the circumstances of the individual case. Attendants may, for example, be required for traveling and other job-related functions. This issue must be dealt with on a case-by-case basis to determine whether an undue hardship is created by providing attendants.

The Committee wishes to clarify the employer's obligation to notify applicants and employees of the employer's obligation to provide a reasonable accommodation, who is entitled to an accommodation, when the duty to provide a reasonable accommodation is triggered, and the process of determining the appropriate accommodation.

First, pursuant to section 105 of the legislation, the employer must notify applicants and employees of its obligation under this legislation to make reasonable accommodations.

Second, section 102(b)(5)(a) of the legislation requires that reasonable accommodation be made for "an otherwise qualifed individual who is an applicant or employee . . ." The term "otherwise qualified" is used in this particular provision in order to clearly describe a person with a disability who meets all of an employer's job-related selection criteria except those criteria that he or she cannot meet because of a disability, but which could be met with a reasonable accommodation. See 45 CFR 84.12(a). This individual, who is "otherwise qualified" for the job, must then be offered the reasonable accommodation that will then make the individual a "qualified individual with a disability" under this title.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a visual impairment who has not yet met these selection criteria. That individual is not yet eligible for a reasonable accommodation because he or she is not otherwise qualifed for the position.

On the other hand, if the individual graduated from an accredited law school and passed a bar examination (assuming that these are the only selection criteria), the person is "otherwise qualified" and the law firm would be required to provide a reasonable accommodation to the employee's visual impairment, such as a reader, that would enable the employee to perform the essential functions of the job as an attorney, unless the necessary accommodation would impose an undue hardship.

If, to continue the example, a part-time reader can be provided as a reasonable accommodation that permits the individual to perform the essential functions of the attorney position without imposing an undue hardship, the person is a "qualified individual with a disability" as defined in section 101(7) of the legislation and it would be unlawful not to hire the individual because of his or her visual impairment.

Third, the legislation clearly states that employers are obligated to make reasonable accommodations only to the "known" physical or mental limitations of an otherwise qualified individual with a disability. Thus, the duty to accommodate is generally triggered by a request from an applicant for employment or an employee. Of course, if a person with a known disability is having difficulty performing his or her job, it would be permissible for the employer to discuss the possibility of a reasonable accommodation with the employee.

In the absence of a request, it would be inappropriate to provide an accommodation, especially where is could impact adversely on the individual. For example, it would be unlawful to transfer unilaterally a person with HIV infection from a job as a teacher to a job where such person has no contact with students. See, e.g., *Chalk* v. *United States District Court*, 840 F.2d 701 (9th Cir. 1988).

The Committee believes that the reasonable accommodation requirement is best understood as a process in which barriers to a particular individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to problems in performance of a particular job because of a physical or mental impairment. A problem-solving approach should be used to identify the particular tasks or aspects of the work environment that limit performance and to identify possible accommodations that will result in a meaningful equal opportunity for the individual with a disability.

The Committee suggests that, after a request for an accommodation has been made, employers first will consult with and involve the individual with a disability in deciding on the appropriate accommodation. The Committee recognizes that people with disabilities may have a lifetime of experience identifying ways to accomplish tasks differently in many different circumstances. Frequently, therefore, the person with a disability will know exactly what accommodation he or she will need to perform successfully in a particular job. And, just as frequently, the employee or applicant's suggested accommodation is simpler and less expensive than the accommodation the employer might have devised, resulting in the employer and the employee mutually benefiting from the consultation.

The Committee also recognizes that there are times when the appropriate accommodation is not obvious to the employeer or applicant because such individual is not familiar in detail with the manner in which the job in question is performed and the employer is not familiar enough with the individual's disability to identify the appropriate accommodation. In such circumstances, the Committee believes the employer should consider four informal steps to identify and provide an appropriate accommodation.

The first informal step is to identify barriers to equal opportunity. This includes identifying and distinguishing between essential and nonessential job tasks and aspects of the work environment of the relevant position(s). With the cooperation of the individual with a disability, the employer must also identify the abilities and limitations of the individual with a disability for whom the accommodation is being provided. The employer then should identify job tasks or work environment that limit the individual's effectiveness or prevent performance.

Having identified the barriers to job performance caused by the disability, the second informal step is to identify possible accommodations. As noted above, the search for possible accommodations must begin with consulting the individual with a disability. Other resources to consult include the appropriate State Vocational Rehabilitation Services agency, the Job Accommodation Network operated by the President's Committee on Employment of People With Disabilities, or other employers.

Having identified one or more possible accommodations, the third informal step is to assess the reasonableness of each in terms of effectiveness and equal opportunity. A reasonable accommodation should be effective for the employee. Factors to be considered include the reliability of the accommodation and whether it can be provided in a timely manner.

The Committee believes strongly that a reasonable accommodation should provide a meaningful equal employment opportunity. Meaningful equal employment opportunity means an opportunity to attain the same level of performance as is available to nondisabled employees having similar skills and abilities.

The final informal step is to implement the accommodation that is most appropriate for the employee and the employer and that does not impose an undue hardship on the employer's operation or to permit the employee to provide his or her own accommodation if it does impose an undue hardship. In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity.

The expressed choice of the applicant or employee shall be given primary consideration unless another effective accommodation exists that would provide a meaningful equal employment opportunity or unless the accommodation requested would pose an undue hardship.

The Committee wishes to note that many individuals with disabilities to not require any reasonable accommodation whatsoever. The only change that needs to be made for such individuals is a change in attitude regarding employment of people with disabilities.

The term "undue hardship" is defined in section 101(9) to mean an action requiring significant difficulty or expense, i.e., an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business, i.e., require significant difficulty or expense, factors to be considered include: (1) the overall size of the business of the covered entity with respect to number of employees, the number, type, and location of facilities operated by the covered entity, the overall financial resources of the covered entity and the financial resources of its covered facility or facilities involved in the provision of the reasonable accommodation; (2) the type of operation or operations maintained by the covered entity, including the composition and structure of the entity's workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship, to the extent that such factors contribute to a reasonable determination of undue hardship; and (3) the nature and cost of the accommodation needed under the Act.

This provision is derived from and should be applied consistently with interpretations by Federal agencies applying the term set forth in regulations implementing sections 501 and 504 of the Rehabilitation Act of 1973.

The weight given to each factor in making the determination as to whether a reasonable accommodation constitutes an "undue hardship" will vary depending on the facts of a particular situation and turns on the nature and cost of the accommodation in relation to the employer's resources and operations. In explaining the "undue hardship" provision, the Department of Health, Education, and Welfare explained in the appendix accompanying the section 504 regulations (42 Fed. Reg. 22676 et seq., May 4, 1977):

> Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a State welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

The mere fact that an employer is a large entity for the purposes of factor (1), should not be construed to negate the importance of factors (2) and (3) in determining the existence of undue hardship.

The Committee wishes to make it clear that the principles enunciated by the Supreme Court in *TWA* v. *Hardison*, U.S. 63 (1977) are not applicable to this legislation. In *Hardison*, the Supreme Court concluded that under title VII of the Civil Rights Act of 1964 an employer need not accommodate persons with religious beliefs if the accommodation would require more than a *de minimus* cost for the employer. By contrast, under the ADA, reasonable accommodations must be provided unless they rise to the level of "requiring significant difficulty or expense" on the part of the employer, in light of the factors noted in the statute—i.e., a significantly higher standard than that articulated in *Hardison*. This higher standard is necessary in light of the crucial role that reasonable accommodation plays in ensuring meaningful employment opportunities for people with disabilities.

Finally, the Committee wishes to make clear that even if there is a determination that a particular reasonable accommodation will result in an undue hardship, the employer must pay for that portion of the accommodation that would not cause an undue hardship if, for example, the State Vocational Rehabilitation Agency, other similar agency, or the employee or applicant pays for the remainder of the cost of the accommodation.

The specific factors added to section 101(9)(B) reflect concerns that were raised regarding covered entities that may operate separate, local facilities across the country. The addition of these factors reflects the Committee's intent that, in determining whether a reasonable accommodation would constitute an undue hardship, courts should look at and may weigh the financial resources and operations of those local facilities that are being asked to provide an accommodation, because the financial resources of local facilities of a covered entity may vary significantly. The factors further reflect the Committee's intent that, in determining whether a reasonable accommodation would constitute an undue hardship, the financial resources of the larger covered entity, and any of those financial resources available to the local covered facility from the larger covered entity, should be looked at and may be weighed by the court as well. As a general matter, and availability of financial resources from the covered entity to the facility should be considered in light of the interrelationship between the facility and the covered entity.

The additional factors also reflect the Committee's intent that, in considering the composition and structure of a covered entity's workforce, a court should consider such factors as the functions of the workforce, geographic separateness, and administrative relationship of such workforce to the covered entity, to the extent that such factors contribute to a reasonable determination of undue hardship. The Committee expects that a court will look at the practical realities of the situation, to determine how the workforce and resources of a covered entity and the facility interrelate. For example, a court may consider what other services and resources the covered entity provides to the local facility in the area of employee benefits, services, and hiring in determining what resources are reasonably available to the facility.

The Committee also intends that the factors set forth in 101(9)(B) are not exclusive and that in appropriate circumstances courts and the administrative agencies may use other relevant factors whether or not those factors are identified in implementing regulations. For example, the number of employees or applicants potentially benefiting from an accommodation may be a relevant consideration in determining undue hardship where use by more than one person with a disability would reduce the relative financial impact of an accommodation. For example, a ramp installed for a new employee who uses a wheelchair not only benefits that employee but will also benefit mobility-impaired applicants and employees in the future. Assistive devices for hearing and visually-impaired persons may be shared by more than one employee so long as each employee is not denied a meaningful equal employment opportunity caused by limited access to the needed accommodation. On the other hand, the Committee wishes to make clear that the fact that an accommodation is used by only one employee should not be used as a negative factor counting in favor of a finding of undue hardship. By its very nature, an accommodation should respond to a particular individual's needs in relation to performance of a specific job at a specific location. It is not the Committee's intent that the individualized nature of the accommodation process be undermined when considering whether other employees may be benefited by an accommodation requested by a single individual.

A second factor the Committee believes should be considered is the availability of outside funding to pay for accommodations. Such Such funding may be available from a State vocational rehabilitation agency, or Federal, State or local tax deductions or tax credits. The Committee strongly believes that a covered entity should not be entitled to assert that the cost of an accommodation would impose an undue hardship on its business when it receives or is eligible to receive monies from an external source that would pay the entire cost of an accommodation. To the extent such monies pay or would pay for only part of the cost of an accommodation, only the non-reimbursed portion of the cost of an accommodation—the final net cost to the entity—may be considered in determining undue hardship. However, the lack of outside funding is not a defense to the obligation to provide a reasonable accommodation.

Finally, the Committee wishes to make it clear that even if there is a determination that a particular reasonable accommodation will result in an undue hardship, the employer must pay for the portion of the accommodation that would not cause an undue hardship if, for example, the applicant or employee pays for the remainder of the cost of the accommodation.

The second factor noted in subsection 101(9), for determining whether or not an accommodation would impose an undue hardship, focuses on the type of operation maintained by the entity. This would include, for example, consideration of the special circumstances incurred on certain types of temporary worksites common in the construction industry. For example, under some circumstances, it might fundamentally alter the nature of a construction site or be unduly costly to implement or maintain physical accessibility, for an applicant or employee who uses a wheelchair if, for example, the site's terrain and building structure change daily as construction progresses. The Committee recognizes that some accommodations that can easily be made in an office setting may impose an undue hardship in other settings. While the Committee believes that undue hardship standards may be developed on an industry by industry basis where particular types of operations common to an industry present special circumstances, the ultimate determination is a factual one which must be made on a case-by-case basis.

Section 102(b)(5)(b) of the legislation specifies that discrimination includes the denial of employment opportunities by a covered entity to an applicant or employee who is an otherwise qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation. This provision is derived directly from regulations issued under section 504. See 42 CFR 84.12(d).

The Section 504 regulation, and this provision, do not include the phrase "when such reasonable accommodation would not impose an undue hardship on such covered entity." However, it has always been understood under Section 504, and the Committee wishes to emphasize that this is its understanding under this Act, that the objection on the part of the covered *entity* to make a reasonable accommodation applies *only* when such accommodation would not impose an undue hardship (see section 102(b)(5)(a)). Because concerns have been raised that this provision could be misinterpreted to mean that there might be circumstances in which a covered entity would be required to provide a reasonable accommodation that *would* impose an undue hardship, the Committee wishes to emphasize that this has never been the case under Section 504 and is not the case under this Act. In addition, to eliminate any possible misunderstanding, the Committee has renumbered these provisions to read as subsets of the same provision, so that it is clear that the undue hardship limitation of 102(b)(5)(a) applies to 102(b), when the covered entity is expected to make the reasonable accommodation.

This provision, therefore should be applied just as it is applied under Section 504. That is, an employer cannot reject an applicant with a disability who requires a reasonable accommodation which, if provided by the covered entity, would not have imposed an undue hardship. In addition, even where an entity is not required under the law to pay for a reasonable accommodation, because it would have imposed an undue harship on the entity, the entity cannot refuse to hire a qualified applicant where the applicant is willing to make his or her own arrangements for the provision of such an accommodation, if the reason for the rejection is the need or the presence of the accommodation.

Section 102(b)(6) of the legislation specifies that discrimination includes using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

As in Section 504, the ADA adopts a framework for employment selection procedures which is designed to assure that persons with disabilities are not excluded from job opportunities unless they are actually unable to do the job. The requirement that job criteria actually measure the ability required by the job is a critical protection against discrimination based on disability. As was made strikingly clear during the hearings on the ADA, stereotypes and misconceptions about the abilities, or more correctly the inabilities, of persons with disabilities are still pervasive today. Every government and private study on the issue has shown that employers disfavor hiring persons with disabilities because of stereotypes, discomfort, misconceptions, and unfounded fears about increased costs and decreased productivity.

The three pivotal provisions to assure a fit between job criteria and an applicant's actual ability to do the job are:

(1) the requirement that individuals with disabilities not be disqualified because of their inability to perform non-essential or marginal functions of the job;

(2) the requirement that any selection criteria that screen out or tend to screen out individuals with disabilities be job-related and consistent with business necessity; and

(3) the requirement to provide reasonable accommodation to assist individuals with disabilities to meet legitimate criteria.

These three legal requirements, which are incorporated in sections 102(b)(5) and (6) of the legislation, work together to provide a high degree of protection to eliminate the current pervasive bias against employing persons with disabilities in the selection process.

The interrelationship of these requirements in the selection procedure is as follows: If a person with a disability applies for a job and meets all selection criteria except one that he or she cannot meet because of a disability, the criterion must concern an essential, non-marginal aspect of the job, and be carefully tailored to measure the person's actual ability to do this essential function of the job. If the criterion meets this test, it is nondiscriminatory on its face and it is otherwise lawful under the legislation. However, the criterion may not be used to exclude an applicant with a disability if the criterion can be satisfied by the applicant with a reasonable accommodation. A reasonable accommodation may entail adopting an alternative, less discriminatory criterion.

For example, in *Stutts* v. *Freeman*, 694 F.2d 666 (11th Cir. 1983), Mr. Stutts, who was dyslexic, was denied the job of heavy equipment operator because he could not pass a written test used by the employer for entering the training program, which was a prerequisite for the job. The written test had a disparate impact on persons with dyslexia. The legal issues presented were whether the written test for admission to the training program, and the reading requirements of the training program itself, were necessary criteria for the heavy equipment operator job. If the answers to both those questions were yes, the question then became whether a reasonable accommodation could enable the person with a disability to meet the employment criteria at issue.

In *Stutts*, the record reflected that Mr. Stutts could perform the job of heavy equipment operator. As stated by the court, "Indeed, everyone involved in this case seems to concede that Mr. Stutts would have no problems doing the job but rather may experience difficulty with the outside reading requirements of the training program. If selected, this obstacle may be overcome by Mr. Stutts obtaining the assistance of someone to act as a 'reader'. . . . [T]o eliminate Mr. Stutts without implementing an alternative test (oral) administered by outside professionals of TVA's staff or by failing to adjust the entry requirements to accommodate his dyslexia, TVA has failed to comply with the statute." 694 F.2d at 669, n. 3.

Hence, the requirement that job selection procedures be "job-related and consistent with business necessity" underscores the need to examine all selection criteria to assure that they not only provide an accurate measure of an applicant's actual ability to perform the essential functions of the job, but that even if they do provide such a measure, a disabled applicant is offered a "reasonable accommodation" to meet the criteria that relate to the functions of the job at issue. It is critical that paternalistic concerns for the disabled person's own safety not be used to disqualify an otherwise qualified applicant. As noted, these requirements are incorporated in the legislation in sections 102(b)(1)(5) and (6).

The Committee intends that the burden of proof under each of the aforementioned sections be construed in the same manner in which parallel agency provisions are construed under Section 504 of the Rehabilitation Act as of June 4, 1989. See, e.g., 45 C.F.R. 84.13 (Department of Health and Human Services); 29 C.F.R. 1613.705 (Equal Employment Opportunity Commission); 28 C.F.R. 42.512 (Department of Justice); 29 C.F.R. 32.14 (Department of Labor).

Section 102(b)(7) of the legislation specifies that discrimination includes failing to select and administer tests so as best to ensure that, when the test is administered to an applicant or employee with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the individual's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Section 102(c) of the legislation specifies that the prohibition against discrimination in section 101(a) applies to medical examinations and inquiries. Section 102(c)(2)(A) prohibits an employer from making any inquiries as to the existence or nature of an applicant's disability prior to an offer of employment. Section 102(c)(2)(B) makes it clear that an employer may make pre-employment inquiries into the ability of an applicant to perform job-related functions. Historically, employment application forms and employment interviews requested information concerning an applicant's physical or mental condition. This information was often used to exclude applicants with disabilities—particularly those with so-called hidden disabilities such as epilepsy, diabetes, emotional illness, heart disease and cancer—before their ability to perform the job was even evaluated.

In order to assure that misconceptions do not bias the employment selection process, the legislation sets forth a process which begins with a prohibition on pre-offer medical examinations or inquiries. The process established by the legislation parallels the regulations issued under section 504 of the Rehabilitation Act of 1973.

The legislation prohibits any identification of a disability by inquiry or examination at the pre-offer stage. Employers may ask questions which relate to the applicant's ability to perform job-related functions, but may not ask questions in terms of disability. For example, an employer may ask whether the applicant has a driver's license, if driving is an essential job function, but may not ask whether the applicant has a visual disability. This prohibition against inquiries regarding disability is critical to assure that bias does not enter the selection process.

The only exception to making medical inquiries is narrow. The legislation allows covered entities to require medical examinations after a conditional job offer has been made, so long as they are given to all entering employees in a particular category, the results of the examinations are kept confidential, and the results of such examinations are not used to discriminate against an individual with a disability unless such results make the individual not qualified for the job. As noted, the examinations must be given to all employees in a particular job category. For example, an entity can test all police officers rather than all city employees, or all construction workers rather than all construction company employees. This exception to the general rule meets the employer's need to discover possible disabilities that do, in fact, limit the person's ability to do the job, i.e., those that are job-related and consistent with business necessity.

A candidate, undergoing a post-offer, pre-employment medical examination may not be excluded, for example, solely on the basis of an abnormality on an x-ray. However, if the examining physician found that there was high probability of substantial harm if the candidate performed the particular functions of the job in question, the employer could reject the candidate, unless the employer could make a reasonable accommodation to the candidate's condition that would avert such harm and such accommodation would not cause an undue hardship.

However, the Committee would like to stress three important points. First, the assessment that there exists a high probability of substantial, harm must be strictly based on valid medical analyses. For example, back x-rays which reveal anomalies in asymptomatic persons usually have largely low predictive value. See Rockey, Fantel, and Omenn, *Discriminatory Aspects of Pre-employment Screening; Low Back x-ray Examination in the Railroad Industry*, 5 Am. J.L. of Med. 197, (1979). Therefore, employers should be diligent in assuring that their examining physicians make assessments based on testing measures that actually and reliably predict the substantial, imminent degree of harm required.

Second, any determination by a company physician can be challenged by evidence from the complainant's physician. Company doctors often are unfamiliar with certain disabilities and assume that there are barriers to employment which, in fact, do not exist. The complainant's own physician often has more knowledge about the effects of the disability on the individual being considered. An employer is not shielded from liability merely by a statement from the employer's physician that a threat of imminent, substantial harm exists by hiring an applicant with a particular disability.

Third, employment decisions must not be based on paternalistic views about what is best for a person with a disability. Paternalism is perhaps the most pervasive form of discrimination for people with disabilities and has been a major barrier to such individuals. A physical or mental employment criterion can be used to disqualify a person with a disability only if has a direct impact on the ability of the person to do their actual job duties without imminent, substantial threat of harm. Generalized fear about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used by an employer to disqualify a person with a disability. See, e.g., *Bentivenga* v. *U.S. Department of Labor,* 694 F.2d 623 (1982).

The Committee wishes to note the medical information obtained in an examination pursuant to 102(c)(3) may be used by the employer as baseline data to assist the employer in measuring physical changes attributable to on-the-job exposures.

Section 102(c)(4) prohibits medical exams of employees unless job-related and consistent with business necessity. Certain jobs require periodic physicals in order to determine fitness for duty. For example, Federal safety regulations require bus and truck drivers to have a medical exam at least biennially. In certain industries, such as air transportation, physical qualifications for some employees are critical. Those employees, for example, pilots, may have to meet medical standards established by Federal, State or local law or regulation, or otherwise fulfill requirements for obtaining a medical certificate, as a prerequisite for employment. In other instances, because a particular job function may have a significant impact on public safety, e.g. flight attendants, an employee's state of health is important in establishing job qualifications, even though a medical certificate may not be required by law. The Committee does not intend for this Act to override any medical standards or requirements established by Federal, State or local law as a prerequisite for performing a particular job, if the medical standards are consistent with this Act (or in the case of federal standards, if they are consistent with section 504)—that is, if they are job-related and consistent with business necessity. See, e.g., *Strathie* v. *Department of Transportation,* 716 F.2d 227 (3d Cir. 1983).

There are other instances in which medical examinations of employees may be permitted, provided the results of those examinations are not used to limit an employee's eligibility for emplcyer-provided health insurance.

For example, several health standards promulgated pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and the Federal Coal Mine Health and Safety Act of 1969 and the amendments thereto adopted in 1977 (30 U.S.C. 801 et seq.) require that employees exposed to certain toxic and hazardous substances be medically surveyed at specified intervals to determine if the exposures to those substances have had any negative effect on the employees.

The OSHA lead standard, for example, requires that employees exposed to lead be tested periodically to determine the lead level in the employee's blood. If the test shows that lead levels exceed the permissible norm, the employee must be transferred from the exposed workplace to another worksite until the lead level falls below the permissible level. At that point, the employee may return to the original work station. It is the Committee's intention that these OSHA standards are valid under this section.

A growing number of employers today are offering voluntary wellness programs in the workplace. These programs often include medical screening for high blood pressure, weight control, cancer detection, and the like. As long as the programs are voluntary and the medical records are maintained in a confidential manner and not used for the purpose of limiting health insurance eligibility or of preventing occupational advancement, these activities would fall within the purview of accepted activities.

Once an employee is on the job, the actual performance on the job is, of course, the best measure of the employee's ability to do the job. When a need arises to question the continued ability of a person to do the job, the employer may make inquiries, and may require medical exams that are job-related and consistent with business necessity. The concept of "job-related and consistent with business necessity" has been outlined elsewhere in the report under the discussion of section 102(b)(6) of the legislation.

An inquiry or medical examination that is not job-related serves no legitimate employer purpose, but simply serves to stigmatize the person with a disability. For example, if an employee starts to lose a significant amount of hair, the employer should not be able to require the person to be tested for cancer unless such testing is job-related. Testimony before the Committee indicated there still exists widespread irrational prejudice against persons with cancer. While the employer might argue that it does not intend to penalize the individual, the individual with cancer may object merely to being identified, independent of the consequences. As was made abundantly clear before the Committee, being identified as disabled often carries both blatant and subtle stigma. An employer's legitimate needs will be met by allowing those medical inquiries and examinations which are job-related and consistent with business necessity.

Consistent with the section in the legislation pertaining to pre-employment inquiries, it is the Committee's intent that a covered entity may invite applicants for employment to indicate voluntarily whether and to what extent they have a disability under the following circumstances only: (1) when a covered entity is taking remedial action to correct the effects of past discrimination, (2) when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities, or (3) when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, provided that:

(a) the covered entity states clearly on any written questionnaire used for this purpose or makes clear orally (if no written questionnaire is used) that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts, and

(b) The covered entity states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this title.

Defenses

Section 103(a) of the legislation specifies that, in general, it may be a defense to a charge of discrimination that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation as required under this title. The Committee has added the phrase "as required under this title," following the term "reasonable accommodation," to eliminate any possible misunderstanding that an entity might be required to provide a reasonable accommodation even if it imposed an undue hardship. The phrase "under this title," therefore, refers to a reasonable accommodation that would not impose an undue hardship on the covered entity, if the covered entity provided the accommodation, or a reasonable accommodation that the applicant or employee provided on his or her own, if the provision of such an accommodation would have imposed an undue hardship on the covered entity.

With respect to contagious diseases or infections, section 103(b) of the legislation specifies that the term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace. Under this qualification standard, for a person with a currently contagious disease or infection to constitute a direct threat to the health or safety or others, the person must pose a significant risk of transmitting the infection to others in the workplace which cannot be eliminated by reasonable accommodation. See *School Board of Nassau County* v. *Arline*, 480 U.S. 273, 287, note 16. Thus, the term "direct threat" is meant to conncte the full standard set forth in the *Arline* decision.

With respect to religious entities, section 103(c)(1) of the legislation specifies that title I does not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Thus, assume that a Mormon organization wishes to hire only Mormons to perform certain jobs. If a person with a disability applies for the job, but is not a Mormon, the organization can refuse to hire him or her. However, if two Mormons apply for a job, one with a disability and one without a disability, the organization cannot discriminate against the applicant with the disability because of that person's disability.

Because title I of this legislation incorporates by reference the definition of the term "employer" and "employee" used in title VII of the Civil Rights Act of 1964 and because of the similarity between the "religious preference" provisions in title VII and the ADA, it is the Committee's intent that title I of the ADA be interpreted in a manner consistent with title VII of the Civil Rights Act of 1964 as it applies to the employment relationship between a religious organization and those who minister on its behalf.

In addition, section 103(c)(2) of the legislation includes a provision not included in title VII of the Civil Rights Act of 1964. This provision specifies that a religious organization may require that all applicants and employees conform to the religious tenets of such organization. This exemption is modeled after the provision in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the terms "religious organizations" and "religious tenets" be interpreted consistent with the Department of Education's regulations under title IX.

The inclusion of a "religious tenents" defense is not intended to affect in any way the scope given to section 702 of title VII of the Civil Rights Act of 1964.

Section 104 deals with employment of individuals who use illegal drugs or alcohol. Section 104(a) provides that a "qualified individual with a disability" does not include an employee or applicant who is a current user of illegal drugs, when the covered entity acts on the basis of such use. The phrase "when the covered entity acts on the basis of such use" is intended to make clear that if an adverse action is taken against a current user of illegal drugs who is otherwise disabled, to the extent the adverse action is taken on the basis of the disability still covered by the Act, the covered entity must comply with the Act and may not unjustly discriminate. However, if the action is taken on the basis of the current use of illegal drugs, the disabled person does not have protection simply by virtue of his or her disability. The Committee understands that this was the intent of the Senate in passing its version of section 104(a). See September 15, 1989, 135 Cong. Rec. S. 11224-5 (Statement by Senator Tom Harkin).

Section 104(b) provides that rehabilitated individuals and those in treatment who no longer use illegal drugs and individuals who are erroneously regarded as illegal drug users are not excluded from the definition of "individual with a disabiliity." In removing protection for persons who currently use illegal drugs, the Committee does not intend to affect coverage for individuals who have a past drug problem or are erroneously perceived as having a current drug problem. Coverage for these groups is, therefore, made explicit in section 104(b) because, under the standard Rehabilitation Act analysis, an individual with a past or perceived disability is protected only if the actual physical or mental condition at issue is itself a disability. Because the condition of current drug use is no longer a disabiliity for purposes of this Act, it is necessary to state that nothing in the exclusion of illegal drug use or addiction from the definition of disabiliity shall be construed to mean that persons with past or perceived illegal drug dependence conditions are necessarily denied coverage under the Act. Of course, as with all other disabilities, such plaintiffs must prove that they have a record of a disability, or are regarded as having a disability, as "disability" has been defined under section 504 and this Act (i.e., a physical or mental impairment that substantially limits a major life activity).

Section 104(b) also permits employers to conduct drug tests or take reasonable actions to ensure that an individual is no longer using illegal drugs. This provision grants employers the same right as provided in section 104(d) to conduct drug tests on applicants and employees without violating this Act, but does not requires such testing. An employer may use other means to ensure that a person is no longer using drugs as long as those measures are reasonable. (See also the discussion on drug testing under section 104(d)).

Section 104(c) provides that a covered entity:

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988;

(4) may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual; and

(5) may require employees in sensitive positions, as defined by the Department of Transportation regulations regarding alcohol and drug use, the Department of Defense drug-free workplace regulations, and the Nuclear Regulatory Commission regulations regarding alcohol and drug use, to comply with the standards established by such regulations.

With respect to the defense that transportation employers may require that transportation employees meet requirements established by the Secretary of Transportation pursuant to and consistent with Federal law, the Committee wishes to make the following clarifications.

First, licensing of motor carrier drivers and railroad engineers, and certification of airplane pilots involves consideration of drunk and drug-related driving convictions, as recorded by individual States and made available to employers through the National Drivers Register at the Department of Transportation. In addition, records of other drug or alcohol related violations of State or Federal law may be considered as indicators of "fitness for duty" for safety-sensitive transportation positions.

Second, this defense applies to violations of Department of Transportation regulations concerning drug and alcohol use outside the workplace, e.g., an air crew member who, in violation of Federal Aviation Administration rules, drinks alcohol within 8 hours of going on duty.

Third, this defense applies to actions based on an individual's failure to pass DOT mandated drug and alcohol tests when administered in accordance with Federal and State laws, e.g., a truck driver who tests positive for illegal drugs and the failure or refusal to take a drug test mandated by Department of Transportation regulations.

The Committee has expanded the provision of section 104(c) beyond transportation employees because of concerns regarding employees in sensitive positions. The Committee has therefore added a new provision, section 104(c)(5), providing that a covered entity may require employees in sensitive positions, as defined by the Department of Transportation regulations regarding alcohol and drug use, the Department of Defense drug-free workplace regulations, and the Nuclear Regulatory Commission regulations regarding alcohol and drug use, to comply with the standards established by such regulations.

Section 104(d)(1) provides that a test to determine the use of illegal drugs is not considered a medical examination. The term "illegal drugs" is defined in section 101(5) and does not include drugs taken under supervision by a licensed health care professional. The exempted category includes, for example, experimental drugs taken under supervision. Many people with disabilities, such as people with epilepsy, AIDS, and mental illness, take a variety of drugs, including experimental drugs, under supervision by a health care professional. Discrimination on the basis of use of such drugs would not be allowed. Section 104(d)(2) further sepcifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results. Thus, nothing in this Act prohibits an employer from giving a test to any applicant or employee to determine the presence of illegal drugs and from refusing to hire the applicant or taking action against the employee if the test accurately detects the presence of illegal drugs. This is the case even if the applicant or employee who tests positive states that he or she recently stopped being a current drug user. The provision regarding drug testing for illegal drugs stands as an independent provision from the provision removing protection from individuals who are current users of illegal drugs.

The Committee believes that test results should be accurate and encourages covered entities to follow the Mandatory Guidelines on Federal Workplace Testing as issued by the Department of Health and Human Services. In any event, testing must comply with applicable Federal, State, or local laws or regulations regarding permitted testing, quality control, confidentiality, and rehabilitation; provided that, with respect to employees, as define by Department of Transportation, Department of Defense, and Nuclear Regulatory Commission regulations, if testing is undertaken, it must be done in compliance with applicable Federal laws and regulations.

Under section 104(d), applicants may be required to take a drug test before a conditional offer of employment has been given, and employees may be required to take a drug test without a showing that the test is job-related and consistent with business necessity, as is required under Section 102(c)(2-4) for other medical examinations. The Committee intends, however, that the application of this provision should not conflict with the right of individuals who take drugs under medical supevision not to disclose their medical condition before a conditional offer of employment has been given. See Sections 102(c)(2) and (3). Employers often use drug tests that detect the presence of a wide range of drugs, not simply illegal drugs. In addition, many legally prescribed medications taken under the supervision of a health care professional may register on a test as illegal drugs.

As noted above, however, section 102(c) prohibits the administration of a drug test, prior to a conditional offer of employment, which would identify prescription drugs taken for disability. Section 102(c) is designed to ensure that, for example, a person who take dilantin is not identified as a person with epilepsy at early stages of the selection process.

In order to clarify what type of tests are allowed, therefore, the Committee has added the word "illegal" before the word "drugs" in section 104(d)(1), to provide that: "(A) test to determine the use of *illegal* drugs shall not be considered a medical examination." (The bill passed by the Senate stated that a test "to determine the use of drugs shall not be considered a medical examination.") Thus, if employers wish to conduct drug tests before a conditional offer of employment is made, they must be sure that the test is designed to accurately identify "illegal drugs," as defined under this Act.

Even if employers limit their tests to those that accurately identify illegal drugs, if the employer takes adverse action against an individual who tests positive on such a test, the individual can challenge the action on the grounds that the positive result was caused by medication taken under medical supervision. Individuals who take medication under medical supervision and those who are erroneously regarded as illegal drug users are protected against discrimination. See sections 101(1) and 104(b).

Employers may, of course, avoid some of these difficulties by giving the drug test after a conditional offer of employment. Because individuals who are current users of illegal drugs are not protected under this Act, if the test accurately detects the presence of illegal drugs, the employer can then withdraw the conditional offer of employment with no liability under the Act. Moreover, drug tests after conditional offers of employment will better conserve employers' financial resources by limiting the number of individuals undergoing such costly exams.

Under section 104, employers are permitted, but certainly are not required, to discipline or discharge employees who are current users of illegal drugs. Many employers have instituted employee assistance programs and give employees who have drug problems an opportunity to obtain assistance before being disciplined or terminated. Although the reasonable accommodation provision in section 102(b)(5) of this title does not require that a covered entity provide a rehabilitation program or an opportunity for rehabilitation for current users of illegal drugs (because current users of illegal drugs are not covered under the Act), employers have often found that it is more cost effective to rehabilitate qualified employees than to terminate them and hire new employees. The Committee endorses these efforts and strongly encourages employers to continue to offer or to initiate such rehabilitation programs rather than to terminate qualified employees with a current drug problem.

As noted, under section 104, employers may discipline or discharge employees who are current users of illegal drugs. Such employees are not protected under the ADA. The professional sports leagues have developed drug policies to deal with players who have current drug problems. The Committee has reviewed those policies because the leagues have raised questions as to whether such policies comply with the Act.

The Committee believes that the leagues' policies are in compliance with the requirements of this Act. The National Football

League permits its players to test positive on drug tests to enter a treatment program and not be disciplined on the first occasion. Players who test positive on a second occasion are permitted to receive treatment but are suspended for a 30-day period or until later deemed fit to return. After a third positive drug test a player is banned from play and is ineligible for reinstatement for at least one year. This policy is consistent with the Act.

The National Basketball Association permits players who voluntarily seek treatment for a current drug problem to obtain treatment without cost to the player on the first occasion without suffering any discipline. Players who are using drugs and do not seek treatment voluntarily and are subsequently detected are terminated for a minimum period of two years. Players who relapse and seek treatment on a second occasion are suspended but permitted to receive treatment and return when deemed fit. Players who relapse for a second time are dismissed and cannot seek reinstatement for at least two years. The decision to reinstate players in both the NBA and the NFL is based on an individualized determination that takes into consideration the player's satisfactory completion of a treatment program, conduct following the dismissal, including completion of any suspension period. This policy is consistent with the Act.

Finally, major league baseball gives players who use drugs and those who test positive on a drug test an opportunity to obtain treatment before being disciplined. Players who relapse are disciplined but are permitted to obtain treatment on a second occasion. This policy is consistent with the Act.

As noted, these drug policies are entirely consistent with the nondiscrimination provisions of the Act. The Committee recognizes the right of these and other sports leagues to maintain the integrity of professional sports through disciplinary procedures, including dismissal, and recognizes that these three leagues have established reasonable policies that provide a means for players to receive rehabilitation, and for appropriate discipline including termination.

In addition, it is consistent with the Act for leagues that wish to do so to dismiss players who illegally use drugs or who relapse again after an opportunity to obtain treatment, while providing an opportunity to petition for discretionary reinstatement after a specified time period, upon a showing of rehabilitiaton, which includes abstinence from the use of illegal drugs to the satisfaction of the appropriate league authority, as one factor in the overall circumstances.

The National Hockey League has adopted a different policy that is also consistent with the Act. The National Hockey League suspends players who are involved with illegal drugs and provides an opportunity for reinstatement within a year based on a showing of positive rehabilitative conduct.

The Act is not intended to disturb the legitimate and reasonable disciplinary rules and procedures established and enforced by professional sport leagues as described above that have been entered into between league management and its players' association.

Posting notices

Section 105 of the legislation specifies that every employer, employment agency, labor organization, or joint labor-management committee covered under this title must post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

Regulations

Section 106 of the legislation specifies that not later than one year after the date of enactment of this Act, the Equal Employment Opportunity Commission must issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

It is the Committee's intent that these regulations will be drafted so as to be a self-contained document. The regulations should not incorporate by reference other laws or regulations. The Commission's regulations will have the force and effect of law.

This format will increase the likelihood of voluntary compliance on the part of covered entities and should minimize the need to hire a battery of lawyers to ascertain the obligations created by this legislation.

Enforcement

Section 107(a) of the legislation specifies that the remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 shall be available with respect to the Commission, the Attorney General, or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this legislation, or regulations promulgated under section 106 concerning employment. As has been the case under title VII of the Civil Rights Act of 1964, the Attorney General will continue to have pattern or practice authority with respect to State and local governments.

This provision reflects a change from the original H.R. 2273, which had provided as well the remedies available under section 1981 of the Civil Rights Act of 1866. An agreement was made that people with disabilities should have the same remedies available to all other minorities under Title VII of the Civil Rights Act of 1964.

Section 205 of H.R. 2273, as originally introduced, provided protection to individuals who believe that they are being or who are "about to be subjected to discrimination." This provision has been deleted because the Committee determined that the case law under title VII of the Civil Rights Act of 1964 already provides protection against discrimination in those circumstances with which the Committee had concerns, and thus, a specific provision in this title was unnecessary.

The Supreme Court has enumerated the "futile gesture" doctrine under title VII in *International Brotherhood of Teamsters* v. *United States,* 431 U.S. 324, 365–67: "When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application." The Committee intends for this doctrine to apply to this title.

The term "is being subjected to discrimination" also includes the situation where the employee discovers that the employer is redesigning office space in such a way that it will become inaccessible to disabled employees or is restructuring its operations in a manner that is adverse to disabled employees. In these situations, an employee is allowed to bring a suit to stop the illegal construction or restructuring before it begins.

The Committee recognizes that this legislation's requirements are substantially different from the other statutes governing private sector employment that are enforced by the Commission. The fact that most of the Commission's current professional employees are unfamiliar with disability nondiscrimination requirements will necessitate that the Commission provide extensive training for staff.

The Committee expects the Commission will establish and implement employer training programs and otherwise provide technical assistance to employers seeking to comply with the legislation's requirements. The Act expressly provides that technical assistance shall be afforded to those with rights and responsibilities under this Act. (See Section 506.)

Sec. 107(b) provides that the agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requiremetns under this title and the Rehabilitation Act of 1973. Section 107(b) further provides that such agencies shall establish such coordinating mechanisms in the regulations implementing this title and the Rehabilitation Act of 1973. The Committee added this provision specifically to address concerns raised by entities that will be covered under section 503 of the Rehabilitation Act (by virtue of receiving federal contracts in excess of $2,500) or under section 504 (by virtue of receiving federal financial assistance), as well as under this title. This provision is designed to ensure that such entities are not subject to a duplication of effort as they go through administrative and judicial proceedings, and are not subject in those proceedings to inconsistent or conflicting standards for the same requirements under this title and under the Rehabilitation Act.

Effective date

Section 108 of the legislation specifies that title I shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Title II of the legislation has two purposes. The first purpose is to make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, regardless of whether or not such entities receive Federal financial assistance. Currently, section 504 prohibits discrimination only by recipients of Federal financial assistance.

The second purpose is to clarify the requirements of section 504 for public transportation entities that receive Federal aid, and to extend coverage to all public entities that provide public transportation, whether or not such entities receive Federal aid.

Extending a Federal prohibition against discrimination on the basis of disability to all State and local governmental entities

Section 202 of the legislation extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local governmental entities. Specifically, section 202 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

The Committee has chosen not to list all the types of actions that are included within the term "discrimination", as was done in titles I and III, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all actions of state and local governments. The Committee intends, however, that the forms of discrimination prohibited by section 202 be identical to those set out in the applicable provisions of titles I and III of this legislation. Thus, for example, the construction of "discrimination" set forth in section 102 (b) and (c) and section 302(b) should be incorporated in the regulations implementing this title. In addition, however, section 204 also requires that regulations issued to implement this section be consistent with regulations issued under section 504. Thus, the requirements of those regulations apply as well, including any requirements such as program access that go beyond titles I and III. In addition, activities which do not fit into the employment or public accommodations context are governed by the analogous section 504 regulations. For example, under this title, local and state governments are required to provide curb cuts on public streets. The employment, transportation, and public accommodation sections of this Act would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets. Finally, it is also the Committee's intent that section 202 also be interpreted consistent with *Alexander* v. *Choate*, 469 U.S. 287 (1985).

Issues regarding communication also arise under this title. Throughout the United States, state and local governments provide for emergency telephone number systems. These systems enable individuals to seek immediate assistance from police, fire, ambulance, and other emergency services. In the event of an emergency, the ability to access an emergency system directly—often accessible by dialing 911—can mean the difference between life and death. Unfortunately, most of these systems nationwide remain inaccessible to hearing impaired and speech impaired individuals who use telecommunication devices for the deaf (TDD) to communicate by telephone. The result is both dangerous and alarming. For example, in one case in San Diego, California, a deaf woman died of a heart attack because the police did not respond when her husband tried to use his TDD to call 911. As part of its prohibition against discrimination in local and state programs and services, Title II will require local governments to ensure that these telephone emergency number systems are equipped with technology that will give hearing impaired and speech impaired individuals a direct line to these emergency services. While initially this will mean installation of a TDD or compatible ASCII or Baudot computer modems by programs operating these services, future technological advances—such as speech to text services—may offer other means of affording direct and equally effective access for these individuals.

The Committee recognizes that the phrasing of section 202 in this legislation differs from section 504 by virtue of the fact that the phrase "solely by reason of his or her handicap" has been deleted. The deletion of this phrase is supported by the experience of the executive agencies charged with implementing section 504. The regulations issued by most executive agencies use the exact language set out in section 202 in lieu of the language included in the section 504 statute.

A literal reliance on the phrase "solely by reason of his or her handicap" leads to absurd results. For example, assume that an employee is black and has a disability and that he needs a reasonable accommodation that, if provided, will enable him to perform the job for which he is applying. He is a qualified applicant. Nevertheless, the employer rejects the applicant because he is black and because he has a disability.

In this case, the employer did not refuse to hire the individual solely on the basis of his disability—the employer refused to hire him because of his disability and because he was black. Although the applicant might have a claim of race discrimination under title VII of the Civil Rights Act, it could be argued that he would not have a claim under section 504 because the failure to hire was not based solely on his disability and as a result he would not be entitled to a reasonable accommodation.

The Committee, by adopting the language used in regulations issued by the executive agencies, rejects the result described above. Court cases interpreting section 504 have also rejected such reasoning. As the Tenth Circuit explained in *Pushkin* v. *Regents of University of Colorado,* 658 F.2d 1372, the fact that the covered entity lists a number of factors for the rejection, in addition to the disability, is not dispositive. In *Pushkin,* the University states that Dr. Pushkin was rejected because of low interview scores. The court stated that "it is not possible to extricate the mean ratings from the reactions to the handicap itself." 658 F.2d at 1386.

Moreover, the interview ratings "as a general practice are not necessarily controlling in the selection process." Id. at 1386. The

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question was whether "the reasons articulated for the rejection other than handicap encompass unjustified consideration of the handicap itself" Id. at 1387. As stated by the court, the "issue is whether rejecting Dr. Pushkin after expressly weighing the implication of his handicap was justified." Id. at 1386.

In sum, the existence of non-disability related factors in the rejection decision does not immunize employers. The entire selection procedure must be reviewed to determine if the disability was improperly considered.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modification to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services of the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

The term "instrumentality of a state and local government" includes public transit authorities.

With regard to school bus operations by public entities, such operations shall be treated as demand-responsive operations. Agencies of a State, or a political subdivision of a State, that provide school bus transportation are required to provide bus service to children with disabilities equivalent to that provided to children without disabilities (whether provided directly or by contract or other arrangement with a private entity).

The school bus transportation provided to children with disabilities must be provided in the most integrated setting possible. This means that when a child with a disability requires transportation, the school bus that serves his/her route should be accessible. This does not mean that all school buses need to be accessible; it means that equal nonsegregated opportunities must be provided to all children. However, the lack of an accessible bus may never be used to limit the placement options of a student with a disability. For example, a student with a disability may not be precluded from attending the most integrated school because of the lack of transportation.

School bus operations, as defined in 49 CFR 605.3(b) and the associated revisions established in Highway Safety Program Standard No. 17, means transportation by Type I and II school bus vehicles of school children, personnel, and equipment to and from school or school-related activities.

Actions applicable to public transportation considered discriminatory

Definition

As used in title II, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, including service contracted through a private sector entity.

As used in title II, the term "public entity" includes the National Railroad Passenger Corporation.

The Committee excluded transportation by air because the Congress recently passed the Air Carrier Access Act, which was designed to address the problem of discrimination by air carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent. However, this title applies to the public entities' fixed facilities use in air travel, such as airport terminals, and to related services, such as ground transportation, provided by public entities.

It is not the Committee's intent to make the vehicle accessibility provisions of this title applicable to vehicles donated to a public entity. The Committee understands that it is not usual to donate vehicles to a public entity. However, there could be instances where someone could conceivably donate a bus to a public transit operator in a will. In such a case, the transit operators should not be prevented from accepting the gift.

The Committee does not intend that this limited exemption for donated vehicles be used to circumvent the intent of the ADA. For example, local transit authority could not arrange to be the recipient of donated inaccessible buses. This would be a violation of the ADA.

As a general rule, all requirements for nondiscrimination apply not only to the design of vehicles and facilities but to their operation as well. Thus, new fixed route buses must have lifts, and new and key stations must have elevators or other means to ensure accessibility as necessary components for a transit authority to be in compliance with the provisions of this title of the legislation. Merely installing the access equipment is never sufficient by itself, however; the lifts and elevators must also operate, be in good working order, and be available when needed for access in order for an entity to be in compliance with the law.

The Committee believes that a strong commitment from a transit authority's management team will ensure nondiscrimination in the provision of transportation to people with disabilities. This includes adequate training of maintenance personnel and bus operators, sensitivity training of all personnel which stresses the importance of providing transportation, and creative marketing strategies.

New buses, rail vehicles, and other fixed route vehicles

Section 203(b)(1) of the legislation specifies that it shall be considered discrimination, for purposes of this Act and for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This requirement is included to ensure that an accessible transportation system is phased-in as new vehicles are purchased. It makes no sense, at this point in time, to perpetuate continued inaccessibility and to exclude persons with disabilities from the opportunity to use a key public service—transportation. Inaccessible vehicles affect more than just individuals with disabilities' ability to travel independently. It affects their ability to gain employment. When such individuals are able to depend on an accessible transportation system, one major barrier is removed which could prevent them from joining the work force. This ability ultimately affects our society as a whole. Accessible transportation also allows individuals with disabilities to enjoy cultural, recreational, commercial and other benefits that society has to offer.

Transportation affects virtually every aspect of American life. Mainline services are geared to moving people to and from work, school, stores, and other activities on schedules that reflect most people's daily routines. It is false and discriminatory to suggest that people with disabilities—who have the same needs as other community residents—are not as interested in or worthy of using transit services as people without disabilities.

The term "fixed route" means a bus system that operates on a continuing and regular basis on a fixed pattern and schedule.

The term "new" means buses which are offered for first sale or lease after manufacture without any prior use. Buses for which a solicitation is made within 30 days after enactment of this legislation are not subject to the accessibility requirement and thus are not required to have wheelchair lift equipment. However, buses that are solicited for after 30 days from enactment of this legislation are covered by the accessibility provision and would have to comply with the requirement that all newly purchased vehicles be accessible to people with disabilities including wheelchair users.

The phrase "for which a solicitation by such individual or entity is made" means when a public entity asks for bids from manufacturers to build buses or begins to offer to purchase or bid for the purchase of new buses 30 days after enactment of this legislation.

The term "readily accessible to and usable by" is a term of art that means the ability of individuals with disabilities, including individuals using wheelchairs, to enter into and exit and safely and effectively use a vehicle used for public transportation.

Lifts or ramps and other equipment, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals using wheelchairs or other mobility aids; how many spaces per vehicle are to be made available for wheelchairs is, however, a determination that depends upon various factors, including the number of vehicles in the fleet, the seat vacancy rates, and usage of people with disabilities.

The Committee intends, consistent with these factors, that the determination of how many spaces must be available for wheelchair use should be flexible and generally left up to the provider, provided that at least some seats on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be promulgated under this legislation. These minimum guidelines should be consistent with the Committee's desire for flexibility and decisionmaking by the provider.

The Committee wishes to emphasize that the legislation uses the phrase "including individuals who use wheelchairs" because of misinterpretations of the nature and extent of obligations under section 504. The obligation to provide public transportation in a nondiscriminatory fashion applies to all persons with disabilities, including people with sensory impairments and those with cognitive impairments such as mental retardation. It is the Committee's intent that the obligation to provide lift service applies, not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. For example, people who use crutches, walkers or three-wheeled mobility aids should be allowed to use a lift.

A public transit authority should develop training sessions to familiarize bus operators with the services that individuals with disabilities may need. For example, assuring that people with vision impairments get off at the correct stop, training bus drivers how to use the lift in a bus, and developing a program which would assist people with mental retardation in how to use the transportation system. Transit authorities should also be required to have written materials available in a format accessible to people with vision impairments and to make TDD numbers available to persons with hearing and communication impairments.

Section 203(e) of the legislation provides temporary relief for public entities from the obligations under section 203(b) where lifts are unavailable. Specifically, with respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities, if such public entity can demonstrate the existence of four factors:

(1) That the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) The unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) That the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) That any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

Section 203(f) of the legislation makes it clear that any relief granted under subsection (e) must be limited in duration by a specified date. In addition, if, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall cancel such relief, if such relief is still in effect, and take other steps that he or she considers appropriate.

Further, the appropriate committees of the Congress must be notified of any such relief granted. The appropriate committees in the House include the Committee on Education and Labor and the Committee on Public Works and Transportation.

Used vehicles

Section 203(b)(2) of the legislation specifies that if a public entity purchases or leases a used vehicle after the date of enactment of this Act, such public entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily acessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The term "used vehicle" means a vehicle that was purchased before a date which is at least 30 days prior to the enactment of this legislation. Frequently small and rural communities do not purchase new buses. Many of these communities buy used buses that are less than new buses in an effort to provide transportation to individuals in these areas without expending large sums of money. Purchasers of used vehicles are required by this legislation to make "demonstrated good faith efforts" to locate accessible used vehicles.

The phrase "demonstrated good faith efforts" is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It might involve the transit authority advertising in a trade magazine, i.e. Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available.

It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy.

Remanufactured vehicles

Section 203(b)(3) of the legislation specifies that if a pubic entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its useful life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The phrase "remanufactures a vehicle or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more" means that the vehicle is stripped to its frame and is then rebuilt. It does not simply mean an engine overhaul. The additional cost to make a remanufactured vehicle accessible would be comparable to the cost of making a new vehicle accessible. Therefore, remanufactured vehicles should be treated the same as new vehicles.

The phrase "to the maximum extent feasible" is included in order to provide clarification that the Committee does not intend to require accessibility for remanufactured vehicles if it would destroy the structural integrity of the vehicle.

Paratransit as a supplement to fixed route public transportation system

Section 203(c) of the legislation specifies that if a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity to fail to ensure the provision of paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden may include a flexible numerical formula that incorporates appropriate local characteristics such as population. Although the legislation mentions only population as an example of local characteristics that might be reflected in such a formula, other characteristics appropriate to consider include population density, level of paratransit services currently being provided in the area, residential patterns, and the interim degree of accessibility of fixed route transit service.

Notwithstanding the above provisions, the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

It is the Committee's intent that any criteria developed by the Secretary regarding the "undue financial burden" proviso, including the use of a formula, be consistent with that portion of the *ADAPT* v. *Skinner* decision handed down on July 24, 1989 by the Third Circuit Court of Appeals concerning the three percent "safe harbor" provision. *ADAPT* v. *Skinner*, 881 F.2d 1184 (3d Cir. 1989).

The Committee recognizes that there will always be a need for paratransit services. Paratransit services must be available to individuals who are unable to ue mainline public transportation. By "unable to use" the committee means to include those individuals who cannot gain access to the public transportation systems. The reasons for this inability to access the transit system could be because of the nature and severity of the individual's physical or mental disability or because of other factors determined by the local community, such as the lack of curb cuts which would prevent individuals with certain disabilities from traveling to a bus stop.

In developing the criteria that will be used to determine which individuals with disability are unable to use the transportation services, it is important to significantly involve organizations representing people with disabilties and individual consumers with disabilities. The Committee wishes to make it clear that criteria developed to determine eligibility for paratransit e.g., inability to use mainline transportation services shall not be used to prevent, limit, or otherwise exclude such individuals from using mainline services if they so choose.

The term "paratransit or other special transportation services" means a transportation system that is available to those individuals who are unable to use the transportation system available to other people. This has been characteristically provided by transit authorities or contracted out to private companies and uses small buses or vans. Usually, the service is demand responsive or door-to-door service.

The Committee does not intend to require a public transit authority to actually provide paratransit or other special transportation services if such services are provided by other entities serving the same geographical location as is served by the pubic transit authority providing the fixed route system. However, the Committee wishes to emphasize that the paratransit or other special transportation services provided must be consistent with the requirements set out in this legislation and a public transit entity must be ulitmately accountable for ensuring that the services are being provided in compliance with this legislation.

The following minimum service criteria should apply to special paratransit service systems that are used to supplement a fixed route accessible system:

(a) Eligibility. All persons with disabilities unable to use the fixed route vehicles and their companions shall be eligible to use the special service.

(b) Response time. The service should be provided to a person with a disability with a comparable response time that a person without a disability would receive.

(c) Restrictions or priorities based on trip purpose. There shall not be priorities or restrictions based on trip purpose on users of the special service.

(d) Fares. The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the fixed route service.

(e) Hours and days of service. The special service shall be available throughout the same hours of days as the fixed route service.

(f) Service area. The special service shall be available throughout the service area in which the fixed route service is provided. Service to points outside this service are served by extended express or commuter bus service shall be available to persons with disabilities in an accessible manner.

The term "comparable level of services" means that when all aspects of a transportation system are analyzed, equal opportunities to use the transportation system exist for all persons—individuals with and without disabilities. The essential test to meet is whether the system is providing a level of service that meets the needs of persons with and without disabilities to a comparable extent.

For instance, if a person with a disability calls for a ride on a demand response system for the general public—and an accessible bus arrives within fifteen minutes—that is equal treatment if a person without a disability has to wait for the bus for an equivalent amount of time. However, if the bus arrives and it does not have a lift and one is needed, or if a disabled person has to wait considerably more time than a non-disabled person, then equal opportunity to use the demand responsive public transportation system is not being provided.

The term "other individuals associated with such individuals with disabilities" means the companions of those individuals who canot otherwise use fixed route bus service whether they are part of the person's family, or friends of the individual with a disability. For instance, if a father wanted to take his children to the zoo and paratransit services are the only means of transportation that father is qualified for, he should be allowed to take his children on the paratransit bus. He should not be relegated to the paratransit by himself while his children are required to take fixed route public transportation.

If a man and woman were dating and the woman could not otherwise use public fixed route transportation then they should be able to use the paratransit services to and from that date. Likewise, if an individual had out of town guests and one of the out of town guests cannot use the fixed route bus system and is qualified to use the paratransit services of the state where they are visiting, then everyone in the group should be allowed to use the paratransit service to go sightseeing.

The Committee intends that during the interim period in which substantial numbers of fixed route buses are not accessible, the public transit authorities form an advisory committee to ensure the participation of individuals with disabilities in the planning, development, and implementation stages of the transportation system. One way to do this is by instituting an advisory group. Careful consideration should be given to the composition of the advisory group and every effort should be made to have adequate representation from all elements of the disability community.

This advisory group is an essential component to the development of standards which must then appear in the authorities' transit plan. Cooperation between the disability community and the transit operators is imperative during the period of time in which the system will be in transition, from an inaccessible system to an accessible one.

The transition options chosen will depend, to a certain extent, on the system involved. Some systems will require the broadest use of the existing accessible buses. For instance, it may be advantageous for a small system to require that all the accessible buses be in service during both off-peak and peak hours and at regular intervals so as to provide some service to the most people. A larger system might choose to make key lines accessible or ensure that the feeder lines are accessible. In this way, the system will be providing meaningful transportation at least to a portion of the individuals that need the access of the system.

The mainline interim service agreed upon by the advisory Committee must be available throughout the regular service area and during the normal service hours. This service, to the extent feasible, must meet a number of criteria as to convenience and comparability to regular mainline service (e.g., no restriction as to trip purpose, wait, fares and travel time).

Regardless of the mainline accessible transportation that will be available, it is important that a paratransit service be in place to ensure adequate access in those areas where accessible mainline service cannot yet be achieved. It is equally as important to realize that paratransit will always be necessary for those individuals who for legitimate reasons are unable to use mainline accessible service.

The local transit authority must be sincere in its efforts to coordinate special services in the locality to meet the service standards. The paratransit services should meet the service criteria both during the transition phase and thereafter.

Community operating demand responsive systems for the general public

Section 203(d) of the legislation specifies that if a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such public entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public.

The intent of the Committee is to provide flexibility for rural and small urban communities that only have a demand responsive system for everyone. These systems are available to people without disabilities as well as to those with disabilities. The Committee intends that the time delay between a telephone call to access the demand responsive system and the pick up of the individual is not to be greater because the individual needs a lift or ramp or other accommodation to access the vehicle.

The term "demand responsive service" means service where the individual must request transportation service before it is rendered. This fact distinguishes this type of service from fixed route service.

With fixed route service, no action is needed by an individual to initiate public transportation. If an individual is at a bus stop at the time the bus is scheduled to appear then that individual will be able to access the transportation system. With demand-responsive service, an additional step must be taken by the individual before he or she can ride the bus i.e., the individual must make a telephone call. In this type of service, the transit provider will know ahead of time whether or not an accessible vehicle is necessary. Therefore, all demand responsive vehicles need not be accessible as long as the level of service provided to individuals with disabilities is equal to that provided to those without disabilities.

The phrase "when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public" means that when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist.

The Committee wishes to make it clear that the authority of the Secretary to grant temporary relief where lifts are unavailable applies to communities operating demand responsive as well as fixed route bus systems.

New facilities

Section 203(g) opf the legislation specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, inter-city rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The meaning of the key phrases used in this subsection are described subsequently in the section of the report pertaining to title III of the Act.

Alterations of existing facilities

Section 703(h) of the legislation specifies that, with respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation) such public entity shall also make any additional alterations that are necessary to ensure that, to the maximum extent feasible, a path of travel from a primary entrance, and a reasonable number of bathrooms, telephones, and drinking fountains serving such path of travel are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The key phrases used in this subsection are described subsequently under the section of the report concerning title III of the legislation.

Existing facilities

Section 203(i)(1) of the legislation specifies that with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for the public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This is the same standard that currently applies under section 504 regulations issued by the Department of Transportation.

The standards set out above do not apply to stations in intercity rail systems, and key stations in rapid rail, commuter rail and light rail systems. Such stations are governed by section 203(i)(3) of the legislation, which specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Intercity rail systems, including the National Railroad Passenger Corporation, must be made accessible as soon as practicable, but in no event later than 20 years after the date of enactment. Key stations in rapid rail, and light rail systems must be made accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

The Committee intends that the term "key stations" shall include stations that have high ridership, and stations that serve as transfer and feeder stations. The public transit authority shall develop a plan for complying with the requirement that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of this requirement.

The phrase "key stations" includes hig ridership stations since individuals with disabilities have the same travel objectives as individuals without disabilities. Stations may have high ridership because they are located in business and employment districts, cultural, educational, recreational and entertainment centers, or are transfer points from other modes of transportation.

In addition to high ridership stations, "feeder stations" should be designated as "key" because they generally are located in suburban areas. Making these stations accessible will provide individuals with disabilities who live in these areas the ability to commute.

Exactly what stations will be determined "key" is a decision best left to the local community. The Committee does not intend to mandate a process to identify "key stations" except that—in developing the criteria that will be used to determine which stations will be "key"—it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities.

It is the Committee's understanding the settlement agreements recently reached in New York City specifying approximately 38 particular stations out of over 465 stations in the system and in

Philadelphia where 11 out of approximately 53 stations on the high speed line and 31 out of approximately 172 commuter rail stations are to be considered "key stations" are in full compliance with the criteria and procedures set out above.

The phrase "as soon as practicable" is included in order to create an obligation to attain accessibility before the specified period of time has elapsed. It is the intent of this Committee that this requirement would prohibit a transit authority from delaying the installation of an elevator, if capital funds were available and the installation could otherwise be accomplished, just because the absolute time limit is not up.

The phrase "extraordinarily expensive structural change to or replacement of existing facilities" is intended to create a narrow exemption for the facilities where the only means of creating accessibility would be to raise the entire platform of a station or to install an elevator. The costs to accomplish these structural changes can be extremely costly.

In issuing regulations for the enforcement of this section, the Secretary of Transportation may prescribe a procedure for the resolution of disputes when a local rail transit operator and representatives of the disability community are unable to reach mutual agreement.

Intercity, rapid, light, and commuter rail systems

Section 203(i)(2) of the legislation specifies that with respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

It is the Committee's expectation that the regulations issued by the Secretary of Transportation will ensure that the car that is accessible stops at an approrpiate place in the station that is level with the car and that signage is included to indicate where such car will stop.

Regulations

Section 204 of the legislation specifies that not later than one year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordinated regulations under part 41 of title 28 Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility", "existing facilities" and "communications", such regulations shall be consistent with applicable portions of regulations and analysis relating to Federally conducted activities under section 504 of the Rehabilitation Act of 1973 (part 39 of title 28 of the Code of Federal Regulations).

Section 204(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that includes standards applicable to facilties and vehicles covered under section 203.

Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Enforcement

Section 205 of the legislation specifies that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning public services.

It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

Definitions

The term "commerce" is defined in section 301(1) of the legislation to mean travel, trade, traffic commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State, or between points in the same State but through another State or foreign country.

The term "commercial facilities" is defined as facilities that are intended for non-residential use and whose operations will affect commerce. This term is discussed later in the report.

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

> (1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
>
> (2) A restaurant, bar, or other establishment serving food or drink;
>
> (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
>
> (4) An auditorium, convention center, or lecture hall;
>
> (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;
>
> (6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;
>
> (7) A terminal used for public transportation;
>
> (8) A museum, library, gallery, and other similar place of public display or collection;
>
> (9) A park or zoo;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(12) A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are exhaustive. However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase "other similar" entities. The Committee intends that the "other similar" terminology should be construed liberally, consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities.

For example, the legislation lists "golf course" as an example under the category of "place of exercise or recreation." This does not mean that only driving ranges constitute "other similar establishments." Tennis courts, basketball courts, dance halls, playgrounds, and aerobics facilities, to name a few other entities, are also included in this category. Other entities covered under this category include video arcades, swimming pools, beaches, camping areas, fishing and boating facilities, and amusement parks.

Similarly, although not expressly mentioned, bookstores, video stores, stationery stores, pet stores, computer stores, and other stores that offer merchandise for sale or rent are included as retail sales establishments.

The phrase "privately operated" is included to make it clear that establishments operated by Federal, State, or local governments are not covered by this title. Of course an establishment which is operated by a private entity and which is covered under this title, but which also receives Federal, State, or local funds is still covered by this title, as well as under any other applicable laws.

Only nonresidential facilities are covered by this title. For example, in a large hotel that has a residential apartment wing, the residential wing would be covered under the Fair Housing Act (42 U.S.C. secs. 3601 et seq., as amended), rather than by this title. The nonresidential accommodations in the rest of the hotel would be covered by this title.

Private schools, including elementary and secondary schools, are covered by this title. The Committee does not intend, however, that compliance with this legislation requires a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations implementing section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104) and regulations implementing part B of the Education of the Handicapped Act (34 CFR Part 300). Of course, if a private school is under contract with a public entity to provide a free appropriate public education, it must provide such education in accordance with section 504 of the Rehabilitation Act and part B regulations of the Education of the Handicapped Act.

The terms "readily achievable" and "public transportation" are discussed elsewhere in this report.

Prohibition of discrimination by public accommodations

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

"Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of H.R. 2273 as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the substitute. However, as explained above, deletion of the original title I does not indicate a rejection of the general anti-discrimination provisions. Rather, the general prohibitions of the original title I have been incorporated into the specific title.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

> To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;
>
> To afford such an opportunity that is not equal to that afforded other individuals; or
>
> To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

The intent of the contractual prohibitions of section 302(b)(1)(A) (i)-(iii) is to prohibit a public accommodation from doing indirectly through a contractual relationship, what it may not do directly. Thus, the "individual or class of individuals" referenced in section 302(b)(1)(A) (i)-(iii) has always been intended to refer to the clients and customers of the public accommodation that entered into a contractual arrangement. The section has never been intended to encompass the clients or customers of *other* entities. Thus, a public accommodation is not liable under this provision for discrimination that may be practiced by those with whom it has a contractual relationship, when that discrimination is not directed against its own clients or customers.

In order that the scope of the contractual prohibition be made clear, however, the Committee has added section 302(b)(1)(A)(iv) to the title which provides that:

> **For purposes of section 302(b)(1)(A)(i)-(iii), the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing or other arrangement.**

This addition tracks a similar clarification in the statute which was made in title I of the Act. See section 102(b)(2).

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the need of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the exisence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public accommodations are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

The Committee wishes to emphasize that these provisions should not be construed to jeopardize in any way the continued viability of separate private schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, the Committee wishes to reaffirm that individuals with disabilities cannot be denied the opportunity to particiapte in programs that are not separate or different. This is an important and over-arching principle of the Committee's bill. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used in any way to restrict the participation of disabled persons in general, integrated activities.

For example, a blind person may wish to decline participating in a special museum tour that that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this title to require the blind person to avail himself or herself of the special tour. The Committee intends that modified participation for persons with disabilities be a choice, not a requirement.

In addition, it would not be a violation of this title for an establishment to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this title if the entity then excluded such children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Providing services in the most integrated setting is a fundamental principle of the ADA. Historically, persons with disabilities have been relegated to separate and often inferior services. For example, seating for persons using wheelchairs is often located in the back of auditoriums. In addition to providing inferior seating, the patron in a wheelchair is forced to separate from family or friends during the performance.

At times, segregated seating is simply the result of thoughtlessness and indifference. At other times safety concerns are raised, such as requiring patrons to sit near theater exits because of perceived hazards in case of fire. The purported safety hazard is largely based on inaccurate assumptions and myths about the ability of people with disabilities to get around in such circumstances. People who use wheelchairs vary greatly (as does the general public) in their individual ability to move quickly or slowly. More "safety hazard" is created by a slow-moving ambulatory person than by a fast-moving wheelchair athlete.

A balance between the safety interest and the need to preserve a choice of seating for movie patrons who use wheelchairs has been accomplished under existing federal accessibility standards (UFAS. sec. 4.33.3) that have applied since 1984 to theaters, auditoriums and other places of assembly constructed with federal funds. These standards provide that wheelchair seating areas must be "dispersed throughout the seating area" and "located to provide lines of sight comparable to those for all viewing areas." Wheelchair areas are not restricted to areas "near an exit," but can be located in various parts of the theater so long as they "adjoin an accessible route that also serves as a means of egress in case of emergency."

The availability of a choice of seating is critical to assure that patrons with disabilities are not segregrated from family or friends. New construction must therefore provide a variety of seating options. In existing theaters, efforts should be made to increase seating options where readily achievable. If removal of seats is not readily achievable, at a minimum, the entity must modify rules and procedures to allow a non-disabled companion to sit with the person who uses a wheelchair, by providing, for example, a folding chair. Finally, it is critical that seating be available in the front of the audience for persons with hearing and vision impairments, including those who use wheelchairs.

Section 302(b)(1)(D) of the legislation specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. This provision is identical to section 102(b)(3) of the bill, which was discussed previously in the report.

Section 302(b)(1)(E) of the legislation specifies that it shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. This provision is comparable to section 102(b)(4) of the legislation, which was discussed previously in the report. The term "entity" is included in this section because, at times, entities that provide services to, or are otherwise associated with people with disabilities, are subjected to discrimination as well.

Section 302(b)(1) includes general prohibitions restricting a public accommodation from discriminating against people with disabilities by denying them the opportunity to benefit from goods or services, by giving them unequal goods or services, or by giving them different or separate goods or services. These general prohibitions are patterned after the basic, general prohibitions that exist in other civil rights laws that prohibit discrimination on the basis of race, sex, religion, or national origin.

In order not to discriminate against people with disabilities, however, certain steps must often be taken as well in order to ensure that an opportunity for individuals with disabilities to participate in the goods or services is effective and meaningful. Thus, section 302(b)(2) includes specific prohibitions against discrimination, which refer to such requirements as providing auxiliary aids, modifying policies, or making various types of physical access changes. Certain limitations have been incorporated into these obligations: for example, a public accommodation need not provide an auxiliary aid if doing so would impose an undue burden, and physical access changes to existing facilities need be made only if they are readily achievable.

It should be noted that the specific provisions, including the limitations in these provisions, control over the general provisions to the extent that there is any apparent conflict. This interaction between the specific and general prohibitions operates with regard to the contractual prohibition as well. Thus, in situations in which there is no limiting factor (cost or otherwise) when the entity acts directly, there is similarly no limiting factor when the entity acts indirectly through a contract. Similarly, when there is a limiting "factor" when the entity acts directly (e.g., the limitation of "undue burden" in providing auxiliary aids and services or the limitation of "readily achievable" for physical access changes in existing facilities), that same limitation applies if the entity is acting indirectly through a contractual relationship.

As noted, the reference to contractual arrangements is tc make clear that an entity may not do indirectly through contractual arrangements what it is prohibited from doing directly under this Act. However, it should also be emphasized that this limitation creates no substantive requirements in and of itself. Thus, for example, a store located in an inaccessible mall or other building, which is operated by another entity, is not liable for the failure of that other entity to comply with this Act by virtue of having a lease or other contract with that entity. This is because, as noted, the store's legal obligations extends only to individuals in their status as its own clients or customers, not in their status as the clients or customers of other public accommodations. Likewise, of course, a covered entity may not use a contractual provision to reduce any of its obligations under this Act. In sum, a public accommodation's obligations are not extended or changed in any manner by virtue of its lease with the other entity. The Committee intends that implementing regulations be issued by the Attorney General that will specifically address this area.

Section 302(b)(2)(A)(i) of the legislation specifies that the term "discrimination" includes the imposition or application of eligibility criteria that screen out or tend ot screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

As explained above, it is a violation of this title to exclude persons with disabilities. For example, it would be a violation for a grocery store to impose a rule that no blind persons would be allowed in the store, or for a drugstore to refuse to serve deaf people. It also would be a violation for such an establishment to invade such individuals' privacy by trying to identify unnecessarily the existence of a disability—for example, for purposes of a credit application, by a department store inquiring whether an individual has epilepsy, has ever had been hospitalized for mental illness, or has any other disability.

Similarly, it can constitute a violation to impose critria that limit the participation of people with disabilities—for example, by requiring that individuals with Down syndrome only be seated at the counter, but not in the table-seating section of a diner.

It would also be a violation of this title to adopt policies which impose additional requirements or burdens upon people with disabilities that are not applied to other persons. Thus, it would be a violation for a theater or restaurant to adopt a policy specifying that individuals who use wheelchairs must be chaperoned by an attendant.

In addition, this subsection prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, drawn from current regulations under Section 504 (See, e.g. 45 C.F.R. 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, diminish such individuals' chances of participation.

Such diminution of opportunity to participate can take a number of different forms. If, for example, a drugstore refuses to accept checks to pay for prescription drugs unless an individual presents a driver's license, and no other form of identification is acceptable, the store is not imposing a criterion that identifies or mentions disability. But for many individuals with visual impairments, and various other disabilities, this policy will operate to deny them access to the service available to other customers; people with disabilities will be disproportionately screened out.

A public accommodation may, however, impose neutral rules and criteria that are necessary for the safe operation of its business. For example, a height limit for certain rides at an amusement park will screen out certain adults of short stature, but may still be a legitimate safety criterion. Safety criteria, however, must be based on actual risks and not on speculation, stereotypes, or generalizations about disability.

Section 302(b)(2)(A)(ii) of the legislation specifies that discrimination includes a failure to make reasonable modifications in policies, practices, and procedures when such modifications may be necessary to afford such goods, services, facilities, privileges, advantages, or accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

Many physicians have developed areas of specialization. Nothing in this legislation is intended to prohibit such a physician from referring a patient with a disability to another physician if that patient is seeking treatment outside the doctor's specialization and if the doctor would make a similar referral for an individual without that disability. For example, a physician who specializes in treating burn victims could not refuse to treat the burns of a deaf individual because of that individual's deafness. However, that physician is not required to accept the deaf individual as a patient if the individual does not have burns. The physician would need only to provide other types of medical treatment to the burn victim if the physician provided such other treatments to nondisabled individuals.

Likewise, nothing in this legislation is intended to prohibit a physician from referring an individual with a disability to another physician if the physician would refer other, nondisabled individuals with the same presenting conditions to another physician, or if the disability itself creates specialized complications for the patient's health which the physician lacks the experience or knowledge to address.

Similarly, a drug rehabilitation clinic could refuse to treat a person who was not a drug addict but could not refuse to prohibit a physician from referring an individual with a disability to another physician if the physician would refer other, nondisabled individuals with the same presenting conditions to another physician, or if the disability itself creates specialized complications for the patient's health which the physician lacks the experience or knowledge to address.

Similarly, a drug rehabilitation clinic could refuse to treat a person who was not a drug addict but could not refuse to treat a person who was a drug addict simply because the patient tests positive for HIV.

A public accommodation which does not allow dogs must modify that rule for a blind person with a seeing-eye dog, a deaf person with a hearing-ear dog, or a person with some other disability who uses a service dog. Refusal to admit the dog in these circumstances is tantamount to refusing to admit the person who is in need of the dog. Moreover, a public accommodation may not require the person with the disability to be separated from the service, guide, or seeing-eye dog once inside the facility.

Section 302(b)(2)(A)(iii) of the legislation specifies that discrimination includes a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, advantages, or accommodations being offered or would result in an undue burden.

The phrase "undue burden" is the limit applied under this title upon the duty of places of public accommodation to provide auxiliary aids and services. It is analogous to the phrase "undue hardship" used in the employment title of the Act and is derived from section 504 and regulations thereunder. The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determining "undue hardship." (See previous discussion in the report.)

The fact that the provision of a particular auxiliary aid would result in a undue burden does not relieve the business from the duty to furnish an alternative auxiliary aid, if available, that would not result in such a burden.

The term "auxiliary aids and services" is defined in section 3(1) of the legislation. The definition includes illustrations of aids and services that may be provided. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation.

The Committee expects that the public accommodation will consult with the individual with a disability before providing a particular auxiliary aid or service. Frequently, an individual with a disability requires a simple adjustment or aid rather than an expensive or elaborate modification often envisoned by a public accommodation.

For example, auxiliary aids and services for blind persons include both readers and the provision of brailled documents (see below). A restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Similarly, a bookstore need not braille its price tags, stock brailled books, or lower all its shelves so that a person who uses a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

The legislation specifies that auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. Other effective methods may include: telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for the deaf, closed captions, and decoders.

For example, it would be appropriate for regulations issued by the Attorney General to require hotels of a certain size to have decoders for closed captions available or, where televisions are centrally controlled by the hotel, to have a master decoder.

It is also the Committee's expectation that regulations issued by the Attorney General will include guidelines as to when public accommodations are required to make available portable telecommunication devices for the deaf. In this regard, it is the Committee's intent that hotel and other similar establishments that offer nondisabled individuals the opportunity to make outgoing calls, on more than an incidental convenience basis, will provide a similar opportunity for hearing impaired customers and for customers with communication disorders to make such outgoing calls by making available a portable telecommunication device for the deaf.

It is not the Committee's intent that individual retail stores, doctors' offices, restaurants or similar establishments must have telecommunications devices for the deaf since people with hearing impairments will be able to make inquiries, appointments, or reservations with such establishments through the relay system established pursuant to title IV of the legislation, and the presence of a public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers, are, however, encouraged to produce and distribute open-captioned versions of films, and theaters are encouraged to have at least some pre-announced screenings of a captioned version of feature films.

Places of public accommodations that provide films and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services include qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services include the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-quided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities.

Indeed, the Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times. This is a period of tremendous change and growth involving technology assistance and the Committee wishes to encourage this process. (See, for example, the enactment in 1988 of P.L. 100-407, the Technology Related Assistance for Individuals with Disabilities Act). Information exchange is one of the areas where there are still substantial barriers, but where great strides are being made. Access to time sensitive print information, whether in the press or in government documents (such as notices of grants and contracts in the Federal Register or the Commerce Daily) is one of the cornerstones of our free society and of equal opportunity and access. It is not coincidental that access to information was the first guarantee extended by the Bill of Rights.

For these reasons, the Committee expects the Federal agencies charged with the implementation of this Act to take special interest in being aware of the possibilities relating to information dissemination and to make special efforts to share this information through technical assistance programs. Programs such as the Newspapers for the Blind Program in Flint, Michigan, a program which has been nationally recognized and is in the process of being emulated, provide an excellent example of what can be done in this area.

Section 302(b)(2)(A)(iv) of the legislation specifies that discrimination includes a failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable.

The Committee was faced with a choice in how to address the question of what actions, if any, a public accommodation should be required to take in order to remove structural barriers in existing facilities and vehicles. On the one hand, the Committee could have required retrofitting of all existing facilities and vehicles to make them fully accessible. On the other hand, the Committee could have required that no actions be taken to remove barriers in existing facilities and vehicles.

The Committee rejected both of these alternatives and instead decided to adopt a modest requirement that public accommodations make structural changes or adopt alternative methods that are "readily achievable."

The phrase "readily achievable" is defined in section 301(5) to mean actions that are easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The overall size of the business of a covered entity with respect to number of employees; the number, type, and location of its facilities; the overall financial resource of the entity and the financial resources of its facility or facilities involved in the removal of the barrier;

(2) The type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness and administrative relationship to the extent that such factors contribute to a reasonable determination of readily achievable; and

(3) The nature and cost of the action needed.

As in the employment title, the specific factors added to section 302(5) reflect concerns that were raised regarding public accommodations that may operate separate, local facilities across the country. The Committee's discussion in title I regarding the addition of these factors applies to this title as well.

It is important to note that readily achievable is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I of this legislation. Any changes that are not easily accomplishable and are not able to be carried out without much difficulty or expense when the preceding factors are weighed are not required under the readily achievable standard, even if they do not impose an undue burden.

The concept of readily achievable should not be confused with the term "readily accessible" used in regard to accessibility requirements for alterations (section 302(b)(2)(A)(vi)) and new construction (section 303). While the word "readily" appears in both phrases and has roughly the same meaning in each context—i.e., easily, without much difficulty—the concepts of "readily achievable" and '"readily accessible" are sharply distinguishable and represent almost polar opposites in focus.

The phrase "readily accessible to and usable by individuals with disabilities" focuses on the person with a disability and addresses the degree of ease with which an individual with a disability can enter and use a facility; it is access and usability which must be "ready."

"Readily achievable," on the other hand, focuses on the business operator and addresses the degree of ease of difficulty of the business operator in removing a barrier; if barrier-removal cannot be accomplished readily, then it is not required.

What the "readily achievable" standard will mean in any particular public accommodiation will depend on the circumstances, considering the factors listed previously. The kind of barrier removal which is envisioned, however, includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

This section may require the removal of physical barriers, including those created by the arrangement of location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

The purpose of this provision is to provide individuals with disabilities access to a representative selection of merchandise available in a department. The Committee does not intend that a department store separate each and every display fixture in order to provide wheelchair clearance maneuverability. It is sufficient if a customer who uses a wheelchair is able to determine, once in a department, that the store offers, for example, black leather jackets. Once that is determined, the customer can rely upon a salesperson to retrieve a black leather jacket in the cutomer's size.

A public accommodation would not be required to provide physical access if there is a flight of steps which would require extensive ramping or an elevator. The readily achievable standard only requires physical access that can be achieved without extensive restructuring or burdensome expense.

In small facilities like single-entrance stores or restaurants, "readily achievable" changes could involve small ramps, the installation of grab bars in restrooms in various sections and other such minor adjustments and additions.

Section 302(b)(2)(A)(v) of the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return dry cleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater and notifying the public of the movie's location in any advertisements.

Section 302(b)(2)(A)(vi) of the legislation specifies that discrimination includes, with respect to a facility or part thereof that is altered by, on behalf of, for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individual with disabilities.

Where the entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity must also make the alternations in such manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under the criteria established by the Attorney General).

Under the language of section 302(b)(2)(A)(vi), an "alteration that affects or could affect usability of or access to an area of the facility containing a primary function" triggers an obligation to provide an accessible path of travel to the altered area, and to make bathrooms, telephones, and drinking fountains serving the altered area accessible. That such alternations must or could affect usability means that minor changes such as painting or papering walls, replacing ceiling tiles, and similar alterations that do not affect usability or access do not trigger the requirement that the altered areas must be made accessible or that the path of travel and bathrooms and other facilities must be made accessible.

Changes to floors may or may not affect accessibility or usability, depending upon the nature of the change involved. Routine maintenance, reparing and sanding floors, and other minor changes to floor surfaces would generally not affect usability and accessibility. Likewise, laying carpets or linoleum would ordinarily not affect usability and access. Such changes to floor surface would affect accessibility, however, if they were done in such a manner or made use of such materials as to result in a surface that is too slippery, spongy, uneven, not securely fastened down, having too-deep or too-wide channels, or otherwise creating a hazard or barrier to access by persons who use wheelchairs or have other mobility, visual or medical impairments. Laying of carpets and other floor coverings may not be done in such a manner as to make an otherwise accessible area inaccessible.

Other changes to floors, such as totally replacing a floor or installing a brick or stone floor, may be so substantial an undertaking and so connected to usability and accessibility as to trigger the requirement that the altered area be made accessible and that the path of travel and bathrooms be made accessible if they occur in "an area of the facility containing a primary function." Under the statutory language, the latter obligations will occur only to the extent that they are not disproportionate to the overall alterations in terms of cost and scope.

Areas containing primary functions refer to those portions of a place of public accommodations where significant goods, services, facilities, privileges, advantages, or accommodations are provided. It is analogous to the concept in existing Uniform Federal Accessibility Standards (UFAS) of "the rooms or spaces in a building or facility that house the major activities" (UFAS 3.5). A mechanical room, boiler room, supply storage room, or janitorial closet is clearly not an area containing a primary function; the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, and the viewing galleries of a museum are areas containing a primary function.

The statute requires that when primary functional areas or places of public accommodation are altered in a manner that affects or could affect the usability or accessibility of the area, an accessibility path of travel and restrooms, telephones, and drinking fountains serving the altered area must be made accessible, if doing so would not be "disproportionate in terms of cost and scope to the overall alteration." This language sets out an expectation that an accessible path of travel and accessible facilities should generally be included when alternations are done to primary functional areas, unless achieving such accessibility would be out or proportion to the overall alteration being undertaken.

The disproportionality concept recognzies that, in some circumstances, achieving an accessible path of travel and accessible restrooms, telephones, and drinking fountains may be sufficiently significant in terms of cost or scope in comparison to the remainder to the alteration being undertaken as to render this requirement unreasonable. In such cases, where the tail (path of travel, accessible restrooms, etc.) would be wagging the dog (the overall alteration), the accessible path of travel and related accessibility features are not required.

Of course, a place of public accommodation may not evade the path of travel, accessible restrooms, etc., requirements by performing a series of small alterations which it would otherwise have performed as a single undertaking. The Committee notes that in Pennsylvania, a state statute requires that any series of alteration projects on a facility conducted within three years is combined as if they were a single alteration for purposes of determining the extent of accessibility requirements (71 Purdon's Pa. Stats. Ann. sec. 1455.1c (1989 Cum. Supp.)). Likewise, under the ADA, if a public accommodation has completed an alteration without incorporating an accessible path of travel and accessible restrooms, etc., the total costs of the alterations both past and future which are proximate in time may appropriately be considered in determining whether providing an accessible path of travel, restrooms, etc. is disproportionate.

If the aggregate cost of an accessible path of travel, restrooms, telephones, and drinking fountains would be disproportionate to the overall alteration cost, the place of public accommodation is not relieved of the obligation to provide a subset of such features that is not disproportionate. The goal is to provide a maximum degree of accessibility in such features without exceeding the disproportionality limit. If a selection must be made between accessibility features, those which provide the greatest use of the facility should be selected. For example, an accessible entrance would generally be the most important path of travel feature, since without it the facility will be totally unusable by many persons with disabilities. An accessible restroom would have greater priority than an accessible drinking fountain.

If there is no way to provide an accessible path of travel to an altered area because of the disproportionality limit, making restrooms, etc. serving the area accessible is still required if it is not disproportionate. It is incorrect to assume that if a building entrance has steps, there is no reason to make the restrooms and other features accessible. Some individuals with disabilities can negotiate steps but still need accessibility features in the restroom, drinking fountains, etc. If those contemplating alterations to places of public accommodation are unsure how to rank such accessibility features in particular circumstances, they would be well-advised to consult with local organizations representing persons with disabilities.

The parameters of the concept of disproportionality will be established in the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board and in the alteration project. For example, it would clearly be disproportionate to require a public accommodation to double the cost of a planned alteration. Indeed, the Committee believes that, in almost all circumstances, it would be disproportionate to increase the cost of an alteration by more than 50% to incorporate an accessible path of travel and related accessibility features. The Committee notes that Pennsylvania statutes incorporate a formula under which an accessible path of travel is mandated whenever an alteration projects costs between 30 percent and 50 percent of the worth of the building, and the entire building must be made accessible if the remodeling exceeds 50 percent of the building's value (71 Purdon's Pa. Stats. Ann. sec. 1455.1c(b)(1) (1989 Cum. Supp.)). This approach differs somewhat from that in the ADA, in that the latter compares the proportionality of the accessibility costs to the overall planned alteration rather than to the underlying value of the building. The Committee believes, however, that it would be consistent with the ADA approach for the minimum guidelines or regulations to establish a specific standard, such as 30% of the alteration costs, for determining the disproportionality of the accessible path of travel and related accessibility features required under Sec. 302(b)(2)(A)(vi).

The "path of travel" to an altered area means a continuous, unobstructed way of pedestrian passage by means of which that area may be approached, entered, used, and exited; and which connects that area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. An accessible path of travel may consist of walks and sidewalks; curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of such elements. An accessible path of travel is analogous to the "accessible route" and "circulation path" concepts in the existing Uniform Federal Accessibility Standards (UFAS sec. 3.5).

The legislation includes an exception regarding the installation of elevators, which specifies that the obligation to make a facility readily accessible to and usable by individuals with disabilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The Committee wishes to make it clear that the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator. And, in the event a facility which meets the criteria for the exception nonetheless has an elevator installed, then such elevator shall be required to meet accessibility standards.

The Committee intends that the term "facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located. This definition is consistent with the definitions used under current Federal regulations and standards and thus includes both indoor areas and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment. For example, curb cuts are required to provide access to the facility from the street or parking lot.

The phrase "readily accessible to and usable by individuals with disabilities" is a term of art which is explained in the section of the report concerning new construction.

The phrase "to the maximum extent feasible" has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As noted above, a public accommodation violates this title by discriminating against an individual on the basis of disability regarding "goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation." Where a place of public accommodation is operated in premises that are rented or leased, either the landlord or the tenant may have legal control over the making of alterations, depending upon the terms of the lease or rental agreement they have entered into and state and local legal requirements regarding such contracts. Under some rental agreements, the tenant may be permitted to make certain alterations upon the premises, which may or may not be subject to a requirement of prior approval from the landlord. In other circumstances, the contractual agreement between the parties may prohibit the tenant from making any alterations. In most cases, the landlord will have full control over public and common areas a facilities.

Legal responsiblity for making alterations under this title will depend upon who has the legal authority to make such alterations, generally determined by the contractual agreement between the landlord and tenant. The obligation to remove architectural and communication barriers in existing buildings where such barrier removal is readily achievable (sec. 302(b)(2)(A)(iv)) and to include accessibility when making alterations (sec. 302(b)(2)(A)(vi)) are both stated in terms that make a "failure" to take such actions unlawful discrimination. The responsibility under this title for such a "failure" rests with the party—either the landlord or the tenant, depending upon their arrangement—who had the legal authority to make the changes required under the Act.

For example, if readily achievable modifications are needed on the premises of a place of public accommodation, and the lease gives the tenant the right to make such changes, then the tenant is responsible under this title to make such modifications. On the other hand, if a lease reserves all authority for making alterations to a landlord of premises in which a public accommodation is located, then the landlord is responsible for making the accessibility modifications called for in the Act.

In regard to the obligation in the cases of alterations that trigger the requirements that the altered area be accessible and, in some cases, that a path of travel and facilities be made accessible as well, this obligations stated in terms requiring an entity to "make the alterations in such a manner that" accessibility requirements are met (sec. 302(b)(2)(A)(vi)). Obviously, this langauge applies only to the entity that is making the alterations—the entity that has responsibility for otherwise undertaking the renovations or alteration.

Consequently, if a tenant is making alterations upon its premises pursuant to terms of a lease that grant it the authority to do so (even if they constitute alterations that trigger the path of travel requirement), and the landlord is not doing alterations to other parts of the facility then the alterations by the tenant on its own premises does not trigger a pathway of travel or bathrooms, etc. obligation upon the landlord in areas of the facility under its authority and not otherwise being altered.

Section 302(b)(2)(B) of the legislation includes policies applicable to fixed route vehicles used by entities that are not in the principal business of transporting people. First, it is considered discrimination for an entity to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act that are not readily accessible to and usable by individuals with disabilities except that over-the-road buses shall be subject to section 304(b)(4) (which delays the effective date for 6 years for small operators and 5 years for other operates) and section 305 (which provides for a study of how to make the impact of making such buses accessible).

If an entity not in the principal business of transporting people purchases or leases a vehicle carrying 16 or fewer passengers after the effective date of title III that is not readily accessible to or usable by indviduals with disabilities, it is discriminatory for such an entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

Section 302(b)(2)(C) includes provisions applicable to vehicles used in demand responsive systems by entities that are not in the principal business of transporting people. The provisions applicable to such vehicles are the same as those applicable to fixed route vehicles except that the entity need not ensure that all new vehicles carryng more than 16 passengers are accessible if it can demonstrate that the system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public.

For example, where a hotel at an airport provides free shuttle service, the hotel need not purchase new vehicles that are accessible so long as it makes alternative equivalent arangements for transporting people with disabilities who cannot ride the inaccessible vehicles. This might be accomplished through the use of a portable lift or by making arrangements with another entity that has an accessible vehicle that can be made available to provide equivalent shuttle service.

New construction

Section 303 of the legislation sets forth obligations with respect to the construction of new facilities. This section is applicable to public accommodations and commercial facilities.

Recipients of federal financial assistance currently must ensure that all newly constructed facilities are readily accessible to and usable by people with disabilities. The Section 504 regulations, which govern these recipients, use the Uniform Federal Accessibility Standards (UFAS) and the American National Standard for Building and Facilities (ANSI), which are based on model guidelines developed by the Architectural and Transportation Barriers Compliance Board.

Under UFAS, the areas of a new building which must be accessible are those "for which the intended use will require public access or which may result in the employment of physically handicapped persons." Thus, both areas that will be used by patrons and areas that will be used by employees, are covered under these standards.

The intent of this title is to extend this obligation to all ewly constructed commercial establishments. In many situations, the new construction will be covered as a "public accommodation," because in many situations it will already be known for what business the facility will be used. The Act also includes, however, the phrase "commercial facilities," to ensure that *all* newly constructed commercial facilities will be constructed in an accessible manner. That is, the use of the term "commercial facilities" is designed to cover those structures that are not included within the specific definition of "public accommodation." In either case, however, the standard governing the construction is that the facility must be "readily accessible to and usable by" people with disabilities.

The phrase "commercial facilities" has been substituted for the phrase "potential places of employment" of H.R. 2273 in order to eliminate any possible confusion between coverage of title III, concerning new construction, and coverage of title I, concerning employmnent practices. Obviously, there is an intended conceptual connection between the two titles. To the extent that new facilities are built in a manner that make them accessible to all individuals, including potential employees, there will be less of a need for individual employers to engage in reasonable accommodations for particular employees. The legal requirements of the two titles, however, are separate and independent.

The term "commercial facilities," retains the same definition as that given to "potential places of employment" in the Senate bill (S. 933). The new term therefore, is designed solely to eliminate any unnecessary confusion regarding coverage of employers; it is not intended to reduce the scope of the definition (i.e., any facility intended for non-residential use). Further, the term is not intended to be defined by dictionary or common industry definitions. Rather, "commercial facility", which is to be interpreted consistently with "potential places of employment", is defined as in S. 933, broadly to include any facility that is intended for nondresidential use and whose operations will affect commerce. Thus, for example, office buildings, factories, and other places in which employment will occur, come within this definition. The phrase, "whose operations affect commerce," is intended to include the full scope of coverage under federal constitutional commerce clause doctrine.

Section 303(a) of the legislation specifies that it is unlawful discrimination for a public accommodation or commercial facility to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under title III.

Section 303(b) of the legislation exempts entities from installing elevators under the same circumstances applicable to alternations (see section 302(b)(2)(A)(vi) and the accompanying clarifications in the report).

The phrase "readily accessible to or usable by" is a term of art which, in slightly varied formulations, has been applied in the Architectural Barriers Act of 1968 ("ready access to, and use of"), the Fair Housing Act of 1968, as amended ("readily accessible to and usable by"), and the regulations implementing section 504 of the Rehabilitation Act of 1973 ("readily accessible to and usable by") and is included in standards used by Federal agencies and private industry, e.g., the Uniform Federal Accessibility Standards (UFAS) ("ready access to and use of") and the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1) (readily accessible to, and usable by).

The term is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter and use a facility. While the term does not necessarily require the accessibility of every part of every area of a facility, the term contemplates a high degree of convenient accessibility, entailing accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services, programs, facilities, accommodations and work areas available at the facility.

The term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, etc. are accessible; only a reasonable number must be accessible, depending on such factors as their use, location and number. However, when the facilities involved do not serve identical functions, each facility must be accessible. For example, to provide equal service, all check-out lanes in a supermarket should be built sufficiently wide to allow passage by individuals who use wheelchairs. Likewise, meeting rooms at a conference center may be used for different purposes at any given time and therefore all must be accessible. Accessibility elements for each particular type of facility should assure both ready access to the facility and usability of its features and equipment and of the goods, services, and programs available therein.

For a hotel, "readily accessible to and usable by" includes, but is not limited to, providing full access to the public use and common use portions of the hotel; requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs; making a percentage of each class of hotel rooms fully accessible (e.g., including grab bars in bath and at the toilet, accessible counters in bathrooms); audio loops in meeting areas; signage, emergency flashing lights or alarms; braille or raised letter words and numbers on elevators; and handrails on stairs and ramps.

Of course, if a person with a disability needing a fully accessible room makes an advance registration without informing the hotel of the need for such a room and the person arrives on the date of the reservation and no fully accessible room is available, the hotel has not violated the Act. Moreover, a hotel is not required to forego renting fully accessible rooms to nondisabled persons if to do so would cause the hotel to lose a rental. However, the hotel must make efforts to afford the person who uses a wheelchair the accessible room, short of losing the rental.

In a physician's office, "readily accessible to and usable by" would include ready access to the waiting areas, a bathroom, and a percentage of the examining rooms.

Historically, particularized guidance and specifications regarding the meaning of the phrase "readily accessible to and usable by" for various types of facilities have been provided by MGRAD, UFAS, and the ANSI standards. Under this legislation, such specificity will be provided by the expanded Minimum Guidelines and Requirements for Accessible Design (MGRAD) standards to be issued by the Architectural and Transportation Barriers Compliance Board and by the regulations issued by the Attorney General, both of which are discussed subsequently in this report.

It is the expectation of the Committee that the regulations issued by the executive branch could utilize appropriate portions of MGRAD.

It is also the Committee's intent that the regulations will include language providing that departures from particular technical and scoping requirements, as revised, will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Allowing these departures will provide public accommodations and commercial facilities with necessary flexibility to design for special circumstances and will facilitate the application of new technologies.

As noted above, the standard of "readily accessible to and usable by" applies not only to areas that will be used by patrons, but also to areas that may be used by disabled employees. The parameters of the standard as it applies to patrons has been set forth above. The same basic approach applies in employment areas for both public accommodations and commercial facilities. Thus, access into and out of the rooms is required. In addition, there must be an accessible path of travel in and around the employment area. The basic objective is that a person with a disability must be able to get to the employment area. These design standards do not cover unusual spaces such as catwalks and fan rooms.

The standard does not require, however, that individual workstations be constructed accessible or be outfitted with fixtures that make it accessible to a person with a disability. Such modifications will come into play in the form of reasonable accommodations when a person with a disability applies for a specific job and is governed by the undue hardship standard. If the builder builds fixtures and equipment to service a worksite (e.g., racks, shelves), the fixtures and shelves do not have to be made accessible. If a qualified person with a disability applies, whether such fixtures and equipment can be modified to allow the person to do the job would be an issue of reasonable accommodation.

Two items regarding the placement of fixtures and equipment should be noted. As have often been pointed out, it is always less expensive to build something new in an accessible manner than it is to retrofit an existing facility to make it accessible. That concept applies as well in the building and placement of fixtures and equipment. Thus, if it would not affect usability or enjoyment by members of the general public, consideration should be given in new construction to placing fixtures and equipment at a convenient height for accessibility. In addition, if they are commercially available, and it would not affect usability or enjoyment by the general public, an effort should be made to purchase new fixtures and equipment that are adjustable so that reasonable accommodations in the future may not pose undue hardships.

The Committee decided not to limit this provision to commercial facilities of 15 or more employees because of the desire to establish a uniform requirement of accessibility in new construction, because of the ease with which such a requirement can be accomplished in the design and construction stages, and because future expansion of a business or sale or lease of the property to a larger employer or to a business that is open to the public is always a possibility.

The phrase "commercial facilities" is not intended to make an establishment that is not a public accommodation subject to the other provisions of this title, e.g., the obligation to provide auxiliary aids or services.

The phrase "structurally impracticable" is a narrow exception that will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted:

> Certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing traditionally may be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites. (Cite.)

By incorporating the phrase "structurally impracticable," thi title explicitly recognizes an exception analogous to the "physica integrity" exception for peculiarities of terrain recognized implicit ly in statutory language and expressly in the House Committe Report accompanying the Fair Housing Amendments Act. A under the Fair Housing Amendments Act, this is intended to be narrow exception to the requirement of accessibility. It means tha only where unique characteristics of terrain prevent the incorpora tion of accessibility features and would destroy the physical integri ty of a facility is it acceptable to deviate from accessibility require ments. Buildings that must be built on stilts because of their loca tion in marshlands or over water are one of the few situations in which the structurally impracticable exception would apply.

Neither under this title nor under the Fair Housing Amendments Act should an exception to accessibility requirements be applied to situations in which a facility is located in "hilly" terrain or on a plot of land upon which there are steep grades; in such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and ought to be required in the construction of new facilities.

In those circumstances in which it is structurally impracticable to achieve full compliance with accessibility requirements under the ADA, public accommodations and commercial facilities should still be designed and constructed to incorporate accessibility features to the extent that they are structurally practicable. The accessibility requirements should not be viewed as an all-or-nothing proposition in such circumstances.

If it is structurally practicable for a facility in its entirety to be readily accessible to and usable by people with disabilities, then those portions which can be made accessible should be. If a building cannot comply with the full range of accessibility requirements because of structural impracticability, then it should still be required to incorporate those features which are structurally practicable. And if it is structurally impracticable to make a particular facility accessible to persons who have particular types of disabilities, it is still appropriate to require it to be made accessible to persons with other types of disabilities.

If, for example, a facility which is of necessity built on stilts cannot be made accessible to persons who use wheelchairs because itis structurally impracticable to do so, this is no reason for the facility not to be accessible for individuals with vision or hearing impairments or other kinds of disabilities.

Prohibition of discrimination in public transportation services provided by private entities

Section 304(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primary engaged in the business of transporting people, but is not in the principal business of providing air transporation, and whose operations affect commerce.

The term "public transportation" is defined in section 301(4) of the legislatiion to mean transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

The Committee wishes to make it clear that the provisions of title III do not apply to public entities such as public transit authorities and school districts. Public entities providing transportation services are generally subject to the provisions of title II of this legislation and school bus operations are generally covered by regulations implementing section 504 of the Rehabilitation Act of 1973 issued by agencies providing Federal financial assistance to school districts.

The Committee also wishes to make it clear that title III does not apply to volunteer-driven commuter ridership arrangements.

The Committee excluded transportation by air because the Congress recently passed the Air Carriers Access Act, which was designed to address the problem of discrimination by air carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent.

Section 304(b) of the legislation includes specific applications of the general prohibition set out in section 303(a). As used in subsection (a), the term "discrimination against" includes:

(1) The imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) The failure of an entity to:

(A) Make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) Provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) Remove barriers consistent with the requirements of section 302(b)(2)(A)(iv), (v), and (vi); and

(3) The purchase or lease of a new vehicle (other than an automobile or over-the-road bus) that is to be used to provide

public transportation services, and for which a solicitation is made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The bill includes a special exception for vehicles used in a demand responsive system. In the case of a vehicle used in a demand-response system, the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

With respect to the purchase of new over-the-road buses, it is considered discrimination to purchase or lease a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 6 years for other providers, that is not readily accessible to and usable by individuals with disabilities.

The term "readily accessible to and usable by" means, with respect to vehicles used for public transportation, able to be entered into and exited from and safely and effectively used by individuals with disabilities, including individuals who use wheelchairs.

Currently, technology may not exist that will enable an individual who uses a wheelchair to access restrooms in over-the-road buses without resulting in the significant loss of current seating capacity. Since this legislation is future driven, the Committee intends that the Department of Transportation develop regulations which require that accessible restrooms be installed on intercity coaches when technologically feasible.

Lifts or ramps, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the current features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals who use wheelchairs or three-wheeled mobility aids; how many spaces per vehicle are to be made available for wheelchairs is, however, a determination that depends on various factors, including the number of vehicles in the fleet, seat vacancy rates, and usage by people with disabilities.

The Committee intends that, consistent with these general factors, the determination of how many spaces must be available should be flexible and generally left up to the provider; provided that at least some spaces on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be issued under this legislation.

The Committee intends that during the interim period prior to the date when over-the-road buses must be readily accessible to and usable by individuals with disabilities that regulations specify that providers modify their policies so that individuals who use wheelchairs may get on and off such buses without having to bring their own attendant to help them get on and off the bus. Further, policies should be modified to require the on-board storage of batteries for battery operated wheelchairs.

Section 305 of the legislation directs the Office of Technology Assessment to undertake a study to determine the access needs of individuals with disabilities to over-the-road buses and the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities.

In determining the most cost-effective methods for making over-the-road buses readily accessible to and usable by persons with disabilities, particularly individuals who use wheelchairs, the legislation specifies that the study should analyze the cost of providing accessibility, recent technological and cost saving developments in equipment and devices, and possible design changes.

Thus, the Committee is interested in having this study include a review of current technology such as lifts that enable persons with mobility impairments, particularly those individuals who use wheelchairs, to get on an off buses without being carried; alternative designs to the current lifts; as well as alternative technologies and modifications to the design of buses that may be developed that will also enable such individuals to get on and off over-the-road buses without being carried.

It is also expected that the study will review alternative design modifications that will enable an individual using the over-the-road bus to have access to the restroom and at the same time permitting the provider to retain approximately the same seating capacity.

The study must also assess the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service in light of the economic pressures on the bus industry that have lead to a reduction of service, particularly in rural America. According to an analysis by the Interstate Commerce Commission staff, 3,400 communities lost all intercity bus service between 1982 and 1986. Of these nine-tenths were areas with populations of under 10,000.

Thus, this study should analyze how the private bus operators can comply with the requirement in section 304 of the legislation that over-the-road buses be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, without contributing to the deterioration of rural bus service.

It is the Committee's expectation that the study will also review current policies that impede the shared use by private companies providing tours and charter services of public buses that are currently accessible. Another component of the study may be to seek ways to link local providers of accessible transportation services with intercity bus service in hub areas. This may necessitate expansion of service by local providers to match intercity and intermodal schedules in order to help ensure effective development of such a feeder service relationship.

The Committee recognizes that after deregulations of the airline and rail industries, safety net programs were implemented to assist States in preserving efficient air and rail transportation, primarily between smaller cities and communities threatened by the loss of service. No similar Federal program was established to assist the private bus industry. The Committee expects that the study will consider whether and, if deemed appropriate, identify policy alternatives that might assist private bus companies meet the mandates in this legislation.

The legislation calls for the establishment of an Advisory Committee to advise the O.T.A. in the conduct of the study. The Committee shall be composed of: private operators using over-the-road buses, bus manufacturers, and lift manufacturers; individuals with disabilities, including potential users of such buses; and individuals with expertise. The Committee shall have equal numbers of members from the first two groups designated above, with more than 50% of the total membership being from those groups. Additionally, the section sets out a process for review of the draft report on the study by the Architectural and Transportation Barriers Compliance Board, with written comments received from the ATBCB incorporated in the final report. Finally, the section states that if the President, after reviewing the report, determines that application of the timelines in section 304(b)(4) will result in significant reduction in intercity bus service, such deadline shall be extended by one additional year.

Anyone in the business of providing taxi service shall not discriminate on the basis of disability in the delivery of that service. For example, it would be illegal under the Act to refuse to pick up a person on the basis of that person's disability. A taxi cab driver could not refuse to pick up someone in a wheelchair because he or she believes that the person could not get out of their chair or because he or she did not want to lift the wheelchair into the trunk of the taxi or put it in the back seat. Likewise a taxi driver cannot refuse to serve a person with a disability who uses an assistive dog.

Regulations

Section 306(a) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2)(B) and (C) and section 304.

With respect to section 304(b)(4) of the legislation, the Committee recognizes the apparent anomaly in requiring the promulgation of regulations while a needs and impact assessment is in progress and two years prior to the submission of the study and its recommendations to the President and the Congress. This timing, however, should not be construed as calling into question the importance or necessity of empirical data and technological information to this rulemaking process. Rather, the Committee believed it wise that, with respect to over-the-road buses, regulations be in place well in advance of the compliance dates of the Act.

The Committee fully expects that, following submission of the needs and impact assessment, the study and its recommendations will be expeditiously and carefully reviewed to determine if, or to what extent, the regulations promulgated pursuant to this section of the legislation need to be revised or amended.

Section 306(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

The Committee also included a new provision of interim accessibility standards. The Committee fully expects that the final regulations implementing this section will be issued within one year, as mandated by the Act. However, in the unlikely event that the regulations have not been issued, this provision sets forth the approach that entities covered under the Act can use so as to ensure that they are in compliance with the Act. Under this provision, if final regulations have not been issued, compliance with the current Uniform Federal Accessibility Standards will suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities. In addition, this approach provides that if the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines it is required to issue under this Act, and those guidelines have been available for one year, a compliance with those guidelines will then be necessary to satisfy the Act's requirement that facilities be built in an accessible manner.

Exemptions for private clubs and religious organizations

Section 307 of the legislation specifies that the provisions of title III do not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 or to religious organizations or to entities controlled by religious organizations. Places of worship and schools controlled by religious organizations are among those organizations and entities which fall within this exemption.

The reference to "entities controlled by a religious organization" is modeled after the provisions in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the term "controlled by a religious organization" be interpreted consistently with the Attachment which accompanied the Assurance of Compliance with title IX required by the U.S. Department of Education. Of course, the Committee recognizes that unlike the title IX exemption, this provision applies to entities that are not educational institutions. The term "religious organization" has the same meaning as the term "religious organization" in the phrase "entities controlled by a religious organization."

Activities conducted by a religious organization or an entity controlled by a religious organization on its own property which are open to nonmembers of that organization or entity are included in this exemption.

Enforcement

Section 308 of the legislation sets forth the scheme for enforcing the rights provided for in title III. Section 308(a)(1) provides a private right of section for any individual who is being or has reasonable grounds for believing that he or she is about to be subjected to discrimination on the basis of disability in violation of title III. The

Committee added the term "has reasonable grounds" to make the provision consistent with title II of the Civil Rights Act of 1964. This subsection makes available to an individual aggrieved under this title the remedies and procedures set forth in section 204a-3(a) of the Civil Rights Act of 1964 (preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order).

Section 308(a)(2) of the legislation makes it clear that in the case of violations of section 302(b)(2)(A)(iv) pertaining to removal of barriers in existing facilities, section 302(b)(2)(A)(iv) pertaining to alternations of existing facilities, and section 303(a) pertaining to new construction, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities as required by title III.

Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

Section 308(b) of the legislation specifies the enforcement scheme for the Attorney General. First, the Attorney General shall investigate alleged violations of title III, which shall include undertaking periodic reviews of compliance of public accommodations and commercial facilities.

The Committee added a new provision, section 308(b)(1)(A)(ii), regarding certification by the Attorney General. Upon the application of a state or local government, the Attorney General, in consultation with the Architectural and Transportation Barriers Compliance Board, may certify that a state law or building code, or similar ordinance which establishes accessibility requirements, meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. Such certification can occur only after public notice of such a request has been given and after a public hearing has been held in which individual with disabilities, and organizations representing such individuals, have been provided an opportunity to testify against such certification if they so wish.

This provision is intended simply to allow builders and architects to use codes and laws with which they are familiar, if those laws, *in fact*, meet or exceed the requirements of this Act. This provision is not intended in any way to allow entities to avoid the purposes and goals of this Act. Thus, the Committee expects that the Attorney General will carefully scrutinize any such requests for certification and seriously consider any objections raised by individuals with disabilities to such certification, if such objections are made.

At any enforcement proceeding under this section, any certification granted by the Attorney General shall be rebuttable evidence that such state law or ordinance does meet or exceed the minimum requirements of this Act. That is, the certification may be presented as evidence, but it can then be rebutted by the plaintiff.

It is expected that, if the Attorney General proposes to grant certification for a particular law, code, or ordinance, a notice shall be issued in the Federal Register and an informal hearing shall be held before a Department of Justice official (not an Administrative Law Judge), at which interested prsons would have an opprtunity to express their comments. Certification is not to be considered rulemaking for purposes of the Administrative Procedure Act, 5 U.S.C. 551 et seq. The Attorney General may establish priorities for considering certifications (e.g., priority could be given to State documents before local documents, or to those that incorporated acceptable model building codes). The Attorney General may also establish procedures for revoking certification and establish the circumstances in which such action would be appropriate.

If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title III or that any person or group of persons has been denied any of the rights granted by title III and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

In a civil action brought by the Attorney General, the court may grant any equitable relief it considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by title III. In addition, a court may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved, when requested by the Attorney General.

Furthermore, the court may vindicate the public interest by assessing a civil penalty against the covered entity in an amount not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation. Section 308(b)(3) makes it clear that, in counting the number of previous determinations of violations for determining whether a "first" or "subsequent" violation has occurred, determinations in the same trial on liability that the covered entity has engaged in more than one discriminatory act are to be counted as a single violation. In other words, assume that the Attorney General brings a pattern or practice case against a public accommodation, and the court determines that the accommodation has engaged in a series of violations of the Act. All of these violations together would count as the "first violation" for purposes of assessing a civil penalty. This would be the case regardless of how the case was dealt with—for example, by trial, settlement, or consent decree. A "second violation" would not accrue to that public accommodation until the Attorney General brought another suit against the accommodation and the accommodation was again held in violation. Again, all of the violations on the second suit would be cumulatively considered as a "subsequent violation."

Section 308(b)(4) clarifies that the term "monetary damages" and "other relief" in section 308(b)(2) does not include punitive damages. It does include, however, all forms of compensatory damages, including out-of-pocket expenses and damages for pain and suffering. The Attorney General has discretion regarding the type of damages he or she seeks on behalf of aggrieved persons, if he or she chooses to seek such monetary damages.

Section 308(b)(2)(C) provides that, "to vindicate the public interest," a court may assess a civil penalty against the entity that has been found to be in violation of the Act in suits brought by the Attorney General. In addition, the Act further provides that, in considering what amount of civil penalty, if any, is appropriate, the court should give consideration to "any good faith effort or attempt to comply with this Act." In evaluating such good faith, the court should consider "among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability."

The "good faith" standard referred to in this section is not intended to imply a willful or intentional standard—that is, an entity cannot demonstrate good faith simply by showing that it did not willfully, intentionally, or recklessly disregard the law. At the same time, the absence of such a course of conduct would be a factor a court should weigh in determining the existence of good faith.

The "good faith" standard is a standard that should be seriously applied to protect from the assessment of civil penalties, as well as from the assessment of maximum civil penalties, those entities that have honestly and reasonably attempted to comply with the law. For example, a public accommodation is not required to anticipate all of the auxiliary aids that might be necessary to accommodate an individual with a unique disability. While, of course, a public accommodation is expected to anticipate such disabilities as visual, speech, hearing and mobility impairments, the Committee does not, as reflected in the statutory language, expect that civil penalties will be assessed against entities that reasonably and honestly could not have anticipated the unique needs of individuals with certain types of unusual disabilities and therefore may not have had some appropriate auxiliary aid at hand. Of course, once an individual has identified and requested a specific auxiliary aid, the public accommodation cannot subsequently claim that the aid could not have been reasonably anticipated. The public accommodation, of course, would still not have to provide the aid if it would impose an undue burden.

In sum, an honest effort to comply with the law should be a basic factor taken into account by the court in assessing whether any civil penalties, or the highest levels of those penalties, should apply against a public accommodation. As an additional example, assume that a public accommodation provided an auxiliary aid to a person with a disability, which the public accommodation reasonably believed would enable the person to effectively enjoy the goods and services provided by the accommodation. Assume further that a court ultimately determined that the auxiliary aid was not adequate for the person with a disability and therefore that the accommodation was in violation of the requirements of the Act. Assuming further that this action (or actions) somehow rose to the level of a case brought by the Attorney General, a court's assessment that the public accommodation had made a reasonable and honest effort to provide the auxiliary aid should obviously be taken into account by the court in determining good faith for the purposes of assessing any civil penalty.

Effective date

In accordance with section 309 of the legislation, title III of the legislation shall become effective 18 months after the date of enactment of this legislation.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Title IV of the legislation, as reported, will help to further the statutory goals of universal service as mandated in the Communications Act of 1934. It will provide to hearing- and speech-impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals.

Background

There are over 24 million hearing-impaired and 2.8 million speech-impaired individuals in the United States, yet inadequate attention has been paid to their special needs with respect to accessing the Nation's telephone system. Given the pervasiveness of the telephone for both commercial and personal matters, the inability to utilize the telephone system fully has enormous impact on an individual's ability to integrate effectively in today's society.

The Communications Act of 1934 mandates that communications services be "[made] available, so far as possible, to all the people of the United States. * * * ". (Section 1, emphasis added). This goal of universal service has governed the development of the nation's telephone system for over fifty years. The inability of over 26 million Americans to access fully the Nation's telephone system poses a serious threat to the full attainment of the goal of universal service.

In order to realize this goal more fully, Title IV of this legislation amends Title II of the Communications Act of 1934, as amended, by adding a new section 225. This new section imposes on all common carriers providing interstate or intrastate telephone service, an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals. Carriers are granted the flexibility to determine whether such services are provided by the carrier alone, in concert with other carriers, or through a designee. Hereinafter, this part of the Report will be referring to this new section 225 and not to sections in S. 933, The Americans with Disabilities Act of 1989.

Currently, individuals with hearing and speech impairments can communicate with each other over the telephone network with the aid of Telecommunications Devices for the Deaf (TDDs). TDDs use a typewriter-style device equipped with a message display (screen and/or printer) to send a coded signal through the telephone network. However, users of TDDs can communicate only with other users of TDDs. This creates serious hardships for Americans with hearing and/or speech impairments, since access to the community at large is significantly limited.

The Commitee intends that section 225 better serve to incorporate the hearing- and speech-impaired communities into the telecommunications mainstream by requiring that telephone services be provided to hearing and/or speech impaired individuals in a manner that is functionally equivalent to telephone services offered to those who do not have these impairments. This requirement will serve to bridge the gap between the communications-impaired telephone user and the community at large. To participate actively in society, one must have the ability to call friends, family, businesses and employers.

Current technology allows for communications between a TDD user and a voice telephone user by employing a type of relay system. Such systems include a third party operator who completes the connection between the two parties and who transmits messages back and forth between the TDD user and the hearing individual. The originator of the call communicates to the operator either by voice or TDD. The operator then uses a video display system to translate the typed or voice message simultaneously from one medium to the other.

Although the Committee notes that relay systems represent the current state-of-the-art, this legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. The hearing- and speech-impaired communities should be allowed to benefit from advancing technology. As such, the provisions of this section do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology.

The Committee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of such services. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under this section whereby a state retains jurisdiction over the intrastate provision of telecommunication relay services.

The Committee finds it necessary to grant the FCC such residual authority in this instance to ensure universal service to the hearing- and speech-impaired community. Although a number of states have mandated statewide relay systems, the majority of states have not done so. Moreover, the systems that do exist vary greatly in quality and accessibility. The Committee finds that to ensure universal service to the population of users, service must be made uniformly available on a local, intrastate, and interstate basis. It is the Committee's hope and expectation, however, that all states will seek certification in a timely manner and that the FCC will not find it necessary to exercise its enforcement authority. It is essential to this population's well-being, self-sufficiency and full integration into society to be able to access the telecommunications network and place calls nationwide without regard to geographic location.

Attaining meaningful universal service for this population also requires that some level of minimum federal standards for service, service quality, and functional equivalency to voice telephone services be established and maintained. The FCC is therefore required to establish certain minimum federal standards that all telecommunications relay service providers must meet.

By requiring telecommunications relay services to be provided throughout the United States, this section takes a major step towards enabling individuals with hearing and speech impairments to achieve the level of independence in employment, public accommodations and public services sought by other sections of the Americans with Disabilities Act. The Committee concludes that expanding the FCC's authority in this instance will both promote interstate commerce and be of benefit to all Americans.

The grant of jurisdiction to the FCC is limited, however, by the state certification procedures required to be established under this section. It is the Committee's intention that these procedures operate to preserve initiatives by a state or group of states to implement a telecommunications relay services program within that state or within a region either through the state itself, through designees, or through regulation of intrastate common carriers. As such, the section provides that any state may regulate intrastate telecommunications relay services provided by intrastate carriers once the state is granted certification by the FCC. The FCC is to establish clearly defined procedures for requesting certification and a review process to ensure that a state program, however it is provided, satisfies the minimum standards promulgated under this section. The certification procedures and review process should afford the least possible intrusion into state jurisdiction consistent with the goals of this section to have nationwide universal service for hearing- and speech-impaired individuals.

The Committee intends that telecommunications relay services be governed by minimum federal standards that will ensure that telephone service for hearing and speech impaired individuals is functionally equivalent to telephone services offered to hearing individuals. Such standards, however, should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

Cost recovery for telecommunications relay services will be determined by the FCC in the case of interstate telecommunications relay services and by certified states in the case of intrastate telecommunications relay services. While states are granted the maximum latitude to determine the methods of cost recovery for intrastate relay services provided under their jurisdiction, the FCC is specifically prohibited from allowing the imposition of a flat monthly charge on residential end users to recover the costs of providing interstate telecommunications relay services. It is the Committee's expectation that the costs of providing telecommunications relay services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.

Definitions

Section 225(a) defines: (1) "Common Carrier or Carrier" to include interstate carriers and intrastate carriers for purposes of this section only; (2) "TDD" to mean a machine that may be used by a variety of disabled individuals such as deaf, hard of hearing, deaf-blind, or speech impaired individuals and that employs graphic communications through the transmission of coded signals over telephone wires; and (3) "Telecommunications relay services" to mean telephone transmission services that allow a hearing- and/or speech-impaired individual to communicate in a manner that is functionally equivalent to voice communications services offered to hearing individuals. The term includes, but is not limited to, TDD relay services.

Availability of telecommunication relay services

Section 225(b) states that in furtherance of the goals of universal service, the FCC must ensure that interstate and intrastate telecommunications relay services are provided to the greatest extent possible and in the most efficient manner.

Section 225(b)(2) extends the remedies, procedures, rights and obligations applicable to interstate carriers under the Communications Act of 1934, as amended, to intrastate carriers for the limited purpose of implementing and enforcing the requirements of this section.

Provision of services

Section (c) requires that carriers providing telephone voice transmission services provide telecommunications relay services within two years after the date of enactment of this section. Carriers are to offer to hearing- and speech-impaired individuals services which are functionally equivalent to telephone services provided to hearing individuals including providing services with the same geographic radius that they offer to hearing individuals. Carriers are granted the flexibility to provide such services either individually, in concert with other carriers, or through designees. In exercising this flexibility to appoint designees, however, carriers must ensure that all requirements of this section are complied with.

Regulations

Section (d) requires the FCC to prescribe the necessary rules and regulations to carry out the requirements of this section with one year of its enactment.

Also, given the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech-impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties. The Committee notes that the FCC has already issued several notices on the creation of an interstate relay system and the most efficient way such a system could be provided. While the FCC is afforded a significant amount of flexibility in implementing the goals of this section, subsection (d) requires that the FCC establish certain minimum standards, practices and criteria applicable to all telecommunications relay services and service providers as follows:

Section (d)(1)(A) requires the FCC to establish functional requirements, guidelines, and operational procedures for the provision of telecommunications relay services. One of these requirements shall be that all carriers subject to this section shall provide telecommunications relay services on a non-discriminatory basis to all users within their serving area. The FCC should pursue means in which the goals of this section may be met in the most efficient manner. In addition, the Commission should include specific language requiring that operators be sufficiently trained so as to effectively meet the specialized communications needs of individuals with hearing and speech impairments, including sufficient skills in typing, grammar and spelling.

Section (d)(1)(B) requires the FCC to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services including technical standards, quality of service standards, and the standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services. Telecommunications relay services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals. In determining factors necessary to establish functional equivalency, the FCC should include, for example, the requirement that telecommunications relay services transmit messages between the TDD and voice caller in real time, as well as the requirement that blockage rates for telecommunications relay services be no greater than standard industry blockage rates for voice telephone services. Other factors that should be included are the opportunity for telecommunications relay service users to choose an interstate carrier whenever possible. The FCC should enumerate other such measurable standards to ensure that hearing and non-hearing individuals have equivalent access to the Nation's telephone networks.

Section (d)(1)(C) requires that such telecommunications relay services operate 24 hours a day, seven days a week.

Section (d)(1)(D) requires that users of telecommunication relay services pay rates no greater than the rates paid for functionally equivalent voice communication with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination. Although the Committee commends states that have chosen to implement a discount, this section is not intended to mandate a rate discount with respect to all duration.

Section (d)(1)(E) prohibits relay operators from refusing calls or limiting the length of calls that use such relay services.

Section (d)(1)(F) prohibits relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of that call. The Committee recognizes that printed records of such calls may be necessary to complete the call however, this requirement is to ensure that records are not kept after termination of the conversation. In addition, the Committee recognizes that it may be technically impossible today to relay recorded messages in their entirety because TDDs can only transmit messages at a give speed. In these situations, a hearing- or speech-impaired individual should be given the option to have the message summarized.

Section (d)(1)(G) prohibits relay operators from intentionally altering any relayed conversation.

Section (d)(2) requires that the FCC ensure that regulations prescribed to implement this section encourage the use of state-of-the-art technology. Such regulations should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technolgy.

Section (d)(3) states that the Commission should issue regulations to govern the separation of costs for the services provided pursuant to this section. No change to the procedures for allocating joint costs between the interstate and intrastate jurisdictions as set forth elsewhere in the Communications Act of 1934 is intended.

Section (d)(4) prohibits the Commission from allowing the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunications relay services. However, the manner in which the costs of providing intrastate telecommunications relay services are recovered is left to the discretion of certified states. It is the Committee's expectation that the costs of providing such services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.

Section (d)(5) grants the FCC flexibility to extend the date of full compliance with the requirements of this Section by one year for any carrier or group of carriers that it finds will be unduly burdened. Interested parties should be given an opportunity to comment on any such request for an extension and such requests should not be granted without compelling justification.

Enforcement

Section (e)(1) requires that the Commission enforce the requirements of this section subject to subsections (f) and (g). The Committee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of the service. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under subsection (f) whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services.

Section (e)(2) requires that the Commission resolve any complaint by final order within 180 days after that complaint has been filed.

Certification

Sections (f)(1) and (2) describe the state certification procedure whereby states may apply to reassert jurisdiction over the provision of intrastate telecommunications relay services. The FCC may grant certification upon a showing that such services are being made available in the state and that they comply with the federal guidelines and standards promulgated pursuant to section (d). A state plan may make service available through the state itself, through designees or through regulation of intrastate carriers.

Section (f)(3) states that, except for reasons affecting rules promulgated pursuant to section (d), the FCC may not deny certification to a state based solely on its chosen method of funding the provision of intrastate telecommunications relay services. Section (d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of telecommunications relay services to pay effectively higher rates than those paid for functionally equivalent voice communications services. Additionally, the Committee urges that because this service is of benefit to all society that any funding mechanism not be labeled so as to unduly prejudice the hearing- and speech-impaired community.

Section (f)(4) allows for the Commission to revoke such certification, if after notice and opportunity for hearing, the Commission determines that certification is no longer warranted.

Complaint

Section (g)(1) states that when a complaint is filed with the Commission that alleges a violation of this section with respect to the provision of intrastate telecommunication relay services, the Commission shall refer such complaint to the appropriate State commission if that State has been duly certified by the FCC pursuant to section (f). If the appropriate State has not been duly certified, then the Commission will handle the complaint pursuant to sections (e) (1) and (2).

Once a complaint has been properly referred to a State Commission, subsection (g)(2) permits the FCC to exercise its jurisdiction over such a complaint only if final action has not been taken within 180 days after the complaint is filed with the State, or within a shorter period as prescribed by the regulations of such State, or if the Commission determines that a State program no longer qualifies for certification under section (f).

TITLE V—MISCELLANEOUS PROVISIONS

Construction

Section 501 of the legislation specifies the relationship between this legislation and the Rehabilitation Act of 1973 and other Federal, State or local laws. Section 501 also specifies the relationship between this legislation and the regulation of insurance.

With respect to the Rehabilitation Act of 1973, section 501(a) of the legislation specifies that nothing in this legislation should be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by the Federal agencies pursuant to such title.

With respect to other laws, section 501(b) of the legislation specifies that nothing in this legislation should be construed to invalidate or limit any other federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities that are afforded by this legislation. In other words, all of the rights, remedies and procedures that are available to people with disabilities under other federal laws or other state laws (including state common law) are not preempted by this Act. This approach is consistent with that taken in other civil rights laws. The basic principle underlying this provision is that Congress does not intend to displace any of the rights or remedies available under other federal or state laws (including state common law) which provide greater or equal protection to individuals with disabilities. Finally, to the extent that this legislation could be construed to be in conflict with other laws governing spaces or worksites, for example OSHA requirements, the Committee expects the Attorney General to exercise coordinating authority to avoid and eliminate such conflicts.

With respect to insurance, section 501(c) of the legislation specifies that titles I, II and III of this legislation shall not be construed to prohibit or restrict—

> (1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefits plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;
>
> (2) any person or organization covered by this Act from establishing, sponsoring or observing the terms of a bona fide benefit plan which terms are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
>
> (3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance

provided that points (1), (2), and (3) are not used as a subterfuge to evade the purposes of titles I, II and III of this legislation.

As indicated earlier in this report, the main purposes of this legislation include prohibiting discrimination in employment, public services, and places of public accommodation. The Committee does not intend that any provisions of this legislation should affect the way the insurance industry does business in accordance with the State laws and regulations under which it is regulated.

Virtually all States prohibit unfair discrimination among persons of the same class and equal expectation of life. The ADA adopts tis prohibition of discrimination. Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

Because there was some uncertainty over the possible interpretations of the language contained in titles I, II and III, as it applies to insurance, the Committee added section 501(c) to make it clear that this legislation will not disrupt the current nature of insurance underwriting or the current regulatory structure for self-insured employers or of the insurance industry in sales, underwriting, pricing, administrative and other services, claims, and similar insurance related activities based on classification of risks as regulated by the States.

However, the decision to include this section may not be used to evade the protections of title I pertaining to employment, title II pertaining to public services, and title III pertaining to public accommodations beyond the terms of points (1), (2) and (3), regardless of the date an insurance plan or employer benefit plan was adopted.

For example, an employer could not deny a qualified applicant a job because the employer's current insurance plan does not cover the person's disability or because of the increased costs of the insurance.

Moreover, while a plan which limits certain kinds of coverage based on classification of risk would be allowed under this section, the plan may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

For example, a blind person may not be denied coverage based on blindness independent or actuarial risk classification. Likewise, with respect to group health insurance coverage, an individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy but cannot be denied coverage for illnesses or injuries unrelated to the preexisting condition.

Specifically, point (1) makes it clear that insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually underwritten basis, or to serve such insurance products.

Point (2) recognizes the need for employers, and/or agents thereof, to establish and observe the terms of employee benefit plans, so long as these plans are based on underwriting or classification of risks.

Point (3) simply clarifies that self-insured plans, which are currently governed by the preemption provisions of the Employment Retirement Income Security (ERISA), are still governed by that preemption provision and are not subject to state insurance laws. Concerns had been raised that points (1) and (2) could be interpreted as affection the preemption provision of ERISA. No such implication is intended. Until the preemption provision of ERISA is modified, these self-insured plans are subject to state law only to the extent determined by the courts in their interpretation of ERISA's preemption provision. Of course, under the ADA, the provisions of these plans must conform with the requirements of ERISA, just as the provisions of other plans must be based on or not inconsistent with State law.

Point (3) provides that persons or organizations covered by the Act may continue to establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that require insurance.

In all cases, points (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of titles I, II and III of the legislation, regardless of the date the insurance plan or employer benefit plan was adopted.

As explained previously in this report, the Committee also wishes to clarify that in its view, as is stated by the U.S. Supreme court, in *Alexander* v. *Choate*, 469 U.S. 287 (1985), employee benefit plans should not be found to be in violation of this legislation under impact analysis simply because they do not address the special needs of every person with a disability, e.g., additional sick leave or medical coverage.

Moreover, this subsection must be read to be consistent with subsection (b) of section 501 pertaining to other Federal and State laws.

In sum, section 501(c) is intended to afford to insurers and employers the same opportunities they would enjoy in the absence of this legislation to design and administer insurance products and benefit plans in a manner that is consistent with basic principles of insurance risk classification. This legislation assures that decisions concerning the insurance of persons with disabilities which are not based on bona fide risk classification be made in conformity with non-discrimination requirements. Without such a clarification, this legislation could arguably find violative of its provisions any action taken by an insurer or employer which treats disabled persons differently under an insurance or benefit plan because they represent an increased hazard of death or illness.

The provisions recognize that benefit plans (whether insured or not) need to be able to continue business practices in the way they underwrite, classify, and administer risks, so long as they carry out those functions in accordance with accepted principles of insurance risk classification.

Prohibition against retaliation and coercion

Section 502(a) of the legislation specifies that no individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Section 502(b) of the legislation specifies that it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this legislation. The Committee intends that the interpretation given by the Department of Housing and Urban Development to a similar provision in the Fair Housing Act, see 54 Fed. Reg. 3291, sec. 100.400(c)(1), be used as a basis for regulations for this section.

Section 502(c) of the legislation specifies that the remedies and procedures available under section 107, 205, and 308 shall be available to aggrieved persons for violations of subsections (a) and (b).

State immunity

Section 503 of the legislation specifies that a State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

This provision is included in order to comply with the standards for covering states set forth in *Atascadero State Hospital* v. *Scanlon*, 105 S. Ct. 3142 (1985).

Regulations by the Architectural and Transportation Barriers Compliance Board

Section 504 specifies that not later than 6 months after the date of enactment of this Act, the Architectural and Transportation

Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

These guidelines shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

The Minimum Guidelines and Requirements for Accessible Design (MGRAD), as issued and revised by the Board have provided guidance to four Federal standard-setting agencies (the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service) in their regulations establishing the Uniform Federal Accessibility Standards (UFAS).

The ADA directs the Board to issue supplemental guidelines and requirements to guide two additional Federal standard-setting agencies—the Department of Transportation and the Department of Justice—in their development of regulations under this legislation.

The development of supplemental MGRAD will require the Board to complete and expand its previous guidelines and requirements. There are some areas within the Board's MGRAD authority in which it has not yet issued minimum guidelines. One such example is the area of recreation. In 1985, the Federal Government Working Group on Access to Recreation developed for the Board a technical paper titled, "Access to Outdoor Recreation Planning and Design," including technical requirements and specific guidelines, but the Board has not officially issued minimum guidelines and requirements in this area. The Committee expects the Board to take prompt action to complete the filling of such gaps in the existing MGRAD.

In issuing the supplemental minimum guidelines and requirements called for under this legislation, the Board should consider whether other revisions or improvements of the existing MGRAD (including scoping provisions) are called for to achieve consistency with the intent and the requirements of this legislation. Particular attention should be paid to providing greater guidance regarding communication accessibility.

In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in existing MGRAD.

This legislation also explicitly provides that the Board is to develop minimum guidelines for vehicles. The Committee intends that the Board shall issue minimum guidelines regarding various types of conveyances and means of transport that come within the gambit of titles II and III of the legislation. Such guidelines should include specifications regarding wheelchair lifts and ramps on vehicles where necessary for boarding and getting off. For example, lifts on buses must be designed to be usable in a safe manner, by persons with mobility impairments who use canes, crutches and walkers in addition to those who use wheelchairs. Therefore, lifts must have railings or other devices for safe use by persons who stand and/or walk with assistance. The Board should also review its minimum guidelines regarding stations and other places of boarding or departure from vehicles to make sure that they are coordinated with and complementary to the minimum guidelines regarding vehicles.

The Committee also added a specific provision to deal with the concerns of historic properties. Under the new provision, the guidelines issued by the Architectural and Transportation Barriers Compliance Board are required to include requirements for alterations that will threaten or destroy the historical significance of qualified historic buildings and facilities as defined in the Uniform Federal Accessibility Standards 4. 1. 7(1)(a). The provision further requires that, regarding alterations of buildings or facilities covered by the requirements of section 106 of the National Historic Preservation Act of 1966, the guidelines issued shall at a minimum maintain the procedures and standards established in the Uniform Federal Accessibility Standards 4. 1. 7(1) and (2), and that, regarding alterations of qualified historic buildings designated as historic under a statute of the appropriate state or local government body, the guidelines shall establish procedures equivalent to those established by the Uniform Federal Accessibility Standards 4. 1. 7(1)(b) and (c) and shall require, at a minimum, compliance with the minimum requirements established in Uniform Federal Accessibility Standards 4. 1. 7(2).

Attorneys' fees

Section 505 specifies that in any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual. Litigation expenses include the costs of experts and the preparation of exhibits. It is intended that the term "prevailing party" be interpreted consistently with other civil rights laws. Plaintiffs should not be assessed opponents' attorneys' fees unless a court finds the plaintiff's claim is "frivolous, unreasonable, or groundless." See *Christianburg Garment Co.* v. *EEOC*, 434 U.S. 412 (1978). The provision specifically includes "litigation expenses" under the rubric of attorneys' fees (and not under "costs") so that the expenses of experts, paralegal, etc. are governed by the *Christianburg Garment* standard regarding the assessment of such expenses against a plaintiff.

Technical assistance

Section 506 specifies that not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Transportation, the Chairman of the Federal Communications Commission, and the Secretary of Commerce, shall develop and implement a plan to assist entities covered under this legislation in understanding the responsibilities of such entities under this Act. The plan shall be published for comment in accordance with the Administrative Procedure Act. Those individuals responsible for implementing this plan for each title are specified in the Act.

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Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

The Act provides that each department or agency ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or responsibilities under the Act no later than six months following the publication of final regulations for titles I, II, III, and IV of the Act. Each such department or agency may make grants or enter into contracts with individuals and profit and nonprofit institutions to effectuate the purposes of this Act. Such grants and contracts may be designed to ensure wide dissemination of information about the rights and duties established by the Act and to provide information and technical assistance about techniques for effective compliance with this Act.

Failure to receive technical assistance in no event excuses entities from meeting the requirements of the Act.

Federal wilderness areas

Section 507 requires the National Council on Disability to conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act.

Transvestites

Section 508 provides that an individual who is a transvestite is not an individual with a disability under this Act solely on the basis of being a transvestite.

Congressional inclusion

Section 509 provides that Congress is covered under all the provisions of this Act. For purposes of employment in the House of Representatives, the provision provides that the remedies and procedures of the Fair Employment Practices Resolution shall be used.

Illegal drug use

Section 510(a) and (b) provides that, for purposes of public services, public accommodations, transportation and telecommunications services, an individual who currently uses illegal drugs is not protected against discrimination if the covered entity takes action against the individual on the basis of his or her current illegal drug use. This section applies the same standard that is set forth in Section 104 of Title I and discussed in the section of this report explaining that title.

Section 510(c) provides that a person who currently uses illegal drugs cannot be denied health and social services if he or she is otherwise entitled to such services. Thus, health and mental health care providers, vocational rehabilitation and other programs that provide rehabilitation services cannot deny such services solely because an individual currently uses illegal drugs. The Committee recognizes that such services are essential to provide for the treatment of, and promote the recovery of, drug dependent persons.

Definitions

Section 511 includes a list of conditions that are not considered disabilities under this Act. Homosexuality and bisexuality were never considered impairments under this Act and therefore were never covered as disabilities. This provision simply makes the point clear in order to allay any possible concerns that have been raised. The other conditions listed are physical or mental impairments and could have been covered under this Act absent this provision. However, under this provision, the listed conditions are now excluded as disabilities. The Committee wishes to note, however, that if a person with one of the listed conditions also has another disability, which is still covered under this Act, and the person is discriminated against on the basis of the covered disability, that discriminatory act is still prohibited.

Amendments to the Rehabilitation Act

Section 512 amends the Rehabilitation Act of 1973 as it applies to individuals who currently use illegal drugs. The Rehabilitation Act presently protects these individuals against discrimination as long as they are qualified to participate in the activity at issue or are qualified to perform the job and do not present a direct threat to property or the safety of others. Section 512 amends this standard so that the treatment of persons who currently use illegal drugs is parallel to sections 104 and 510 of the ADA. Section 512, however, does not amend the existing Rehabilitation Act standard for individuals with current alcohol problems.

Severability

Section 513 provides that if any provision of this Act is found to be unconstitutional, it shall be severed from the remainder of the Act and the rest of the Act shall remain in force.

VII. OVERSIGHT FINDINGS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no findings or recommendations from the Committee on Government Operations were submitted to the Committee with reference to the subject matter specifically addressed by this legislation.

VIII. OVERSIGHT FINDINGS OF THE COMMITTEE

With reference to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee's oversight findings are set forth in the "Hearings" and "Need for the Legislation" sections of this report.

IX. CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to the filing of this report, is set forth as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 21, 1989.

Hon. Augustus F. Hawkins,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2273, the Americans with Disabilities Act of 1989, as ordered reported by the Committee on Education and Labor on November 14, 1989. The bill would require several federal agencies to establish regulations and standards to implement the legislation. We estimate the costs of these activities to be $3 million in fiscal year 1990, $7 million in 1991, $19 million in 1992, $31 million in 1993, and $31 million in 1994, assuming appropriations of the necessary funds.

Enactment of H.R. 2273 would result in substantial costs for state and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. As a result of this bill, we estimate that transit operators would have to spend $20 million to $30 million per year to purchase additional accessible buses and about $15 million per year by 1994 for additional maintenance costs. The bill would also mandate expanded paratransit service, which could result in significant costs, but uncertainties about implementation of this requirement and demand for these services makes these costs very difficult to estimate. Further, the cost of complying with the bill's requirement to make existing transit facilities accessible to the handicapped would probably reach several hundred million dollars over the next twenty years. Some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements. We could not determine how many localities would be affected by this provision.

If enacted, H.R. 2273 would prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services. H.R. 2273 would require that the Equal Employment Opportunities Commission, the Attorney General, the Secretary of Transportation, the Architectural and Transportation Barriers Compliance Board, and the Federal Communications Commission develop and issue regulations and standards for implementation and enforcement of this act.

IMPACT ON THE FEDERAL BUDGET

Equal Employment Opportunities Commission (EEOC)

Title I—Employment—would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. In addition, the EEOC would ensure the availability of a technical assistance manual to those entities with rights of responsibilities under this act. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $0.5 million in fiscal year 1990, $2.5 million in fiscal year 1991, $14.7 million in fiscal year 1992, and $27 million annually in fiscal years 1993–94. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Commission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation

H.R. 2273 would direct the Secretary of Transportation to issue regulations within one year including standards applicable to the facilities and vehicles covered by these provisions. Also, the Secretary of Transportation would make available technical assistance manuals to those with rights and responsibilities under this act. CBO estimates that the cost to the federal government of developing these regulations and manuals would be about $0.5 million during fiscal years 1990 and 1991. In addition, the federal government might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board

H.R. 2273 would require the board to issue minimum guidelines that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Although no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1990. This estimate is based upon salaries and expense costs of $104,000 and research contracts costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1992.

Office of Technology Assessment (OTA)

The OTA would be required to undertake a study to determine (1) the needs of individuals with disabilities with regards to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. In conjunction with this study, the OTA is directed to establish an advisory committee to assist with and review the study. Although no specific authorization level is stated in the bill, CBO estimates the cost of the study and advisory committee would be $0.1 million in fiscal year 1990, $0.3 million in 1991, and $0.1 million in 1992. This estimate is based upon the assumption that the OTA will not have to conduct significant additional field research.

Department of Justice

H.R. 2273 also would require the Attorney General to develop regulations to carry out sections 201 and 202 of Title II—Public Services—and to investigate alleged violations of Title III—Public Accommodations—which includes undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. In addition, H.R. 2273 would require the Department of Justice to make available technical assistance manuals to those with rights and responsibilities under this act. We estimate the cost of these activities would be $2 million in fiscal year 1990 and $4 million annually in fiscal years 1991-1994.

Federal Communications Commission (FCC)

H.R. 2273 requires the FCC to prescribe and enforce regulations with regards to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. In addition, H.R. 2273 would require the FCC to make available technical assistance manuals to those with rights and responsibilities under this act. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1990, $0.1 million in fiscal year 1991, $0.2 million in 1992, $0.2 million in 1993, and $0.1 million in 1994.

National Council on Disability

H.R. 2273 would require the council to conduct a study on the effect that wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System. Although no authorization level is stated, CBO estimates the cost of this study would be $0.1 million in fiscal year 1990 and $0.2 million in fiscal year 1991.

COSTS TO STATE AND LOCAL GOVERNMENTS

Public buildings

H.R. 2273 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly constructed state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, that some local governments may not have such requirements. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs. This estimate assumes that the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public transit

CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be acccessible to handicapped persons.

Bus and paratransit services.—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach $15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 37 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,900 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1990, increasing to $15 million in 1994, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would utilize the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such service would not impose an "undue financial burden." Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

Transit Facilities—We expect that the cost of compliance with the provisions concerning key stations would be signficant for a number of transit systems and could total several hundred million dollars (at 1990 prices) over twenty years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, "Urban Transportation for Handicapped Persons: Alternative Federal Approaches," (November 1979) that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to overstate these costs severely. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cory Leach (226-2820) and Marjorie Miller (226-2860).

Sincerely,

Robert D. Reischauer,
Director.

X. Committee Estimate

With reference to the statement required by clause 7(a)(1) of Rule XIII of the Rules of the House of Representatives, the Committee accepts the estimate prepared by the Congressional Budget Office.

XI. Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, it is the Committee's estimate that enactment of this legislation will have no significant impact on prices and costs in the operation of the national economy. Indeed, the civil rights guaranteed under this legislation will contribute to enhanced productivity, utilization of services, and cost savings in other social programs.

XII. Section-by-Section Analysis

Section 1. Short title

This Act may be cited as the "Americans with Disabilities Act of 1989."

Section 2. Findings and purposes

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities; provide enforceable standards addressing discrimination against individuals with disabilities, and ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

Section 3. Definitions

The term "disability" is defined to mean, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. This is the same definition used for purposes of sections

501, 503 and 504 of the Rehabilitation Act of 1973 and the 1988 amendments to the Fair Housing Act.

TITLE I—EMPLOYMENT

Section 101. Definitions

The provisions in Title I of the bill use or incorporate by reference many of the definitions in Title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor-management committee, commerce, industry affecting commerce). For the first two years after the effective date of the Act, only employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered. The terms "illegal drug" and "qualified individual with a disability" are also defined. The term "undue hardship" is defined, and among the specified factors to be considered are the overall financial resources available to a covered entity and those available to its covered facility, the type of operation or operations maintained by the covered entity, including the composition and structure of the entity's workforce, and the nature and cost of a needed accommodation.

Section 102. Discrimination

Using the section 504 legal framework as the model, the bill specifies that no entity covered by the Act shall discriminate against any qualified individual with a disability because of such individual's disability in regard to application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Discrimination includes, for example: limiting, segregating, or classifying a job applicant or employee in a way that adversely affects his or her opportunities or status; participating in contractual or other arrangements that have the effect of subjecting individuals with disabilities to discrimination; and using standards, criteria or methods of administration that have a discriminatory effect or perpetuate discrimination of others subject to common administrative control.

In addition, discrimination includes excluding or denying equal opportunities to a qualified nondisabled individual because of the known disability of an individual with whom the qualified individual is known to have relationship or association.

Discrimination also includes not making reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 legal framework. The term includes: making existing facilities accessible, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of policies, examinations, and training materials, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of tests and other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria is shown to be job-related for the position in question and is consistent with business necessity.

The bill also includes the pre-employment inquiries provision from section 504 which permits employers to make preemployment inquiries into the ability of an applicant to perform job-related functions but prohibits inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability. Employers are permitted to undertake post-offer/pre-entrance medical examinations so long as the results are kept confidential, all entering employees take the examinations, and the results are used only in accordance with the provisions of the title.

The bill also prohibits employers from requiring medical examinations and making inquiries as to whether an employee has a disability or as to the nature or severity of the disability unless such examination or inquiry is shown to be job-related and consistent with business necessity.

Section 103. Defenses

The bill also specifies several defenses to charges of discrimination under the Act. First, an employer can show that a qualification standard, test, or selection criteria that screens out or tends to screen out or otherwise deny a job or benefit to an individual with a disability is job-related and consistent with business necessity, and that such performance cannot be accomplished by reasonable accommodation as required under this title. Second, as a subset of the first defense, an employer need not hire or retain an employee who it shows has a currently contagious disease or infection that poses a direct threat to the health or safety of other individuals in the workplace.

With respect to religious entities, the bill adopts the religious preference provision from Title VII of the Civil Rights Act of 1964 and includes a religious tenet exemption which provides that a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

Section 104. Illegal drugs and alcohol

Current users of illegal drugs are not considered individuals with disabilities and thus are not protected under the Act. Individuals who are in or who have completed a rehabilitation program, and who are no longer current users of illegal drugs, continue to be protected. Tests for illegal drug use are not considered medical examinations under the Act. Finally, an employer may prohibit the use of alcohol or illegal drugs at the workplace by all employees; may require that employees not be under the influence of alcohol or illegal drugs at the workplace; may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act; and may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

Section 105. Posting notices

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act.

Section 106. Regulations

The Commission is directed to promulgate regulations within one year in an accessible format.

Section 107. Enforcement

The bill incorporates by reference the remedies and procedures set out in sections 706, 707, 709, and section 710 of title VII of the Civil Rights Act of 1964.

Section 108. Effective date

The effective date of Title I is 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Section 201. Definition

A "qualified individual with a disability" means an individual who, with or without reasonable modifications to rules, policies or practices, or the removal of architectural, communication, or transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

Section 202. Discrimination

Section 504 only applies to entities receiving Federal financial assistance. Title II of the bill makes all activities of State and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination).

Section 203. Actions applicable to public transportation provided by public entities considered discriminatory

New fixed route buses of any size, rail vehicles and other fixed route vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.

Used vehicles purchased or leased after the date of enactment need not be accessible but a demonstrated good faith effort to locate a used accessible vehicle must be made.

Vehicles that are remanufactured so as to extend their usable life for five years or more must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

In those communities with fixed route public transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation. Communities need not make expenditures that would result in an undue financial burden.

Communities that operate a demand responsive system that is used to provide public transportation for the general public (nondisabled and disabled) must purchase new buses for which a solicitation is made 30 days after the date of enactment of the Act that are accessible unless the system can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public; in which case all newly purchased vehicles need not be accessible.

All new facilities used to provide public transportation services must be readily accessible to and usable by individuals with disabilities.

When alterations are made to existing facilities that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities. This obligation to make the path of travel accessible only applies where the covered entity undertakes major structural modification.

All stations in intercity rail systems must be accessible within 20 years and key stations in rapid rail, commuter rail and light rail systems must be made readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable, but in any event in no less than five years.

Section 204 Regulations

The bill directs the Attorney General to promulgate regulations within one year in an accessible format that implement the provisions generally applicable to state and local governments. These regulations must be consistent with the coordination regulations issued in 1978 that governed the regulations applicable to recipients of Federal financial assistance, except with respect to "existing facilities" and "communications," in which case the Federally conducted regulations apply.

Within one year from the date of enactment, the Secretary of Transportation is directed to issue regulations in an accessible format that include standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Section 205. Enforcement

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be available to any individual who believes he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

Section 206. Effective date

The effective date of Title II is eighteen months from the date of enactment with the exception of the provision applicable to the purchase of new buses, which takes effect on the date of enactment.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 301. Definitions

The terms "commerce", "commercial facilities", and "public transportation" are defined. The term "readily achievable" is defined to mean "easily accomplishable and able to be carried out without much difficulty or expense". Factors to be considered in considering whether an action is to be considered in considering whether an action is "readily achievable" are analogous to those listed in determining whether an action is an "undue hardship" in Title I.

The bill lists categories of establishments that are considered public accommodations. The list includes but is not limited to restaurants, hotels, doctors' offices, pharmacists, grocery stores, museums, and homeless shelters. The list does not include religious institutions or entities controlled by religious institutions.

Section 301. Prohibition of discrimination by public accommodations

The bill includes general and specific categories of discrimination prohibited by the Act. In general, it is considered discriminatory to subject an individual or class or individuals, directly or indirectly, on the basis of disability, to any of the following:

(1) Denying the opportunity to participate in or benefit from an opportunity;

(2) Affording an opportunity that is not equal to that afforded others;

(3) Providing an opportunity that is less effective than that provided to others;

(4) Providing an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others; however, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Further, an entity may not directly or indirectly use standards or criteria or methods of administration that have the effect of subjecting an individual to discrimination on the basis of disability or perpetuate discrimination by others who are subject to common administrative control or are agencies of the same State. Nor can an entity discriminate against an individual because of the known association of that individual with another individual with a disability.

Specific categories of discrimination include:

The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability unless such criteria can be shown to be necessary for the provision of the goods or services being offered.

A failure to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program.

A failure to provide auxiliary aids and services unless the entity can demonstrate that such services would fundamentally alter the nature of the goods or services being offered or would result in an undue burden. Auxiliary aids and services include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

A failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to a facility that is altered, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities. The obligation to make the path of travel accessible only applies if the facility is making alterations to a primary function area and such changes are not disproportionate to the alterations being undertaken. Further, a covered entity need not install an elevator if the building has fewer than three stories, has fewer than 3,000 square feet per floor unless the building is a shopping mall, shopping center, or the professional office of a health care provider or the Attorney General determines that the category of usage requires an elevator.

A failure by a public accommodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of the Act which are readily accessible to and usable by individuals with disabilities. Special rules apply to demand responsive systems (e.g., shuttles to and from an airport and hotel).

Section 303. New construction in public accommodations and commercial facilities

With respect to places of public accommodation and commercial facilities, the bill also specifies that discrimination includes a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment readily accessible to and usable by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations. The elevator exception applicable to alterations is also applicable to new construction.

Section 304. Prohibition of discrimination in public transportation services provided by private entities

The bill includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principle business of providing air transportation) and whose operations affect commerce. All such newly purchased buses purchased later than 7 years after the date of enactment, or, in the case of small providers, 6 years after the date of enactment, must be readily accessible to and usable by individuals with disabilities.

Section 305. Study

A study must be completed within 3 years from the date of enactment on how best to achieve the section 304 accessibility requirements for entities using over the road coaches.

Section 306. Regulations

Not later than one year after the date of enactment, the Secretary of Transportation shall issue regulations that shall include standards applicable to fixed route systems and demand response systems and to public transportations services provided by private entities. Not later than one year after the date of enactment, the Attorney General shall issue regulations to carry out the remaining provisions of this title.

Section 307. Exemptions for private clubs and religious organizations

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 or to religious organizations or entities controlled by religious organizations, including places of worship.

Section 308. Enforcement

The bill uses the model of title II of the Civil Rights Act of 1964 (injunctive relief) and includes the pattern and practice authority (including civil penalites) from the recently enacted Fair Housing Act.

Section 309. Effective date

Title III shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Section 401. Telecommunications services for hearing-impaired and speech-impaired individuals

Title IV specifies that a common carrier that offers telephone services to the general public must also provide interstate or intrastate telecommunication relay services so that such services provide individuals who use non-voice terminal devices because of their disabilities opportunities for communications that are equivalent to those provided to their customers who are able to use voice telephone services, unless such services are provided pursuant to a State relay program.

Nothing in this title is to be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501. Construction

Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973. Nothing in this Act shall be construed to invalidate or limit the rights, remedies, or procedures of any other Federal law or law of any State or political subdivision of a State that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. This bill is not to be construed as regulating the underwriting, classifying, or administering of insurance risks.

Section 502. Prohibition against retaliation and coercion

Section 502 contains a prohibition against retaliation and coercion.

Section 503. State immunity

States are not immune under the 11th amendment of the United States Constitution for violations of the Act.

Section 504. Regulations by the Architectural and Transportation Barriers Compliance Board

This section directs the Architectural and Transportation Barriers and Compliance Board to issue minimum guidelines for titles II and III.

Section 505. Attorney's fees

In any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Section 506. Technical assistance

Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with specified individuals, shall develop a plan to assist entities covered under this Act, as well as other executive agencies and commissions, in understanding the responsibility of such entities under this Act. This plan shall be published for comment in accordance with the Administrative Procedure Act. Those individuals and agencies responsible for implementing this plan for each title are specified in the Act.

Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

Each department or agency shall ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or responsibilities under the Act no later than six months following the publication of final regulations for titles I, II, III, and IV of the Act. Each such department or agency may make grants or enter into contracts with individuals and profit and nonprofit institutions to effectuate the purposes of this Act. Such grants and contracts may be designed to ensure wide dissemination of information about the rights and duties established by the Act and to provide information and technical assistance about techniques for effective compliance with this Act.

Failure to receive technical assistance in no event excuses entities covered under this Act from meeting the requirements of the Act.

Section 507. Federal wilderness areas

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System, and shall issue a report to Congress within one year after the enactment of this Act.

Section 508. Transvestites

For purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

Section 509. Congressional inclusion

The provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof. The rights and protections under this Act shall apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives. In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

Section 510. Illegal drug use

For purposes of this Act, an individual with a disability does not include an individual who is a current user of illegal drugs when the covered entity acts on the basis of such use.

Nothing in this subsection shall be construed to exclude as an individual with a disability an individual who has successfully completed a supervised drug rehabilitation program and is no longer using illegal drugs, or an individual who is participating in such a program and no longer uses illegal drugs, or an individual who is erroneously regarded as using illegal drugs but is not using illegal drugs.

An individual shall not be denied health or social services on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

Section 511. Definitions

This section lists several exclusions from the term "disability".

Section 512. Amendments to the Rehabilitation Act

Provisions summarized in description of section 510 set forth above are applied to the Rehabilitation Act of 1973.

Section 513. Severability

In the event that any provision in this Act is found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and this action shall not affect the enforceability of the remaining provisions of the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

REHABILITATION ACT OF 1973

* * * * * * *

DEFINITIONS

SEC. 7. For the purposes of this Act:

(1) * * *

* * * * * * *

(8)(A) * * *

(B) [Subject to the second sentence of this subparagraph,] *Subject to subparagraphs (C) and (D),* the term "individual with handicaps" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. [For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.]

(C)(i) For purposes of title V, the term "individual with handicaps" does not include an individual who is a current user of illegal drugs, when a recipient acts on the basis of such use.

(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

(I) has successfully completed a supervised drug rehabiliation program and is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer using illegal drugs;

(II) is participating in a supervised rehabilitation program and is no longer using illegal drugs; or

(III) is erroneously regarded as being an illegal drug user but is not using illegal drugs;

except that it shall not be a violation of this Act for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual with handicaps is no longer using illegal drugs.

(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II, and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses illegal drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(v) For purposes of sections 503 and 504 as such sections relate to employment, the term "individual with handicaps" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

[(C)] *(D)* For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease of infection, is unable to perform the duties of the job.

* * * * * * *

(22) The term "illegal drugs" means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. Such term does not mean the use of a controlled substance taken under supervision by a licensed health professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

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COMMUNICATIONS ACT OF 1934

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APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in [section 223 or 224] *sections 223, 224, and 225* and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

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TITLE II—COMMON CARRIERS

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SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) Subject to the provisions of [section 301] *sections 225 and 301,* nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

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TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS

SEC. 225. (a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

(d) REGULATIONS.—

(1) In general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs.—

(A) In general.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

(C) Joint provision of services.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

(4) Fixed monthly charge.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunications relay services.

(5) Undue burden.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

(e) Enforcement.—

(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging violation of this section within 180 days after the date such complaint is filed.

(f) Certification.—

(1) State documentation.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(g) Complaint.—

(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

* * * * * * *

MINORITY VIEWS

I

On September 7, 1989, the Senate passed S. 933, the Americans with Disabilities Act, by the vote of 76–8. That bill, endorsed by President Bush, was essentially a product of negotiations between the Administration and the bill's proponents and constituted a complete rewrite of the original version of S. 933 as introduced on May 9, 1989. The major improvements in the bill, concerning employment requirements, can be summarized as follows:

ENFORCEMENT/DAMAGES

An unrestricted private cause of action with allowance for punitive and compensatory damages was eliminated. In lieu thereof, the enforcement procedures under Title VII of the 1964 Civil Rights Act were adopted. Under these procedures, a plantiff must first file a charge with the EEOC before, after receiving a right to sue letter, proceeding to Federal court. Relief is limited to lost backpay and benefits and injunctive relief; there is no provision for punitive and compensatory damages.

SCOPE

A phase-in of coverage was adopted. The first two years, employers with 25 or more employees will be covered; thereafter, those with 15 or more.

CONFUSING OVERLAP BETWEEN TITLE I (GENERAL PROHIBITION AGAINST DISCRIMINATION) AND TITLE II (EMPLOYMENT)

Title I of the bill was eliminated. All employer requirements are now contained in a new Title I.

ANTICIPATORY DISCRIMINATION

The language which would have allowed a plaintiff to sue if he or she believed that he or she was "about to be subjected to discrimination" was eliminated from the employment section.

II

On November 9 and 14, 1989, the House Education and Labor Committee considered the ADA. A substitute was offered and adopted at the markup which was comprised of the Senate-passed version of the bill and numerous changes negotiated prior to markup in both the employment and public accommodations sections. These improvements were as follows:

DRUGS

The substitute includes provisions that would clearly exclude current users of illegal drugs from protection under the ADA and under the Rehabilitation Act of 1973. An employer could act on the basis of a positive drug test and could administer such tests without fear of liability under the ADA.

CONTRACT LIABILITY

The substitute clarifies the extent of liability of a covered entity in contractual situations. Thus, a covered entity is only liable for discrimination against its own employees caused through a contract, not the effect of the contractor's action on other employees. This concept has also been clarified in the public accommodation title.

UNDUE HARDSHIP

The Committee added consideration of site specific factors when determining whether the provision of a reasonable accommodation represents an undue hardship. For example, if a grocery store that is part of a chain failed to reasonably accommodate an employee with a disability because the accommodation would constitute an undue hardship, a court could consider the financial resources of that store, and other store-based factors, as well as the financial resources of the chain, in determining whether the accommodation sought was an undue hardship. A similar principle was included in the public accommodation title under the provision, "readily achievable", the standard with which those engaged in public accommodations must comply in removing barriers.

The linkage between reasonable accommodation and undue hardship was also clarified so that any duty of reasonable accommodation is limited by the concept of undue hardship.

THRESHOLD ON ALTERATIONS

The substitute includes clarifications of when an alteration to a facility would require making the alteration accessible to and usable by those with disabilities.

DAMAGES

In the substitute a clarification was added concerning the Attorney General's authority to ask a court for monetary damages for an aggrieved party in a pattern and practice case under the public accommodation title. Such authority would not include punitive damages.

POTENTIAL PLACES OF EMPLOYMENT

Deleted the phrase and inserted "commercial facilities" to clarify that new construction, under the public accommodations title, must be accessible but not individual work stations.

GOOD FAITH

In the same type of pattern and practice case, the substitute would direct the court, when considering the good faith of the defendant, to consider whether he or she could have reasonably anticipated the appropriate auxiliary aid to accommodate the unique needs of the individual or individuals with disabilities involved in the pattern and practice case.

COORDINATION AND TECHNICAL ASSISTANCE

To encourage coordination across agencies with responsibility to enforce the ADA, the Committee added a provision to require such agencies to develop procedures in implementing regulations to ensure that complaints are handled in a manner to avoid duplication and maximize consistency in interpretation of common terms in the ADA and the Rehabilitation Act. Also, the substitute requires agencies with enforcement authority to develop technical assistance manuals on the ADA to assist businesses in complying with the act. Such manuals must be developed within six months after the issuance of regulations for any title of the ADA.

REASONABLE GROUNDS

The substitute clarifies that when filing suits based on anticipatory claims under the public accommodations title, plaintiffs must have reasonable grounds to sue.

ATTORNEY GENERAL CERTIFICATION

Allows, but does not require, State and local governments to gain certification from the Department of Justice, that State or local codes, etc., meet the accessibility requirements of the Act. Such certification would create a rebuttable presumption of compliance.

QUALIFIED HISTORICAL PROPERTIES

Allows flexibility in applying requirements of the Act to qualified historical buildings when such requirements may threaten or destroy the historical significance of such buildings.

III

While these changes to the Senate bill were significant, individual Minority Members of the Committee offered further improving amendments at the Committee markup. For example, one amendment would have deleted the requirement that medical examinations can be given only upon demonstrating that such exams were consistent with business necessity; another would have limited relief under the public accommodations section of ADA to that provided under Title II of the 1964 Civil Rights Act (injunctive relief); a third postponed the effective date of the employment and public accommodation section until after final regulations would be issued; a fourth allowed for a tax credit for costs incurred by small business under the legislation; a fifth limited the scope of the "association" provision to relationships based on blood, marriage, or situations involving significant assistance; a sixth extended coverage of the legislation to Congress. Others were also offered. These amendments were defeated.

In sum, Americans with Disabilities Act has undergone, from the time of its introduction to its passage by the Committee, many changes and many improvements. As such, it is a reasonable attempt to address a difficult social problem. Nevertheless, it is far from a perfect piece of legislation and the Minority Members of the Committee hope that an extensive Floor debate on the bill, allowing for full consideration of further improving amendments, will be allowed.

A final, important note. The Minority Members of this Committee supported this bill on the assumption that the agreement as struck in the Senate, as discussed above, with regard to remedies would be adhered to. That agreement, again, was to delete punitive and compensatory damages from the bill and to adopt current Title VII remedies of injunctive relief and lost backpay and benefits. Unfortunately, the legislation implemented this agreement through simply incorporating, by reference, the existing relevant provisions of Title VII. The Committee is now considering the Civil Rights Act of 1990, which among many other things, would amend Title VII remedies to included punitive and compensatory damages. These proposed changes to Title VII, in the view of the Minority Members, would thus, by fiat, undermine and reverse the underlying agreement which led to the passage of the ADA by the Senate. Employers, in short, are now facing the prospect of punitive and compensatory damages under a new statute imposing many novel requirements unfamiliar to most businesses in the private sector. This prospect threatens to undermine all support for this legislation and is the one issue which will result in complete opposition to the bill by the entire business community.

We strongly urge that the original agreement be adhered to and that an amendment be adopted on the House floor which would expressly adopt, in text, current Title VII remedies.

Bill Goodling.
Tom Coleman.
Tom Petri.
Marge Roukema.
Steve Gunderson.
Steve Bartlett.
Tom Tauke.
Harris W. Fawell.
Fred Grandy.
Cass Ballenger.
Peter Smith.
Tommy F. Robinson.

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101st Congress
2d Session

HOUSE OF REPRESENTATIVES

Rept. 101-485
Part 3

AMERICANS WITH DISABILITIES ACT OF 1990

May 15, 1990.—Ordered to be printed

Mr. Brooks, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal use of drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

39-081

TITLE II—PUBLIC SERVICES

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
Sec. 204. Regulations.
Sec. 205. Enforcement.
Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and commercial facilities.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemptions for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Examinations and courses.
Sec. 310. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Congressional inclusion.
Sec. 510. Illegal use of drugs.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Alternative means of dispute resolution.
Sec. 514. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) Auxiliary aids and services.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) Commission.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) Covered entity.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Employee.—The term "employee" means an individual employed by an employer.

(4) Employer.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) Illegal use of drugs.—The term "drugs" means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act

(21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal use of drugs" does not mean the use of controlled substances taken under supervision of a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(6) Person, etc.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential.

(8) Direct threat.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(9) Reasonable accommodation.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship.—

(A) In general.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses, resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition and structure of the workforce of such entity; the geographic separateness, administrative, and fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

(a) General Rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Medical Examinations and Inquiries.—

(1) In general.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment.—

(A) Prohibited examination or inquiry.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) Examination and inquiry.—

(A) Prohibited examinations and inquiries.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

(a) In General.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) Qualification Standards.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious Entities.—

(1) In general.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) Qualified Individual With a Disability.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current illegal user of drugs, when the covered entity acts on the basis of such use.

(b) Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who (i) has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs, or (ii) is participating in a supervised rehabilitation program and is no longer illegally using drugs, or (iii) is erroneously regarded as being an illegal user of drugs but is not illegally using drugs. Provided that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual defined in this paragraph is no longer illegally using drugs.

(c) Authority of Covered Entity.—A covered entity—

(1) may prohibit the use of alcohol or the illegal use of drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who is an illegal user of drugs or an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the use of drugs or alcohol by the employee; and

(5) may require employees in sensitive positions, as defined by the Department of Transportation regulations regarding alcohol and drug use, the Department of Defense drug-free workplace regulations, and the Nuclear Regulatory Commission regulations regarding alcohol and drug use, to comply with the standards established by such regulations.

(d) Drug Testing.—

(1) In general.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for illegal use of drugs of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. Such agencies shall establish such coordinating mechanisms in memoranda of understanding or regulations implementing this title and the Rehabilitation Act of 1973.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITION.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. DISCRIMINATION.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) Remanufactured vehicles.—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Paratransit as a Supplement to Fixed Route Public Transportation System.—

(1) In general.—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

(2) Undue financial burden.—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

(3) Regulations.—

(A) Formula.—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) Additional paratransit services.—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) Community Operating Demand Responsive Systems for the General Public.—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) Temporary Relief Where Lifts Are Unavailable.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(f) Construction.—

(1) In general.—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) Fraudulent application.—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) New Facilities.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) Alterations of Existing Facilities.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, and Commuter Rail Systems, and Key Stations.—

(1) Existing facilities.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Intercity, rapid, light, and commuter rail systems.—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) Key stations.—

(A) In general.—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) Rapid rail, commuter rail, and light rail systems.—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) Intercity rail systems.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) Plans and milestones.—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 205. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures and rights this title provides to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

SEC. 206. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) PUBLIC ACCOMMODATION.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(4) Public transportation.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) Readily achievable.—

(A) In general.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) Determination.—In determining whether an action is readily achievable, factors to be considered include—

(i) the nature and cost of the action needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at the facility; the effect on expenses, resources, or the impact otherwise of such action upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition and structure of the workforce of such entity; the geographic separateness, administrative and fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.—

(1) General prohibition.—

(A) Activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual with a disability or a class of individuals with disabilities, on the basis of such disability or disabilities, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual with a disability or a class of individuals with disabilities, on the basis of such disability or disabilities, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual with a disability or a class of individuals with disabilities, on the basis of such disability or disabilities, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) For purposes of sec. 302(b)(1)(A)(i)–(iii), the term "individual with a disability or a class of individuals with disabilities" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, facilities, privileges, advantages, accommodations, or services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals n covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) EQUIVALENT SERVICE.—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term 'direct threat' means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, the term "discrimination" as used in section 302(a) shall mean—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) Construction.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 6 years for other providers, except as provided in section 305(d), that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 305. STUDY.

(a) Purpose.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) Content.—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;

(2) the degree to which over-the road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) Advisory Committee.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

(d) INTERIM ACCESSIBILITY STANDARDS.—For new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(A)(vi) and 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 306(a), compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require an individual with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief

shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) Denial of rights.—

(A) Duty to investigate.—

(i) In general.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) Attorney general certification.—On the application of a state or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including persons with disabilities are provided an opportunity to testify against such certification, certify that a state law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of the Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such state law or local ordinance does meet or exceed the minimum requirements of the Act.

(B) Potential violation.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) In counting the number of previous determinations of violations for purposes of determining whether a "first" or "subsequent" violation has occurred, determinations in the same trial on liability that the covered entity has engaged in more than one discriminatory act are to be counted as a single violation.

(4) Punitive damages.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) Telecommunications.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) Definitions.—As used in this section—

"(1) Common carrier or carrier.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) Telecommunications relay services.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) Availability of Telecommunications Relay Services.—

"(1) In general.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) Remedies.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) Provision of Services.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) Regulations.—

"(1) In general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) Jurisdictional separation of costs.—

"(A) In general.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) Recovering costs.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) Joint provision of services.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) Fixed monthly charge.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) Undue burden.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) Enforcement.—

"(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) Certification.—

"(1) State documentation.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) Complaint.—

"(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) Conforming Amendments.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "sections 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance:

Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

(d) ACCOMMODATIONS AND SERVICES.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified Historic Properties.—(1) The guidelines issued under subsection (a) shall include guidelines and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in the Uniform Federal Accessibility Standards 4. 1. 7(1)(a).

(2) Regarding alterations of buildings or facilities that are covered by the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and the guidelines issued under paragraph (i) shall, at a minimum, maintain the procedures and standards established in the Uniform Federal Accessibility Standards 4. 1. 7 (1) and (2).

(3) Regarding alterations of qualified historic buildings designated as historic under a statute of the appropriate state or local government body, the guidelines issued under paragraph (i) shall establish procedures equivalent to those established by the Uniform Federal Accessibility Standards 4. 1. 7(1)(b) and (c), and shall require, at a minimum, compliance with the minimum requirements established in Uniform Federal Accessibility Standards 4. 1. 7(2).

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) Plan for Assistance.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the National Council on Disability, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chair of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) Publication of plan.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) Agency and Public Assistance.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation.—

(1) Authority to contract.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) Implementation of titles.—

(A) Title i.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) Title ii.—

(i) In general.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) Exception.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) Title iii.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) Title iv.—The Chair of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals.—Each department or agency as part of its implementation responsibilities, shall ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or responsibilities under this Act, no later than six months after applicable final regulations are published for titles I, II, III, and IV of this Act.

(d) Grants and Contracts.—

(1) In general.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) Dissemination of information.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) Failure to Receive Assistance.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) Study.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of Report.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

(a) In General.—Notwithstanding any other provision of this Act or of law, the provisions of this Act shall, subject to subsection (b), apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

(b) House Employees.—

(1) In general.—The rights and protections under this Act shall apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(2) Administration.—In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied. As used in this paragraph, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 4, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) For purposes of this Act, an individual with a disability does not include an individual who is a current illegal user of drugs, when the covered entity acts on the basis of such use.

(b) Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who (i) has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs, or (ii) is participating in a supervised rehabilitation program and is no longer illegally using drugs, or (iii) is erroneously regarded as being an illegal user of drugs but is not illegally using drugs. Provided that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual defined in this paragraph is no longer illegally using drugs.

(c) Notwithstanding subsection (a) and section 511(d), an individual shall not be denied health or social services on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

SEC. 511. DEFINITIONS.

(a) Homosexuality and Bisexuality.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) Certain Conditions.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) Handicapped Individual.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph" and inserting instead "Subject to subparagraphs (C) and (D)";

(2) by striking the second sentence;

(3) by inserting after subparagraph (B) the following:

"(C) For purposes of subchapter V of this Act the term 'individual with handicaps' does not include an individual who is a current illegal user of drugs, when a recipient acts on the basis of such use."; and

(4) by redesignating subparagraph (C) as subparagraph (D).

(b)(1) Nothing in subsection (a) shall be construed to exclude as an individual with handicaps an individual who (A) has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs, or (B) is participating in a supervised rehabilitation program and is no longer illegally using drugs, or (C) is erroneously regarded as being an illegal user of drugs but is not illegally using drugs. Provided that it shall not be a violation of this Act for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual defined in this paragraph is no longer illegally using drugs.

(2) Notwithstanding subsection 1(a), for purposes of programs and activities providing health services and services provided under title I, II and III of the Rehabilitation Act of 1973, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(3) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the illegal use or possession of drugs or alcohol against any handicapped student who currently and illegally uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(4) For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term "individual with handicaps" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(5) Section 7 of the Rehabilitation Act is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term 'illegal use of drugs' does not mean the use of controlled substances taken under supervision of a licensed health professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

EXPLANATION OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The amendment in the nature of a substitute adopted by the Committee is modeled after bills ordered reported by other Committees with jurisdiction over the bill and S. 933 as passed by the Senate. The bill differs in significant respects from the bill as introduced.

The amendment differs from the bill as introduced primarily in the following respects: The amendment deletes the general provisions title of the bill (title I), and incorporates those provisions in the remaining titles of the amendment. The amendment adds specific provisions, discussed below, detailing obligations under the employment, public services, public accommodations, and telecommunications titles. The amendment adds miscellaneous provisions, including coverage of Congress, technical assistance, and the exclusion from coverage of individuals discriminated against because of current illegal use of drugs and other specific conditions.

PURPOSE OF THE BILL AS AMENDED BY THE COMMITTEE

The purpose of the Americans with Disabilities Act (ADA), H.R. 2273 as amended, is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring those individuals into the economic and social mainstream of American life. The ADA provides enforceable standards addressing discrimination against individuals with disabilities and ensures that the federal government will play a central role in enforcing these standards on behalf of individuals with disabilities. Each title specifies the role of federal agencies in promulgating regulations, conducting compliance reviews, pursuing litigation and providing guidance and technical assistance regarding the requirements of the Act.

AMENDMENTS ADOPTED BY THE COMMITTEE

The Committee adopted 5 amendments to the bill ordered reported by the Subcommittee. An amendment added a new section to the bill, Section 513, to encourage the use of alternative dispute resolution where appropriate and to the extent authorized by law. An amendment added additional factors to be considered in making a determination of what constitutes an undue hardship under title I and what is readily achievable under title III. An amendment clarified that the remedies incorporated by reference in titles I, II and III are the remedies that the ADA provides, and that the incorporated remedies are the remedies currently available. If those remedies are amended in the future, such remedies will also apply to the ADA.

An amendment clarified the "direct threat" provision, the phrase "essential functions" of a job, and the "anticipatory discrimination" provision. This amendment also clarified what entities are covered under the general rule of title III, that commercial facilities are covered by the alterations provisions, and that exams and classes relating to applications, licensing, certifications, or credentialing must be held in an accessible place and manner. An amendment made technical changes to the interim accessibility standards under title III.

HISTORY

Federal civil rights protections for individuals with disabilities were first established by title V of the Rehabilitation Act of 1973.[1] Sections 501 and 503 of the Rehabilitation Act prohibit the federal government and most federal contractors from discriminating in employment, and requires them to use affirmative action to employ persons with disabilities. Section 504 of the Rehabilitation Act goes beyond employment, and prohibits discrimination against persons with disabilities in programs and activities of the federal government and by recipients of federal financial assistance.

The Americans with Disabilities Act was first introduced in 1988 during the 100th Congress.[2] This first bill was drafted by the National Council on Disability,[3] an independent federal agency charged with assessing the condition of persons with disabilities and making legislative recommendations. H.R. 4498 was referred to 4 Committees in the House, and was the subject of a joint hearing by subcommittees of the House Committee on Education and Labor and the Senate Committee on Labor and Human Resources.

Also in the 100th Congress, the Committee on the Judiciary considered amendments to the Fair Housing Act, title VIII of the Civil Rights Act of 1968, to prohibit discrimination against persons with disabilities in the sale or rental of housing. The amendments were enacted [4] to prohibit discrimination against persons with disabilities, to require that certain new multifamily housing units be accessible to and usable by persons with disabilities, and that units have adaptable features to meet individual needs of persons with disabilities.

The Americans with Disabilities Act was reintroduced, in a modified form, in the 101st Congress.[5] The bill as introduced again established a clear and comprehensive prohibition of discrimination on the basis of disability, in employment, public services, public accommodations and telecommunications, but responded to a number of concerns raised about the 1988 bill. The Subcommittee on Civil and Constitutional Rights conducted 3 hearings on the bill, and the Committee held one hearing, receiving testimony from the Attorney General of the United States.[6]

On April 25, 1990, the Subcommittee on Civil and Constitutional Rights, by a recorded vote of 7-1, ordered favorably reported to the Committee, H.R. 2273, as amended by an amendment in the nature of a substitute. The Committee considered H.R. 2273, as amended, on May 1 and 2, 1990. On May 2, by a recorded vote of 32-3, the Committee ordered H.R. 2273 reported favorably to the House, with a single amendment in the nature of a substitute.

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[1] P.L. 93-112, 29 U.S.C. 791, *et seq.*

[2] H.R. 4498, introduced by Mr. Coelho, and S. 2345, by Mr. Weicker.

[3] The National Council on Disability, then called the National Council on the Handicapped, is an independent federal agency first established by title IV of the Rehabilitation Act of 1973, 29 U.S.C. 780, as an advisory board within the Department of Education. In 1984 the Council was transformed into an independent federal agency by the Rehabilitation Act Amendments of 1984, P.L. 98-221.

[4] P.L. 100-430, 42 U.S.C. 3601 *et seq.*

[5] Mr. Coelho introduced the bill, H.R. 2273, in the House and Mr. Harkin introduced a companion bill in the Senate, S. 933.

[6] Hearings on H.R. 2273, the Americans with Disabilities Act, before the Committee on the Judiciary and the Subcommittee on Civil and Constitutional Rights, 101st Congress, 1st Session, Serial No. 58.

BACKGROUND AND NEED

A recent survey conducted by Louis Harris and Associates found that Americans with disabilities are notably underprivileged and disadvantaged. Compared with persons without disabilities, persons with disabilities are much poorer, have far less education, have less social and community life, participate much less often in social activities that other Americans regularly enjoy, and express less satisfaction with life.[7] Historically, the inferior economic and social status of disabled people has been viewed as an inevitable consequence of the physical and mental limitations imposed by disability.

Over the years, this assumption has been challenged by policy makers, citizens with disabilities, the courts and Congress. Gradually, public policy affecting persons with disabilities recognized that many of the problems faced by disabled people are not inevitable, but instead are the result of discriminatory policies based on unfounded, outmoded stereotypes and perceptions, and deeply imbedded prejudices toward people with disabilities. These discriminatory policies and practices affect people with disabilities in every aspect of their lives, from securing employment, to participating fully in community life, to securing custody of their children, to enjoying all of the rights that Americans take for granted.

The first major challenge to the notion that being disabled meant lifelong economic dependency was the enactment of the first Rehabilitation Act, the Fess-Kenyon Act of 1920,[8] which was prompted by the return of a vast number of disabled World War I veterans, and the ever-increasing incidence of industrial accidents. By the mid-1960's, the integration of disabled people into the mainstream of American life was the explicit goal of rehabilitation policy.

From a civil rights perspective, a profound and historic shift in disability public policy occurred in the 1970's. Through landmark litigation [9] and legislation,[10] Americans with disabilities were recognized for the first time as a minority group that was subject to discrimination, and worthy of basic civil rights protections.

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[7] Louis Harris and Associates, The ICD [International Center for the Disabled] Survey of Disabled Americans: Bringing Disabled Americans Into the Mainstream, (1986); *See also*, The ICD Survey II: Employing Disabled Americans (1987); National Council on the Handicapped, Toward Independence (1986), and On the Threshold of Independence (1988); U.S. Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities (1983); and Presidential Commission on the Human Immunodeficiency Virus Epidemic, Report of the Commission, (1988).

[8] 41 Stat. 735.

[9] Two landmark cases *Pennsylvania Association for Retarded Children* v. *Pennsylvania*, 334 F. Supp. 1257 (E.D.Pa. 1971); and *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), held that disabled children who had previously been excluded from public education had the right to a public education appropriate to their educational needs.

[10] In addition to the 1973 Rehabilitation Act, Congress enacted several other pieces of legislation designed to promote equal opportunity and integration of disabled people into the mainstream of American life. Chronologically, these statutes included: 1968, Architectural Barriers Act, 42 U.S.C. 4151 *et seq.* (required federally funded or leased buildings to be accessible); 1970, Urban Mass Transportation Act, 49 U.S.C. 1612 (required eligible jurisdictions to provide accessibility plan for mass transportation); 1973, Education for All Handicapped Children Act, 20 U.S.C. Section 1401 *et seq.* (provided that each handicapped child was entitled to a free appropriate education in the least restrictive environment); and 1975, National Housing Act Amendments, 12 U.S.C. 1701 *et seq.* (provided for barrier removal in federally supported housing).

This major shift in public policy relating to disability culminated in the passage of a broad anti-discrimination provision, Section 504 of the Rehabilitation Act of 1973. Section 504 bars discrimination by recipients of federal financial assistance against persons with disabilities in all the recipient's programs and activities. Section 504 recognizes that discrimination results from actions or inactions, and that discrimination occurs by effect as well as by intent or design. And Section 504 acknowledges, that, as in the finding 35 years ago by the Supreme Court in *Brown v. Board of Education*, in referring to the segregation of black students, that segregation for persons with disabilities "may affect their hearts and minds in a way unlikely ever to be undone." [11]

In 1973, during consideration of the Rehabilitation Act, Senator Harrison Williams said:

> for too long, we have been dealing with [the handicapped] out of charity. . . . I wish it to be said of America in the 1970's that when its attention at last returned to domestic needs, it made a strong and new commitment to equal opportunity and equal justice under law. . . . The handicapped are one part of our Nation that have been denied these fundamental rights for too long. It is for the Congress and the Nation to assure that these rights are no longer denied.[12]

The Americans With Disabilities Act completes the circle begun in 1973 with respect to persons with disabilities by extending to them the same civil rights protections provided to women and minorities beginning in 1964. This year, 1990, is an historic one in the evolution of this nation's public policy towards persons with disabilities. The ADA is a comprehensive piece of civil rights legislation which promises a new future: a future of inclusion and integration, and the end of exclusion and segregation.

SECTION-BY-SECTION ANALYSIS

Following is a section-by-section analysis of the Americans with Disabilities Act as ordered reported by the Committee.

Section 1. Short title; table of contents

This Act may be cited as the "Americans with Disabilities Act of 1990." The use of the term "disabilities" instead of the term "handicaps" reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than "handicapped" as used in previous laws, such as the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

By this change in phraseology, the Committee does not intend to change the substantive definition of handicap. The Committee intends that the analysis of the term "individaul with handicaps" contained in the primary regulations implementing the Rehabilitation Act of 1973,[13] and the term "handicap" contained in the primary regulations implementing the Fair Housing Amendments Act of 1988,[14] apply to the definition of "disability" in the ADA.

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[11] 347 U.S. 483, 494 (1954).

[12] 118 Cong. Rec. 3321-22 (1972).

The ADA should also not be interpreted to be limited to "Americans" with disabilities. The use of the title "Americans with Disabilities" reflects the belief that individuals with disabilities compose an integral part of our nation's makeup, and, like all other individuals, are entitled to equal access and opportunity. As in other civil rights laws, however, the ADA should not be interpreted to mean that only American citizens are entitled to the protections afforded by the Act.

Section 2. Findings and purposes

This section sets forth the findings and purposes of the Congress in enacting the ADA.

Section 3. Definitions

This section defines two terms: "auxiliary aids and services" and "disability."

Section 3(1)—Auxiliary aids and services

This section defines "auxiliary aids and services" to include services and devices which may be necessary to assure full and equal participation by persons with disabilities in the services and activities of public entities covered under title II and of public accommodations covered under title III.

Section 3(2)—Disability

The ADA uses the same basic definition of "disability" first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988. This definition was adopted for a number of reasons. First, it has worked well since it was adopted in 1973. Second, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may develop in the future, as they have since the definition was first established in 1973.

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the ADA.

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[13] 45 CFR, Part 84.

[14] 24 CFR, Part 100.

Test A.—A physical or mental impairment that substantially limits one or more of the major life activities of such individual

Physical or mental impairment.—Under the first test, an individual must have a physical or mental impairment. This means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.[15]

Although the definition does not include a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments,[16] examples include: orthopedic, visual, speech and hearing impairments; cerebral palsy; epilepsy; infection with the Human Immunodeficiency Virus; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; specific learning disabilities; drug addiction [17] and alcoholism.

Physical or mental impairment does not include simple physical characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural or economic disadvantages, such as having a prison record, or being poor. Age is not a disability. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the ADA based on the impairment.

Substantial limitation of a major life activity.—Under the first test, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

For example, a paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning.[18]

The impairment should be assessed without considering whether mitigating measures, such as auxiliary aids or reasonable accommodations, would result in a less-than-substantial limitation. For example, a person with epilepsy, an impairment which substantially limits a major life activity, is covered under this test, even if the effects of the impairment which substantially limits a major life activity, is also covered, even if the hearing loss is corrected by the use of a hearing aid.

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[15] This is the list used in the regulations for Section 504 of the Rehabilitation Act of 1973, 45 CFR 84.3(j)(2)(i).

[16] The definition is specifically designed to be able to incorporate new conditions and diseases that may affect individuals in the future.

[17] The current illegal use of drugs is not protected by the ADA. *See*, Sections 104 and 510.

[18] Persons infected with the Human Immunodeficiency Virus are considered to have an impairment that substantially limits a major life activity, and thus are considered disabled under this first test of the definition. *See*, Memorandum of Arthur B. Culvahouse, Jr., Counsel to the President, from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, September 27, 1988, at 3; *reprinted in* Hearings on S. 933, the Americans with Disabilities Act, before the Committee on Labor and Human Resources, 101st Congress, 1st Session, S. Hrg. 101-156, at 346.

A person with an impairment who is discriminated against in employment is also limited in the major life activity of working. However, a person who is limited in his or her ability to perform only a particular job, because of circumstances unique to that job site or the materials used, may not be substantially limited in the major life activity of working. For example, an applicant whose trade is painting would not be substantially limited in he major life activity of working if he has a mild allergy to a specialized paint used by one employer which is not generally used in the field in which the painter works.

However, if a person is employed as a painter and is assigned to work with a unique paint which caused severe allergies, such as skin rashes or seizures, the person would be substantially limited in a major life activity, by virtue of the resulting skin disease or seizure disorder. The cause of a disability is always irrelevant to the determination of disability. In such a case, a reasonable accommodation to the employee may include assignment to other areas where the particular paint is not used.

Test B.—A record of such an impairment

This test is intended to cover those who have a record of an impairment. This includes a person who has a history of an impairment that substantially limited a major life activity, such as those who have recovered from an impairment. It also includes persons who have been misclassified as having an impairment. Examples include a person who had, but no longer has, cancer, or a person who was misclassified as being mentally retarded.

Test C.—Being regarded as having such an impairment

This test is intended to cover persons who are treated by a covered entity as having a physical or mental impairment that substantially limits a major life activity. It applies whether or not a person has an impairment, if that person was treated as if he or she had an impairment that substantially limits a major life activity.

The ADA uses the same "regarded as" test set forth in the regulations implementing Section 504 of the Rehabilitation Act. Those regulations provide:

> (iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.[19]

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[19] 45 CFR 84.3(j)(2)(iv). Paragraph (j)(2)(i) is discussed at footnote 15.

The perception of the covered entity is a key element of this test. A person who perceives himself to have an impairment, but does not have an impairment, and is not treated as if he has an impairment, is not protected under this test.

A person would be covered under this test if an employer refused to hire, or a restaurant refused to serve, that person because of a fear of "negative reactions" of others to that person. A person would also be covered if an entity perceived that the applicant had an impairment which prevented the person from working, or if a public accommodation refused to serve a patron because it perceived that the patron had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, severe burn victims often face discrimination in employment and participation in community activities which results in substantial limitation of major life activities. These persons would be covered under this test because of the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *School Board of Nassau County v. Arline.*[20] The Court noted that although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." [21]

The Court concluded that, by including this test, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." [22]

Thus, a person who is rejected from a job because of the myths, fears and stereotypes associated with disabilities would be covered under this third test, whether or not the employer's perception was shared by others in the field and whether or not the person's physical or mental condition would be considered a disability under the first or second part of the definition.

Sociologists have identified common barriers that frequently result in employers excluding disabled persons. These include concerns regarding productivity, safety, insurance, liability, attendance, cost of accommodation and accessibility, and acceptance by co-workers and customers.

This list of frequent workplace concerns is not exhaustive. It illustrates, however, the attitudinal barriers that Congress clearly intended to include within the meaning of "regarded as" having a disability under the Rehabilitation Act and now under the ADA.

It is not necessary for the covered entity to articulate one of these concerns. In the employment context, if a person is disqualified on the basis of an actual or perceived physical or mental condition, and the employer can articulate no legitimate job-related reason for the rejection, a perceived concern about employing persons with disabilities could be inferred and the plaintiff would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the employer's perception is inaccurate, *e.g.*, that he will be accepted by others, or that insurance rates will not increase, in order to be qualified for the job.

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[20] 480 U.S. 273 (1987).

[21] 480 U.S. at 283.

[22] 480 U.S. at 284.

For example, many people are rejected from jobs because a back x-ray reveals some anomaly, even though the person has no symptoms of a back impairment. The reasons for the rejection are often the fear of injury, as well as increased insurance or worker's compensation costs. These reasons for rejection rely on common barriers to employment for persons with disabilities and therefore, the person is perceived to be disabled under the third test.

Behaviors and conditions not included as disabilities

In other sections of the bill, certain behaviors are explicitly not included as disabilities. Current illegal use of drugs is not protected under the bill. *See* Sections 104 and 510. Homosexuality and bisexuality, which were never covered disabilities under other federal disability laws, because they are not physical or mental impairments, are explicitly noted as not being impairments and as such are not disabilities under the ADA. *See* Section 511(a). Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs, are also excluded. *See* Sections 511(b)-(d).

TITLE I—EMPLOYMENT

Title I prohibits discrimination in employment against a qualified person with a disability. The title borrows much of its procedural framework from title VII of the Civil Rights Act of 1964,[23] which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin, by incorporating title VII's enforcement provisions, notice posting provisions, and employer coverage provisions. The title borrows much of its substantive framework from Section 504 of the Rehabilitation Act of 1973.

The underlying premise of this title is that persons with disabilities should not be excluded from job opportunities unless they are actually unable to do the job. The requirement that job criteria actually measure skills required by the job is a critical protection, because stereotypes and misconceptions about the abilities and inabilities of persons with disabilities continue to be pervasive. Discrimination occurs against persons with disabilities because of stereotypes, discomfort, misconceptions, and fears about increased costs and decreased productivity.

In order to assure a match between job criteria and an applicant's actual ability to do the job, the bill contains the following provisions:

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[23] 42 U.S.C. 2000e *et seq.*

the requirement that persons with disabilities not be disqualified because of the inability to perform non-essential or marginal functions of the job [Section 101(7)];

the requirement that any selection criteria that screen out or tend to screen out people with disabilities be job-related and consistent with business necessity [Section 102(b)(6)]; and

the requirement to provide reasonable accommodation to assist persons with disabilities to meet legitimate job criteria [Section 102(b)(5)].

These requirements work together to eliminate the pervasive bias against employing persons with disabilities.

If a person with a disability applies for a job and meets all selection criteria except one that he or she cannot meet because of a disability, the criterion must concern an essential, and not marginal, aspect of the job. The criterion must be carefully tailored to measure the actual ability of a person to perform an essential function of the job. If the criterion meets this test, it is not discriminatory on its face and is not prohibited by the ADA. If the legitimate criterion can be satisfied by the applicant with a reasonable accommodation, then the reasonable accommodation must be provided under Section 102(b)(5).

Section 101. Definitions

A number of definitions from title VII of the Civil Rights Act of 1964 are incorporated by reference in this title ("person," "labor organization," "employment agency," "commerce," and "industry affecting commerce"). Other terms, such as "Commission" and "employer" use the same concepts as contained in title VII. The definition of "employer" differs from title VII only to allow a phase-in for the first two years the law is in effect for employers employing less than 25 employees. "Employee" means an individual employed by an employer. The exception set out in title VII for elected officials and their employees and appointees is not incorporated in the ADA.

Section 101(5)—Illegal use of drugs

The term "drugs" means controlled substances as listed in schedules I through V of Section 202 of the Controlled Substances Act.[24] The Controlled Substances Act makes unlawful certain possession or distribution of listed drugs. The Committee does not intend to affect the Controlled Substances Act. The term "Illegal use of drugs" does not include the use of controlled substances, including the use of experimental drugs, taken under the supervision of a licensed health care professional. It also does not include uses authorized by the Controlled Substances Act or other provisions of federal law.

Section 101(7)—Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with a reasonable accommodation if necessary, can perform the essential functions of the employment position that such individual holds or desires.

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[24] 21 U.S.C. 812.

This same concept is used in the regulations implementing Sections 501 and 504 of the Rehabilitation Act of 1973. The phrase "essential functions" means job tasks that are fundamental and not marginal. The regulations point out that "inclusion of this phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job." [25]

For example, many employers require driver's licenses for a variety of jobs which do not require driving or where driving is incidental to the job. A driver's license is often required because it is presumed that people who drive to work are more likely to arrive at work on time or because a driver can do an occasional errand. The "essential functions" requirement assures that a person who cannot drive because of his or her disability is not disqualified for these reasons if he or she can do the actual duties of the job.

In one case, a person with epilepsy applied for the job of group counselor at a juvenile hall. After receiving a job offer, the offer was withdrawn when the employer learned that the applicant did not have a driver's license. Driving was required for emergencies, to take a juvenile to the hospital, for example, and to transport the juveniles to court appearances. While it was necessary that some of the group counselors be able to drive, it was not essential that all group counselors be available to drive. On any given shift, another group counselor could perform the driving duty. Hence, it is necessary to review the job duty not in isolation, but in the context of the actual work environment.

The incorporation of the requirement of reasonable accommodation into the definition of "qualified individual with a disability" is meant to indicate that essential functions are those which must be performed, even if the manner in which particular job tasks comprising those functions are performed, or the equipment used in performing them, may be different for an employee with a disability than for a non-disabled employee. For example, in a job requiring the use of a computer, the essential function is the ability to access, input, and retrieve information from the computer. It is not "essential" that a person be able to use the keyboard or visually read the information from a computer screen. Adaptive equipment or software may enable a person with no arms or a person with impaired vision to control the computer and access information.

The Committee adopted additional language to this definition during its consideration of the bill. The language states explicitly that consideration shall be given to the employer's judgment as to what functions of a job are essential. Although essential functions need not be listed in a written form, a written list by an employer is a useful starting point for determining essential functions of a job. An amendment that would have created a presumption in favor of the employer's determination of essential functions was rejected.

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[25] 42 Fed. Reg. 22686 (1977).

This additional language adopted by the Committee is not meant to change the current burden of proof. This language simply assures that the employer's determination of essential functions is considered. A plaintiff may challenge the employer's determination of what is an essential function.

The determination of whether a person is qualified should be made at the time of the employment action, *e.g.* hiring or promotion, and should not be based on the possibility that the employee or applicant will become incapacitated and unqualified in the future. Nor can paternalistic concerns about what is best for the person with a disability serve to foreclose employment opportunities.

With respect to covered entities subject to rules promulgated by the department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, the Committee intends that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy any physical qualification standard that is job-related and required by business necessity in order to be considered a qualified individual with a disability. By the effective date of this title, the Committee expects the Secretary of Transportation to review these requirements to determine whether they are valid under this Act. Of course, the Department of Transportation currently has an obligation under Section 504 of the Rehabilitation Act to ensure that its regulations are consistent with that Act.

Section 101(8)—Direct threat

This definition was added during Committee consideration of the bill. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. The Committee intends to codify the direct threat standard used by the Supreme Court in *School Board of Nassau County v. Arline.*[26]

Section 101(9)—Reasonable accommodation

The term "reasonable accommodation" incorporates a range of actions that may be necessary to allow a person with a disability to perform the essential functions of a job.

Examples of possible accommodations include, but are not limited to, making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment of devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers for the visually impaired or interpreters for the hearing impaired, and other similar accommodations.

The requirements of reasonable accommodation are discussed under Section 102(b)(5) below.

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[26] 480 U.S. 273 (1987).

Section 101(10)—Undue hardship

The term undue hardship means an action requiring significant difficulty or expense. Undue hardship is determined by considering, at least, the overall size of the business, the site involved, and the nature and cost of the accommodation needed. Although an action may be a significant expense or result in significant difficulty in the abstract, or when considered with regard to a small employer, it may not be an undue hardship when considered in light of the size of the employer, the site involved and the accommodation needed.

The Committee adopted additional factors to be considered in making a determination of undue hardship. These additional factors are discussed under Section 102(b)(5) below.

Section 102. Discrimination

Section 102(a), General Rule. Discrimination is prohibited against a qualified individual with a disability in all parts of the employment process. Specifically included as part of the employment process are job application procedures, hiring, advancement, discharge, compensation, and job training, and other terms, conditions, and privileges of employment.

The Committee intends that the aspects of the employment process covered by the non-discrimination mandate be construed in a manner consistent with the regulations implementing Section 504 of the Rehabilitation Act. Those regulations provide that the antidiscrimination mandate applies in:

> (1) recruitment, advertising, and the processing of applications for employment;
>
> (2) hiring, updating, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
>
> (3) rates of pay or any other form of compensation and changes in compensation;
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> (4) job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
>
> (5) leaves of absence, sick leave, or any other leave;
>
> (6) fringe benefits available by virtue of employment, whether or not administered by the [employer];
>
> (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leave of absence to pursue training;
>
> (8) employer sponsored activities, including social or recreational programs.[27]

Discrimination is prohibited against a qualified individual with a disability, as defined in Section 101(7), and as discussed above. The Committee does not intend to cover individuals who do not meet the definition of qualified individual with a disability.

As with other civil rights laws prohibiting discrimination in employment, the Committee does not intend to limit the ability of covered entities to choose and maintain a qualified workforce. Covered entities continue to have the ability to hire and employ employees who can perform the job. Employers can continue to use job-related criteria in choosing qualified employees. For example, in a job that requires lifting 50 pound boxes, an employer may test applicants and employees to determine whether they can lift 50 pound boxes. Similarly, an employer can continue to give typists typing tests to determine their abilities.

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[27] 45 CFR 84.11(b).

The Committee does not intend that covered entities have an obligation to prefer applicants with disabilities over other applicants on the basis of disability.

Section 102(b)—Construction

This section of the bill describes 7 specific types of discrimination included in the prohibition under Section 102(a).

Section 102(b)(1)—Limiting, segregating or classifying

Section 102(b)(1) prohibits an employer from limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee based on that person's disability.

For example, an employer could not adopt a different pay scale, benefits, promotion opportunities or working area for employees with disabilities. In one case, an employer had a separate job category for janitors with developmental disabilities with lower pay, no benefits or seniority rights, even though the job duties were the same as other janitors. This would be a violation of this title.

Section 102(b)(2)—Contractual relationships

Section 102(b)(2) provides that a covered entity may not participate in a contractual relationship that has the effect of subjecting the covered entity's qualified applicants or employees to discrimination. The phrase "the covered entity's" qualified applicants or employees was included in order to avoid any misunderstanding regarding this provision. This provision is intended to apply to a situation in which a covered entity "A" enters into a contractual relationship with another entity "B," which has the effect of subjecting the covered entity "A's" own employees or applicants to discrimination. It does not apply to a situation in which covered "A" enters into a contractual relationship with another entity "B," and that entity "B" is engaging in some form of discrimination against its own employees or applicants. Entity "A" carries no liability in such a situation for the discrimination of entity "B." Of course, entity "B" may be separately liable to suit under this Act, by its employees or applicants.

Section 102(b)(2) also provides that a covered entity may not participate in a contractual relationship that has the effect of subjecting the covered entity's qualified applicants or employees "to the discrimination prohibited by this title." The intent of this provision is that an entity may not do through a contractual provision what it may not do directly. The type of discrimination prohibited is that set forth in the substantive provisions of the bill. Thus, if the contractual relationship having the effect of discrimination occurs in any of the areas covered by this title, for example, in hiring, training or promotion of employees, to the extent that the requirement of reasonable accommodation, and the limitation of undue hardship, apply if the entity is acting directly, these requirements and limitations would apply as well when the entity is acting in a contractual relationship. The contractual relationship adds no new obligations in and of itself beyond the obligations imposed by the Act, nor does it reduce the obligations imposed by the Act.

For example, assume that an employer "C" is seeking to contract with a company "D" to provide training for the employees of employer "C". Whatever responsibilities and limitations of reasonable accommodation that would apply to the employer "C" if it provided the training itself would apply as well in the contractual situation. Thus, if the training company "D" were planning to hold its program in a physically inaccessible location, thus making it impossible for an employee who used a wheelchair to attend the program, the employer "C" would have a duty to consider various reasonable accommodations. These could include, for example, (1) asking the training company to identify other sites for the training that are accessible; (2) identifying other training companies that use accessible sites; (3) paying to have the training company train the disabled employee (either one-on-one or with other employees who may have missed the training for other reasons), or any other accommodation that might result in making the training available to the employee.

If no accommodations were available that would have made the training program accessible, or if the only options that were available would have imposed an undue hardship on the employer, the employer would have then met its requirements under the Act. The Committee anticipates, however, that some form of accommodation could be made so the disabled employee would not be precluded from receiving training that the employer may consider necessary.

As a further example, assume that an employer contracts with a hotel for a conference held for the employer's emplcyees. Under the Act, the employer has an affirmaive duty to investigate the accessibility of a location that it plans to use for its own employees. Suggested approaches for determining accessibility would be for the employer to inspect the hotel first-hand, if possible, or to ask a local disability group to inspect the hotel. In any event, the employer can always protect itself in such situations by simply ensuring that the contract with the hotel specifies that all rooms to be used for the conference, incuding the exhibit and meeting rooms, be accessible in accordance with applicable standards. If the hotel breaches this accessibility provision, the hotel will be liable to the employer for the cost of any accommodation needed to provide access to the disabled individual during the conference, as well as for any other costs accrued by the employer. Placing a duty on the employer to investigate the accessibility of places that it contracts for will, in all likelihood, by the impetus for ensuring that these types of contractual provisions become commonplace in our society.

With respect to health insurance contracts, Section 501(c) of the Act specifically provides that the ADA does not affect pre-existing condition clauses included in insurance policies offered by employers. Employers may continue to offer policies that contain pre-existing condition exclusions, even though such exclusions adversely affect persons with disabilities, so long as such clauses are not used as a subterfuge to evade the purposes of this Act.

However, employers may not deny health insurance coverage completely to an individual based on the person's diagnosis or disability. For example, it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments (*e.g.*, a limit on the extent of kidneys dialysis or whether dialysis will be covered at all, or a limit on the amount of blood transfusions or whether transfusions will be covered). It would not be permissible, however, to deny coverage to individuals, such as persons with kidney disease or hemophilia, who are affected by these limits on coverage for procedures or treatments, for other procedures or treatments connected with their disability.[28] It would also not be permissible to deny coverage to such individuals for other conditions not connected with these limitions on coverage, such as treatment for a broken leg or heart surgery. While limitation may be placed on reimbursements for a procedure or the types of drugs or procedures covererd, that limitation must apply to all persons, with or without disabilities. Persons with disabilities must have equal access to the health insurance coverage that is provided by the employer to all employees.

Section 102(b)(3)—Standards, criteria or methods of administration that have the effect of discrimination or that perpetuate discrimination

Section 102(b)(3) prohibits employers from using standards, criteria or methods of administration that have the effect of discrimination or that perpetuate discrimination by others who are subject to common administrative control.

For example, an employer could not enter into a contract for liability insurance with an insurance company who refused to cover accidents or injuries of persons with disabilities. Nor could the employer refuse to hire a person with a disability because the liability policy did not cover persons with disabilities.

Section 102(b)(4)—Association

Discrimination is also prohibited against a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

This provision protects persons who associate with persons with disabilities and who are discriminated against because of that association. This may include family, friends, and persons who provide care for persons with disabilities. The Committee rejected an amendment to limit this provision to the relatives (by blood, marriage, adoption or guaradianship) of persons with disabilities.

This provision applies only when the employer knows of the association with the other person and knows of that other person's disability. The burden of proof is on the individual claiming discrimination to prove that the discrimination was motivated by that individual's relationship or association with a person with a disability.

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[28] Of course, if the insurance plan had a pre-existing condition clause which limited coverage for a specified time, that clause would govern to limit coverage.

For example, it would be discriminatory for an employer to discriminate against a qualified employee who did volunteer work for people with AIDS, if the employer knew of the employee's relationship or association with the people with AIDS, and if the employment action was motivated by that relationship or association.

Similarly, it would be illegal for an employer to discriminate against a qualified employee because that employee had a family member or a friend who had a disbility, if the employer knew about the relationship or association, knew that the friend or family member has a disability, and acted on that basis. Thus, if an employee had a spouse with a disability, and the employer took an adverse action against the employee based on the spouse's disability, this would then constitute discrimination.

This section would not apply if the employer did not know of the relationship or association, or if the employer did not know of the disability of the other person. Thus, if an employer fired an employee, and did not know of a relationship or association of the employee with a person with a disability, the employee could not claim discrimination under this section.

Section 102(b)(5)—Reasonable accommodation

An employer is required to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability. An employer may not deny employment opportunities if the denial is based on the need to make a reasonable accommodation. This reasonable accommodation requirement is central to the non-discrimination mandate of the ADA.

Section 101(9) provides examples of reasonable accommodations, including making changes in the physical environment in order to provide access, as well as changes in the structure of the job, such as part-time or modified work schedules. In other cases, the acquisition of modification of equipment, such as adaptive hardware or software for computers, telephone headset amplifiers, and the telecommunication devices will enable persons with disabilities to do the job. For some people with disabilities, the assistance of another individual, such as a reader, interpreter or attendant, may be necessary for specified activities.

The examples set forth in Section 101(9) are not meant to be exhaustive, but rather serve to illustrate the nature of the obligation. The employee or applicant must request a reasonable accommodation; the employer is not liable for failing to provide an accommodation if it was not requested.

A reasonable accommodation should be tailored to the needs of the individual and the requirements of the job. Persons with disabilities have vast experience in all aspects of their lives with the types of accommodations which are effective for them. Employers should not assume that accommodations are required without consulting the applicant or employee with the disability. Stereotypes about disability can result in stereotypes about the need for accommodations, which may exceed what is actually required. Consultations between employers and the persons with disabilities will result in an accurate assessment of what is required in order to perform the job duties.

In the event there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement, as long as the selected accommodation provides meaningful equal employment opportunity for the applicant or employee.

Like Sections 501, 503 and 504 of the 1973 Rehabilitation Act, the ADA provides that the employer is not required to provide accommodations if the employer demonstrates that providing such an accommodation will pose an undue hardship on the opeation of its business.

The ADA defines "undue hardship" in Section 101(10)(A) to mean an action requiring significant difficulty or expense, when considered in light of the factors set forth in subsection (B). This definition was included for two reasons. First, a definition of undue hardship was included in order to distinguish it from the definition of "readiily achievable" in title III governing the requirement to alter existing public accommodations. Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense." The duty to provide reasonable accommodation, by contrast, is a much higher standard than the duty to remove barriers in existing buildings (if removing the barriers is readily achievable) and creates a more substantial obligation on the employer.

Second, a definition was included in order to distinguish the duty to provide reasonable accommodation in the ADA from the Supreme Court's interpretation of title VII in *TWA v. Hardison,*[29] which held that accommodations to religious beliefs need not be provided if the cost was more than *de minimis* to the employer.

Thus, the definition of "undue hardship" in the ADA is intended to convey a significant, as opposed to a *de minimis* or insignificant, obligation on the part of employers. In determining whether this obligation is met, the legislation, like Sections 501, 503 and 504 of the Rehabilitation Act, sets forth a number of factors to be considered, including the size, budget and number of employees of the covered entity.

The ADA also sets forth additional factors which ae specifically addressed to entities which operate more than one facility. Concerns were expressed that a court would look only at the resources of the local facility involved, or only at the resources of the parent company, in determining whether an accommodation imposed an undue hardship. The Committee believes that both of these alternatives are unsatisfactory. Instead, the Committee intends that the resources of both the local facility involved and of the parent compnay, as well as the relationship between the two, be relevant to the undue hardship determination.

The Committee is responding particularly to concerns about employers who operate in depressed or rural areas and are operating at the margin or at a loss. Specifically, concern was expressed that an employer may elect to close a store if it is losing money or only marginally profitable rather than undertake significant investments to make reasonable accommodations to employees with disabilities. The Committee does not intend for the requirements of the Act to result in the closure of neighborhood stores or in loss of jobs. The Committee intends for courts to consider in determining "undue hardship," whether the local store is threatened with closure by the parent company or is faced with job loss as a result of the requirements of this Act.

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[29] 432 U.S. 63 (1977).

The Committee adopted an amendment which sets forth the site factors in Section 101(10)(B)(ii) and the parent company factors in Section 101(10)(B)(iii). Section 101(10)(B)(iv) addresses the fiscal and administrative relationship between the covered entity and the facility involved in the accommodation. By rearranging the factors in Section 101(10)(B), the Committee did not intend to give any single factor paticular weight. Rather, all of the listed factors should be included in an analysis of whether providing an accommodation would impose an undue hardship on a covered entity.

By including a number of factors the Committee intends to establish a flexible approach. The Committee rejected an amendment which would have set a fixed limit of over 10% of the disabled employee's salary as a *per se* undue hardship. The Committee believes that setting a ceiling on reasonable accommodation is inappropriate and that the flexible approach used under Section 504 of the Rehabilitation Act, which has been in operation for 17 years, is appropriate for the ADA as well.

The Committee bill added the phrase in subparagraph (A) "when considered in light of the factor set forth in subparagraph (B)" in order to emphasize that the standard is relative. Thus, an action which may be significant in the abstract may, in fact, still be required when considered in light of all the factors. Only those accommodations which would require significant difficulty or expense when considered in light of the size, resources and structure of the employer would be considered an undue hardship.

The flexible approach is illustrated by a leading Section 504 case, *Nelson* v. *Thornburgh*.[30] In that case, a group of state income maintenance workers who were blind requested several accommodations, including the use of readers, braille forms and a computer which stores and retrieves information in braile. Although the costs of these accommodations were substantial, the court found that the additional dollar burden was only a small fraction of the state agency's personnel budget. Given these facts, the accommodations would not require "significant expense" and thus would not be an undue hardship. However, the same accommodations may be an undue hardship for a small employer because they would require expending significant proportions of available resources.

The fourth factor for determining or not an accommodation would impose an undue hardship focuses on the type of operation maintained by the entity. This would include, for example, consideration of the special circumstances incurred on certain types of temporary worksites common in the construction industry. For example, in some circumstances, it might fundamentally alter the nature of a construction site or be unduly costly to implement or maintain physical accessibility, for a job applicant or employee who uses a wheelchair if, for example, the site's terrain and the building structure changes daily as construction progresses. The Committee recognizes that some accommodations that can easily be made in an office setting may impose an undue hardship in other settings.

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[30] 567 F. Supp. 369 (E.D. Pa. 1983).

The determination of undue hardship is a factual one which must be made on a case-by-case basis. Like Section 504 of the Rehabilitation Act, the burden is on the employer to demonstrate that the needed accommodation would cause an undue hardship.[31]

Section 102(b)(6)—Qualification standards

This section prohibits the use of qualification standards, employment tests or other selection criteria that screen out or tend to screen out persons with disabilities, unless the criteria are shown to be jobrelated and consistent with business necessity.

If an employer uses a facially neutral qualification standard, employment test or other selection criterion that has a discriminatory effect on persons with disabilities, this practice would be discriminatory unless the employer can demonstrate that it is jobrelated and required by business necessity.[32]

The requirement that job selection procedures be job-related and consistent with business necessity underscores the need to examine all selection criteria to assure that they not only provide an accurate measure of an applicant's actual ability to perform the job, but that even if they do provide such a measure, a disabled applicant is offered a reasonable accommodation to meet the criteria that relate to the essential functions of the job at issue. It is critical that paternalistic concerns for the disabled person's own safety not be used to disqualify an otherwise qualified applicant.

Section 102(b)(7)—Tests

Tests should measure what they purport to measure. It is discriminatory to select and administer tests to a person who has a disability that impairs sensory, manual, or speaking skills, if the test reflects impaired sensory, manual or speaking skills, rather than reflecting the skills or aptitudes the test purports to measure. An employer can use such a test if the test purports to measure sensory, manual, or speaking skills and those skills are related to the job, as required under this title.

Section 102(c)—Medical examinations and inquiries

Historically, employment application forms and employment interviews requested information concerning an applicant's physical or mental condition. This information was often used to exclude applicants with disabilities, particularly those with "hidden" disabilities such as epilepsy, diabetes, emotional illness, heart disease and cancer, before their ability to perform the job was even evaluated.

In order to assure that misconceptions do not bias the employment selection process, this section sets up a process that begins with the prohibition of pre-employment medical examinations or inquiries. This process parallels the requirements in the regulations implementing Section 504 of the Rehabilitation Act of 1973, but differs from requirements under Section 503 of the same Act.

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[31] *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 308 (5th Cir. 1981), 29 CFR 1613.704(a).

[32] *See, Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 306 (5th Cir., 1981), 45 CFR 84.13; 28 CFR 42.512; 29 CFR 32.14; 42 Fed. Reg. 22688, ¶ 17 (1977).

Before employment.—Employers may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is disabled or as to the nature of severity of a disability. An employer may make inquiry into the ability of an applicant to perform job-related functions.

After an offer of employment has been made, an employer may require a medical examination, and may condition the offer of employment on the results of the examination. All entering employees within the same job category must be subject to the examination, however, and information obtained during the examination must be kept confidential. This information, including the medical condition or history of the applicant, must be collected and maintained on separate forms and kept in separate files from general personnel information.

This confidential information may be shared with supervisors and managers regarding necessary restrictions on the work of the employee and necessary accommodations. It may also be shared with first aid and safety personnel for emergency purposes and with government officials investigating compliance with the Act.

The results of the medical examination cannot be used to discriminate against a person with a disability if the person is still qualified for the job.

In certain industries, such as air transportation, applicants for security and safety related positions are normally chosen on the basis of many competitive factors, some of which are identified as a result of post-offer pre-employment medical examinations. Thus, after the employer receives the results of the post-offer medical examination for applicants for safety or security sensitive positions, only those applicants who meet the employer's criteria for the job must receive confirmed offers of employment, so long as the employer does not use those results of the exam to screen out qualified disabled individuals on the basis of disability.

The Committee does not intend for this Act to override any legitimate medical standards or requirements established by federal, state or local law, or by employers for applicants for safety or security sensitive positions, if the medical standards are consistent with this Act.

During employment.—After an employee is hired, an employer cannot require a medical examination, make an inquiry as to whether the employee has a disability, or inquire as to the nature or severity of the disability, unless the examination or inquiry is job-related and consistent with business necessity.

An employer may conduct voluntary medical examinations which are part of an employee health program available to employees at a particular worksite. This provision was included in the bill to allow the continuation of voluntary "corporate wellness" programs. These voluntary corporate wellness programs have over the years uncovered employees with elevated blood pressure readings, glaucoma, lung cancer and other ailments for which the employee can then seek medical help. These programs can also be used, and are used, to provide treating physicians with x-ray and lab tests which help reduce the cost for medical care. This section does not preclude employers from continuing to offer these programs on a volunary basis. Employers may not require, however, medical examinations which are not job-related and consistent with business necessity.

As during pre-employment, employers may continue to make inquiries into the ability of an employee to perform job-related functions. These examinations and inquiries are subject to the same confidentiality and non-discrimination requirements as for pre-employment examinations and inquiries.

An inquiry or medical examination that is not job-related serves no legitimate employer purpose, but simply serves to stigmatize the person with a disability. For example, if an employee starts to lose a significant amount of hair, the employer should not be able to require the person to be tested for cancer unless the testing is job-related. While the employer may argue that it does not intend to penalize the person, the person with cancer may object merely to being identified, independent of the consequences. Being identified as having a disability often carriers both blatant and subtle stigma. Legitimate needs of the employer are met by allowing job-related examinations and inquiries.

Consistent with regulations implementing the Rehabilitation Act, covered entities may invite applicants to indicate whether and to what degree they have a disability only under the following circumstances:

> when a covered entity is taking remedial action to correct the effects of past discrimination,
>
> when a covered entity is taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for persons with disabilities, or
>
> when a covered entity is taking affirmative action required by Section 503 of the Rehabilitation Act of 1973.

If a covered entity meets any of these circumstances, then it must state clearly on any written questionnaire used for this purpose or make clear orally (if no written questionnaire is used):

> that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts, and
>
> that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this title.

Section 103. Defenses

Section 103(a)—In general

If a qualification standard, test, or other selection criterion screens out or tends to screen out or otherwise denies a job to an individual with a disability, an employer may defend the practice by showing that the practice is job-related and consistent with business necessity.

Section 103(b)—Qualification standards

Employers, as discussed above, may set qualification standards for their employees. For example, an employer may have a requirement that a person be able to lift 50 pounds or be able to drive a vehicle, if these requirements are job-related and consistent with business necessity.

A qualification standard may also include a requirement that an individual not pose a direct threat to the health or safety of other individuals in the workplace. During Committee consideration, this "direct threat" standard was extended to all individuals with disabilities, and not simply to those with contagious diseases or infections.

This concept is also contained in the Civil Rights Restoration Act of 1988 [33] and the Fair Housing Amendments Act.[34] It is based on the same standard for "qualified" person with a disability that has existed for years under the Rehabilitation Act of 1973.

In order to determine whether an individual poses a direct threat to the health or safety of other individuals in the workplace, the Committee intends to use the same standard as articulated by the Supreme Court in *School Board of Nassau County* v. *Arline.*[35] In *Arline,* the court held that a "person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk." [36] Such risk of transmitting the infection to others must be determined based on objective and accepted public health guidelines.

An amendment defining "direct threat" was adopted by the Committee in Section 101(8). Direct threat is defined as a "significant risk to the health or safety of others that cannot be eliminated with reasonable accommodation." This definition was added to clarify that the direct threat standard is a codification of the analysis in *Arline.*

While the *Arline* case involved a contagious disease, tuberculosis, the reasoning in that case is applicable to other circumstances. A person with a disability must not be excluded, or found to be unqualified, based on stereotypes or fear. Nor may a decision be based on speculation about the risk or harm to others. Decisions are not permitted to be based on generalizations about the disability but rather must be based on the facts of an individual case.

For example, an employer may not assume that a person with a mental disability, or a person who has been treated for a mental disability, poses a direct threat to others. This would be an assumption based on fear and stereotype. The purpose of creating the "direct threat" standard is to eliminate exclusions which are not based on objective evidence about the individual involved. Thus, in the case of a person with mental illness there must be objective evidence from the person's behavior that the person has a recent history of committing overt acts or making threats which caused harm or which directly threatened harm.[37]

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[33] P.O. 100-259, 29 U.S.C. 706(8)(C).
[34] P.L. 100-430, 42 U.S.C. 3604(f)(9).
[35] 480 U.S.C. 273 (1987).
[36] 480 U.S. at 287, n.16.

The "direct threat" standard may not be used to circumvent the prohibition against pre-employment inquiries into a person's disability. It may not be used to justify generalized requests or inquiries related to medical records. The prohibition against pre-offer medical examinations also applies to psychological examinations.

The employer may, however, conduct a post-offer medical examination, including a psychological examination, as long as it meets the requirements of Section 102(c)(3). If the applicant is otherwise qualified for the job, he or she cannot be disqualified on the basis of a physical or mental condition unless the employer can demonstrate that the applicant's disability poses a direct threat to others in the workplace.

The plaintiff is not required to prove that he or she poses no risk. As stated in *Chalk* v. *U.S. District Court,* "[l]ittle in science can be proved with complete certainty, and section 504 does not require such a test. As authoritatively construed by the Supreme Court, section 504 allows the exclusion of an employee only if there is 'a *significant* risk . . . to others'." [38]

The determination of significant risk for persons with disabilities must be based on the current condition of the applicant or employee. The decision to exclude cannot be based on merely "an elevated risk of injury." [39] This amendment adopted by the Committee sets a clear, defined standard which requires actual proof of significant risk to others.

Section 103(c)—Religious entities

This section states that the ADA does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such entity. This provision is similar to provisions included in Section 702 of the Civil Rights Act of 1964,[40] and should be interpreted in a consistent manner. Nothing in this section should be interpreted to affect Section 702 of the Civil Rights Act of 1964.

This section also allows religious organizations to require that all applicants and employees conform to the religious tenets of such organizations. A similar provision is included in title IX of the Educational Amendments of 1972.[41] The Committee intends that this provision be interpreted consistent with that provision. To the extent allowed under title IX, religious tenets are not required to be in written form to be considered under this section.

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[37] For example, an employer may not refuse to hire an individual simply because the applicant has mental retardation or has sought treatment for a mental disorder. Similarly, if the employer determines that the applicant has a history of mental illness, the employer cannot presume that the person poses a threat to the health or safety of others. Any determination of direct threat must be based on objective evidence, not stereotype or speculation.

[38] 840 F.2d 701, 707 (9th Cir. 1988), emphasis original, quoting *Arline* (see fn. 36).

[39] *See, Mantolete* v. *Bolger*, 767 F.2d 1416, 1422 (9th Cir., 1985).

[40] 42 U.S.C. 2000e–1.

[41] 20 U.S.C. 1681(a)(3).

Section 104. Illegal use of drugs and alcohol

Employers are not prohibited from discriminating against a person based on current illegal use of drugs. However, a person who illegally uses drugs, but is discriminated against because of some other disability that is covered under the Act, is still protected againt such discrimination. The person is simply not protected against adverse actions taken on the basis of such person's illegal use of drugs.

Section 104(b) provides protections for persons who are not currently illegally using drugs and (1) have successfully completed a drug rehabilitation program, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as being an illegal user of drugs.

Sections 104 (a) and (b) are similar to sections 510 (a) and (b) relating to the entire bill, and should be interpreted in a consistent fashion.

Employers may require that employees not be under the influence of illegal drugs and may prohibit the use of alcohol or illegal drugs at the workplace. Employers may require that employees behave in conformance with requirements of the Drug-Free Workplace Act of 1988,[42] and may hold an employee who is an illegal user of drugs or an alcoholic to the same qualification standards required of all employees. Employers may require employees in sensitive positions, as defined by regulations established by the Departments of Transportation and Defense, and the Nuclear Regulatory Commission, to adhere to standards established by such regulations.

Finally, section 104(b) and section 104(d) explicitly allow employers to conduct drug tests for the illegal use of drugs to ensure that an applicant or employee is not illegally using drugs. However, the Committee wishes to emphasize that this provision may not be applied to conflict with the right of individuals who are legally taking drugs (e.g., taking drugs under medical supervision for their disability) not to disclose their medical condition before a conditional offer of employment has been given.[43] Thus, employers must either give drug tests after conditional offers of employment have been made (the employer may then make the job offer strictly contingent on the person not testing positive on the drug test for the illegal use of drugs) or ensure that any drug test given before a conditional job offer will be used to test strictly for the illegal use of drugs and not for drugs that are taken legally pursuant to medical supervision.

Section 105. Posting notices

Section 105 requires covered entities to post notices in an accessible format to applicants, employees, and members of the public describing the applicable provisions of the Act, in a manner prescribed in Section 711 of the Civil Rights Act of 1964.[44]

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[42] 41 U.S.C. 701, *et seq.*

[43] See Section 102(c)(2).

[44] 42 U.S.C. 2000-10.

Section 106. Regulations

The Equal Employment Opportunity Commission (EEOC) is required to issue regulations within 1 year after enactment. The regulations must be in an accessible format, and must be promulgated in accordance with the Administrative Procedure Act.[45]

In the employment title, as in all the titles, the Committee expects that the designated agencies will take their responsibilities seriously and will issue the required regulations in the designated time-frame. As noted, one of the stated purposes of this Act is "to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities."[46] The first role that the federal agencies must play in enforcing the ADA is the issuance of regulations. The Committee intends that individuals with disabilities have a right under this Act to require the relevant agencies to issue the mandated regulations.

Section 107. Enforcement

Title I incorporated the powers, remedies and procedures set forth in Sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964.[47] The Committee intends that the powers, remedies and procedures available to persons discriminated against based on disability shall be the same as, and parallel to, the powers, remedies and procedures available to persons discriminated against based on race, color, religion, sex or national origin. Thus, if the powers, remedies and procedures change in title VII of the 1964 Act, they will change identically under the ADA for persons with disabilities.

A bill is currently pending in the Judiciary and Education and Labor Committees, H.R. 4000, which would amend the powers, remedies and procedures of title VII of the Civil Rights Act of 1964. Because of the cross-reference to title VII in Section 107, any amendments to title VII that may be made in H.R. 4000 or in any other bill would be fully applicable to the ADA. An amendment was offered, during consideration of H.R. 2273 by the Committee, that would have removed the cross-reference to title VII and would have substituted the actual words of the cross-referenced sections. This amendment was an attempt to freeze the current title VII remedies (*i.e.*, equitable relief, including injunctions and back pay) in the ADA. This amendment was rejected as antithetical to the purpose of the ADA—to provide civil rights protections for persons with disabilities that are parallel to those available to minorities and women. By retaining the cross-reference to title VII, the Committee's intent is that the remedies of title VII, currently and as amended in the future, will be applicable to persons with disabilities.

The Committee also addressed the concern that the statutory language providing that the remedies and procedures set forth in title VII of the Civil Rights Act of 1964 "shall be available" might have been interpreted to imply that a plaintiff could bypass the administrative remedies of title VII and go directly to court under title I of the ADA.[48] Thus an amendment was adopted that replaced the term "available, with respect" with "the powers, remedies and procedures this title provides." The purpose of this amendment was to clarify that persons with disabilities must follow the same procedures and secure the same remedies as women and minorities under title VII, currently and as amended in the future. The Committee adopted this amendment because it reaffirms the intent of parity between people with disabilities and minorities and women under title VII, and because it serves to clarify the intended meaning of the provision. The amendment does not affect in any way the continued availability of the rights, remedies and procedures of other federal laws and other state laws (including state common law) as provided in Section 501(b) of this Act, but simply clarifies that the remedies of title VII of the Civil Rights Act of 1964 are the only remedies that are provided by title I of this Act for employment discrimination claims.

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[45] 5 U.S.C. 551 *et seq.*

[46] Section 2(b)(3).

[47] 42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8 and 2000e-9.

Administrative complaints filed under this title and the Rehabilitation Act should be dealt with in a manner to avoid duplication of efforts, and to prevent inconsistent or conflicting standards. The Committee intends that agencies with enforcement authority under this title or the Rehabilitation Act of 1973 should develop procedures and coordination mechanisms to achieve these goals. Coordinating mechanisms should be established in regulations or memoranda of understanding.

The term "person" is used in the enforcement section to make it clear that organizations representing individuals with disabilities shall have standing to sue under the ADA.

Section 108. Effective date

Title I becomes effective 24 months after enactment.

TITLE II—PUBLIC SERVICES

Section 201. Definition

This section defines the term "qualified individual with a disability." This definition is derived from the regulations implementing Section 504 of the Rehabilitation Act of 1973,[49] and should be interpreted in a manner consistent with those regulations.

Section 202. Discrimination

Title II extends the protections of Section 504 of the Rehabilitation Act to cover all programs of state or local governments, regardless of the receipt of federal financial assistance. By prohibiting discrimination against persons with disabilities in programs and activities of the federal government and by recipients of federal financial assistance, Section 504 of the Rehabilitation Act has served not only to open up public services and programs to people with disabilities but has also been used to end segregation. The purpose of title II is to continue to break down barriers to the integrated participation of people with disabilities in all aspects of community life. The Committee intends that title II work in the same manner as Section 504.

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[48] The concerns expressed was that the term "shall be available" could be read to mean that the powers, remedies and procedures were merely available to a plaintiff, and that a plaintiff could choose not to avail him or her self of such powers, remedies and procedures.

[49] 45 CFR 84.3(k).

While the integration of people with disabilities will sometimes involve substantial short-term burdens, both financial and administrative, the long-range effects of integration will benefit society as a whole.[50] The general prohibitions set forth in the Section 504 regulations,[51] are applicable to all programs and activities in title II. The specific sections on employment and program access in existing facilities are subject to the "undue hardship" and "undue burden" provisions of the regulations which are incorporated in Section 204. No other limitation should be implied in other areas.

As with Section 504 of the Rehabilitation Act, integrated services are essential to accomplishing the purposes of title II. As stated by Judge Mansmann in *ADAPT* v. *Skinner*,[52] "the goal [is to] eradicat[e] the 'invisibility of the handicapped'." Separate-but-equal services do not accomplish this central goal and should be rejected.

The fact that it is more convenient, either administratively or fiscally, to provide services in a segregated manner, does not constitute a valid justification for separate or different services under Section 504 of the Rehabilitation Act, or under this title. Nor is the fact that the separate service is equal to or better than the service offered to others sufficient justification for involuntary different treatment for persons with disabilities. While Section 504 of the Rehabilitation Act and this title do not prohibit the existence of all separate services which are designed to provide a benefit for persons with disabilities, such as specialized recreation programs, the existence of such programs can never be used as a basis to exclude a person with a disability from a program that is offered to persons without disabilities, or to refuse to provide an accommodation in a regular setting.[53]

In order to comply with the non-discrimination mandate, it is often necessary to provide training to public employees about disability. For example, persons who have epilepsy, and a variety of other disabilities, are frequently inappropriately arrested and jailed because police officers have not received proper training in the recognition of and aid for seizures. Often, after being arrested, they are deprived of medications while in jail, resulting in further seizures. Such discriminatory treatment based on disability can be avoided by proper training.

In the area of employment, title II incorporates the duty set forth in the regulations for Sections 501, 503 and 504 of the Rehabilitation Act to provide a "reasonable accommodation" that does not constitute an "undue hardship."

The provision of reasonable accommodation is central to the non-discrimination mandate. Courts have recognized that the Rehabilitation Act "mandates significant accommodation for the capabilities and conditions of the handicapped," [54] Which may require "substantial amounts of time and money to keep handicapped employees on the payroll," [55] Likwise, in *Nelson* v. *Thornburgh*, [56] the court recognized that while the cost of providing readers to blind caseworkers was substantial in the abstract, it was only a small part of the overall budget of the state agency and was slight compared to the societal consequences of unemployment of the blind workers.

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[50] Cases which have enforced the rights of persons with disabilities to accessible public services have recognized that Section 504 may place substantial burdens on state and local agencies in order to accomplish the goals of non-discrimination and integration. *See, e.g. Dopico* v. *Goldschmidt*, 687 F.2d 644, 650 (2d Cir., 1982); *New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847, 855 (10th Cir., 1982).

[51] 45 CFR 84.4.

[52] 881 F.2d 1184, 1204 (3rd Cir. 1989) (*en banc*) (concurring in part and dissenting in part).

[53] *See*, 45 CFR 84.4(b)(3).

In determining whether an accommodation would constitute an undue hardship, a number of factors, including the size and budget of the employer are set forth as factors to be considered. As stated in the appendix accompanying the Rehabilitation Act Section 504 regulations in 1977,

> Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a state welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to improve that requirement on a provider of foster home care services.[57]

This approach is applicable to title II as well. Thus, the undue hardship determination is flexible, depending on the facts of an individual case. The employer must demonstrate that a reasonable accommodation would impose an undue hardship.

Similarly, title II incorporates the regulations applicable to federally conducted activities under Section 504 with respect to program accessibility, existing facilities and communications,[58] which requires that the agency demonstrate that access cannot be accomplished without imposing an undue burden after considering all available resources. The agency must still take any action that would not result in a fundamental alteration to the program or an undue burden, "but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity."[59]

Title II should be read to incorporate provisions of titles I and III which are not inconsistent with the regulations implementing Section 504 of the Rehabilitation Act of 1973, such as Section 102(b)(4) of the ADA. However, nothing in the other titles should be construed to lessen the standards in the Rehabilitation Act regulations which are incorporated by reference in Section 204.

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[54] *Bentivegna* v. *Dept. of Labor*, 694 F. 2d 619, 621 (9th Cir. 1982).

[55] *Rhone* v. *U.S. Dept. of Army*, 665 F. Supp. 734, 745, n. 19 (E.D.Mo., 1987).

[56] 567 F. Supp. 369 (E.D.Pa. 1983).

[57] 42 Fed. Reg. 22688, May 4, 1977.

[58] 28 CFR Part 39.

[59] 28 CFR 39.150(a)(2).

Section 203. Actions applicable to public transportation provided by public entities considered discriminatory

This section prohibits discrimination in public transportation provided by public entities. These requirements were extensively addressed by the Committees with jurisdiction over transportation issues.

Section 204. Regulations

The Attorney General is require to issue regulations within 1 year after enactment. The regulations must be consistent with this title and the coordination regulations under the Rehabilitation Act of 1973, except with respect to "program accessibility, existing facilities" and "communications." For these provisions, such regulations must be consistent with the regulations applicable to federally conducted activities under Section 504 of the Rehabilitation Act.

Unlike the other titles in this Act, title II does not list all of the forms of discrimination that the title is intended to prohibit. Thus, the purpose of this section is to direct the Attorney General to issue regulations setting forth the forms of discrimination prohibited.[60] The Committee intends that the regulations under title II incorporate interpretations of the term discrimination set forth in titles I and III of the ADA to the extent that they do not conflict with the Section 504 regulations.

The Secretary of Transportation is required to issue regulations for requirements under Section 203. The regulations must be in an accessible format, and must be promulgated in accordance with the Administrative Procedure Act.

Section 205. Enforcement

Section 205 incorporates the remedies, procedures and rights set forth in Section 505 of the Rehabilitation Act of 1973.[61] As in title I, the Committee adopted an amendment to delete the term "shall be available" in order to clarify that Rehabilitation Act remedies are the only remedies which title II provides for violations of title II. The Rehabilitation Act provides a private right of action, with a full panoply of remedies available, as well as attorney's fees.[62]

This enforcement provision, like the others in the ADA, should be read in conjunction with Section 501(b), which provides that the ADA does not preempt other applicable laws that include equal or greater protection. For title II, like Section 504 of the Rehabilitation Act, this includes remedies available under 42 U.S.C. 1983 and under state law claims.[63]

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[60] The Act requires that regulations promulgated by the Attorney General shall be consistent with the coordination regulations codified at 28 CFR Part 41, as in existence on January 13, 1978. The portion of the 1978 regulation which dealt with design, construction and alteration used the American National Standards Institute (ANSI) specifications: later notices have substituted the Uniform Federal Accessibility Standards (UFAS) for the ANSI reference. The Committee does not intend that the Attorney General use the old ANSI standard from the 1978 regulation.

[61] 29 U.S.C. 794a.

[62] *See, e.g., Miener* v. *State of Missouri*, 673 F. 2d 969 (8th Cir. 1982).

[63] See discussion of Section 501(b), below.

Section 206. Effective date

Title II becomes effective 18 months after enactment. Requirements for fixed route vehicles under Section 203 become effective upon enactment.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 301. Definitions

This section provides definitions for the terms "commerce," "commercial facilities," "public accommodations," "public transportation," and "readily achievable."

Section 301(1)—Commerce

Commerce is defined in the same manner as in title II of the Civil Rights Act of 1964, regarding public accommodations.

Section 301(2)—Commercial facilities

Commercial facilities is a term used in Section 303 to address requirements for new construction and alterations. It is designed to cover nonresidential facilities that are not public accommodations and whose operations will affect commerce. For example, office buildings that are not public accommodations [*i.e.* do not contain entities listed in Section 301(3)], factories and warehouses, would be commercial facilities and thus are subject to the requirements of Section 303.

The term "commercial facilities" does not include entities that are covered or expressly exempted under the Fair Housing Act. Entities covered under the Fair Housing Act are already under an obligation not to discriminate against persons with disabilities.

The obligations imposed by Section 303 for new construction and alterations are the same for public accommodations and for commercial facilities.

The term "commercial facilities" replaces the term "potential places of employment" in H.R. 2273 as introduced. This change was made to eliminate confusion over the obligations under this title and title I concerning employment. The Committee intends that obligations under each title be separate and distinct.

With this change, the Committee does not intend to restrict the scope of the term "commercial facilities," which retains the same definition that "potential places of employment" has in S. 933, as enacted by the Senate. The term is not intended to be defined by a dictionary or common industry definition. Rather, the definition of "commercial facility" is any facility that is intended for nonresidential use and whose operations will affect commerce.

Section 301(3)—Public accommodation

The definition of public accommodation differs from the bill as introduced. The bill as introduced provided a standard to be applied, rather than a list of covered accommodations. The new definition lists 12 categories of public accommodation.

The bill, as reported, provides examples of public accommodations, based on the following categories:

1. Places of lodging
2. Establishments serving food or drink
3. Places of exhibition or entertainment
4. Places of public gathering
5. Establishments selling or renting items
6. Establishments providing services
7. Stations used for public transportation
8. Places of public display or collection
9. Places of recreation
10. Places of education
11. Establishments providing social services
12. Places of exercise or recreation

These 12 listed categories are exhaustive. However, within each category, the bill lists only a number of examples. For example, under category (5), the bill lists "a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment." This list is only a representative sample of the types of entities covered under this category. Other retail or wholesale establishments selling or renting items, such as a book store, videotape rental store, or pet store, would be a public accommodation under this category.

A person alleging discrimination does not have to prove that the entity being charged with discrimination is similar to the examples listed in the definition. Rather, the person must show that the entity falls within the overall category. For example, it is not necessary to show that a jewelry store is like a clothing store. It is sufficient that the jewelry store sells items to the public.

Entities not falling under one of these categories, or not privately operated, or not affecting commerce, are not considered to be public accommodations. Entities that are not public accommodations may be commercial facilities and subject to the requirements of Section 303. Entities operated by governments are not covered by this title, but are covered by other titles of this bill or other federal laws. The fact that a private entity receives funds from federal, state, or local governments would not remove it from coverage under this title.

Both the public accommodation facility and the programs and services offered by the public accommodation cannot discriminate against individuals with disabilities. As discussed below, there is an obligation not to discriminate in programs and services provided by the public accommodation, to remove barriers in existing facilities, and to make new and altered facilities accessible and usable. It is not sufficient to only make facilities accessible and usable; this title prohibits, as well, discrimination in the provision of programs and activities conducted by the public accommodation.

Section 301(5)—Readily achievable

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

Unlike many other terms used in this bill, this is a new term that was not part of earlier civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or their implementing regulations.

The definition provides factors to be considered in making a determination of what is readily achievable in a particular case. Factors include the size of both the overall business and the site involved in making the determination. This analysis is the same as in title I, when considering whether a reasonable accommodation in the employment context will impose an undue hardship. The same factors adopted during Committee consideration of the bill for "undue hardship" were adopted for "readily achievable."

In adopting this amendment, the Committee has responded to concerns about public accommodations that operate in depressed or rural areas that may be operating at the margin or at a loss. Specifically, concern was expressed that a business may elect to close a site if it is losing money rather than undertake significant investments to remove barriers to allow access and use for persons with disabilities.

The Committee does not intend for the requirements of the Act to result in the closure of neighborhood stores or in the loss of jobs. Rather, the Committee intends for courts to consider as a factor in determining whether removing a barrier is "readily achievable" whether the local store is threatened with closure by the parent company or is faced with job loss as a result of the requirements of this Act.

Section 302. Prohibition of discrimination by public accommodations

Section 302(a)—General rule

As a general rule, this section prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.

Full and equal enjoyment means the right to participate and to have an equal opportunity to obtain the same results as others. It does not mean that an individual with a disability must achieve an identical result or level of achievement as persons without a disability. For example, an exercise class cannot exclude a person who uses a wheelchair because he or she cannot do all of the exercises and derive the same result from the class as persons without a disability.

The Committee adopted an amendment which clarifies that the prohibition against discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation," applies to "any person who owns, leases (or leases to), or operates a place of public accommodation."

This amendment makes it clear that the owner of the building which houses the public accommodation, as well as the owner or operator of the public accommodation itself, has obligations under this Act. For example, if an office building contains a doctor's office, both the owner of the building and the doctor's office are required to make readily achievable alterations. It simply makes no practical sense to require the individual public accommodation, a doctor's office for example, to make readily achievable changes to the public accommodation without requiring the owner to make readily achievable changes to the primary entrance to the building.

Similarly, a doorman or guard to an office building containing public accommodations would be required, if requested, to show a person who is blind to the elevator or to write a note to a person who is deaf regarding the floor number of a particular office.

The amendment also clarifies that the owner of a public accommodation is liable for discriminatory policies. For example, if the corporate headquarters for a chain of restaurants designs all new restaurants to contain barriers to access, an injunction could be brought against the corporation to enjoin the inaccessible new construction.

The amendment also clarifies that entities which lease public accommodations are covered by the requirements of this title.

Section 302(b)(1)—General prohibitions

Section 302(b)(1) sets out general prohibitions against discrimination. These prohibitions are further refined by the specific prohibitions in Section 302(b)(2)

Section 302(b)(1)(A)—Activities

Deny participation.—It is discriminatory to deny a person with a disability the right to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of the public accommodation.

The Committee emphasizes that a public accommodation may not exclude persons with disabilities for reasons other than those specifically set forth in this title ("direct threat" and eligibility criteria that are necessary to the operation of the business, see discussion below). For example, a public accommodation cannot refuse to serve a person with a disability because its insurance company conditions coverage or rates on the absence of persons with disabilities. This is a frequent basis of exclusion from a variety of community activities and is prohibited by this title.

Unequal benefit.—This title, like Section 504 of the Rehabilitation Act, prohibits services or accommodations which are not equal to those provided others. For example, person with disabilities must not be limited to certain performances at a theater.

Separate benefit.—Separate benefits or services are allowed only when necessary to provide persons with disabilities opportunities as effective as those provided others. Thus, this title would not prohibit the designation of restrooms or parking spaces for persons with disabilities.

Section 302(b)(1)(B)—Integrated settings

Integration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status. For example, it would be a violation of this provision to require persons with disabilities to eat in the back room of a restaurant or to refuse to allow a person with a disability the full use of a health spa because of stereotypes about the person's ability to participate.

For example, it would also be a violation of this Act to segregate seating for persons using wheelchairs to the back of auditoriums or theaters. In addition to providing inferior seating, the patron in a wheelchair may be forced to separate from family or friends during a performance.

At times segregated seating is simply the result of thoughtlessness and indifference. At other times, safety concerns are raised, such as requiring patrons to sit near theater exits because of perceived hazards in case of fire. The purported safety hazard is largely based on inaccurate assumptions and myths about the ability of people with disabilities to get around in such circumstances. People who use wheelchairs vary greatly, as does the general public, in their individual ability to move quickly or slowly.

A balance between the safety interest and the need to preserve a choice of seating for movie patrons who use wheelchairs has already been accomplished under existing federal accessibility standards that have applied since 1984 to theaters, auditoriums and other places of assembly constructed with federal funds. These standards provide that wheelchair seating areas must be "dispersed throughout the seating area" and "located to provide lines of sight comparable to those for all viewing areas." Wheelchair areas are not restricted to areas near an exit, but can be located in various parts of the theater so long as they "adjoin an accessible route that also serves as a means of egress in case of emergency."[64]

The availability of a choice of seating is critical to assure that patrons with disabilities are not segregated from family or friends. New construction must provide a variety of seating options. In existing theaters, efforts should be made to increase seating options where readily achievable. If removal of seats is not readily achievable, the theater must, at a minimum, modify rules and procedures to allow a non-disabled companion to sit with a person who uses a wheelchair, by providing, for example, a folding chair. Seating should also be available in the front of the audience for persons with hearing and vision impairments, including those who use wheelchairs.

Section 302(b)(1)(C)—Opportunity to participate

It is critical that the existence of separate specialized services never be used as a justification for exclusion from programs that are not separate or different. For example, the existence of a special art program for persons who are developmentally disabled must not be used as a reason to reject an individual who is retarded from the regular art class if that person prefers to participate in that class. This provision does not require changes in the regular method of instruction that are not required under Sections 302(b)(2)(A)(ii) and (iii).

Section 302(b)(1)(D)—Administrative methods

Standards, criteria or administrative methods that have the effect of or perpetuate discrimination are also prohibited. (See discussion of 302(b)(2)(A)(i) below.)

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[64] Section 4.33.3, Uniform Federal Accessibility Standards.

Section 302(b)(1)(E)—Association

It is also illegal to discriminate against an individual or entity based on a relationship or association of the individual or entity with a disabled person. The term "entity" is included in this section because, at times entities that provide services to, or are otherwise associated with persons with disabilities, are subjected to discrimination. This protection is analogous to the protection provided in Section 102(b)(4) in the employment context.

Section 302(b)(2)—Specific prohibitions

Section 302(b)(2) sets out specific prohibitions. The general prohibitions set forth in Section 302(b)(1) are patterned after provisions contained in other civil rights laws protecting women and minorities. In order to provide effective protections for persons with disabilities, however, additional specific prohibitions are provided in this section. These specific provisions, including the limitations contained within them, control over the general provision to the extent that is any conflict.

Section 302(b)(2)(A)(i)—Eligibility Criteria

It is discriminatory to impose eligibility criteria that screen out or tend to screen out disabled persons from public accommodations, unless the eligibility criteria can be shown by the public accommodation to be necessary to provide persons with disabilities the goods or services of that public accommodation.

For example, it would be illegal to require all customers to present a driver's license in order to purchase merchandise, because this would screen out persons with disabilities who do not drive. It would not be discriminatory to require another equally valid form of identification that did not screen out persons with disabilities.

Under this provision, it would be a violation for a store to impose a rule that no blind or deaf person would be allowed in the store. Further, it would be a violation for such an establishment to invade such individuals' privacy by trying to identify unnecessarily the existence of a disability—for example, by asking whether a person has a disability, by forcing the person to disclose medical records, or by requiring the person to undergo an exam or to determine whether the person has a disability.

A public accommodation may, however, impose neutral rules and criteria that are necessary for the safe operation of its business. For example, a height limitation for certain rides in an amusement park may screen out certain persons with disabilities of short stature, but may still be a legitimate safe criterion. Similarly, it may be a legitimate safety requirement that persons be able to see in order to operate certain devices or vehicles, even though the effect of this requirement is to deny access only to those persons with visual impairments. Safety criteria must, however, be based on actual risks and not on speculation, stereotypes or generalizations about persons with disabilities.

Section 302(b)(2)(A)(ii)—Reasonable modifications

It is discriminatory to fail to make reasonable modifications in policies and practices when such modifications are necessary to provide goods or services, unless it can be demonstrated that the modifications would fundamentally alter the nature of the goods or services provided.

For example, it is discriminatory to refuse to alter a "no pets" rule for a person with a disability who uses a guide or service dog. It would not be a violation of this title to refuse to modify a policy of not touching delicate works of art for a person who is blind if the touching threatened the integrity of the work.

Section 302(b)(2)(A)(iii)—Auxiliary aids and services

It is discriminatory to fail to take steps to ensure that a disabled individual is not treated differently because of the absence of auxiliary aids and services, unless it can be demonstrated that the auxiliary aids would fundamentally alter the nature of the goods or services being offered, or would result in an undue burden.

For example, a store would be required to communicate with a person who is deaf by writing down information which is normally spoken (such as indicating the location of the furniture department). It may be an undue burden, however, for the store to provide an inerpreter to convey this information.

The term "undue burden" is analogous to the term "undue hardship" in title I. The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a public accommodation will be made on a case-by-case basis, taking into account the same standard and factors used for determining an undue hardship.

A critical determination is what constitutes an effective auxiliary aid or service (or reasonable accommodation in the employment context). While the use of handwritten notes may be effective to a person who is deaf in the context of shopping, it may not be an effective means of communication in a training session for employees in the employment context. Likewise, while it may not be necessary to provide braille price tags for shoppers who are visually impaired, it may be necessary to provide braille manuals in the employment context. For this reason, the obligations of a business will vary depending on the context involved.

Open-captioning of feature films playing in movie theaters is not required by this Act. Filmmakers are encouraged, however, to produce and distribute open-captioned versions of films and theaters are encouraged to have at least some pre-announced screenings of captioned versions of feature films.

Sections 302(b)(2)(A)(iv)-(v) and 303—Obligations for existing facilities, alterations and new construction

One major obstacle for persons with disabilities is simply obtaining access into buildings. Buildings have often been constructed in such a manner that persons with disabilities are effectively excluded from such places—they cannot get through the door, get around and use the building, or go to another floor.

This title sets out accessibility standards for buildings containing public accommodations. Three situations are covered: existing facilities, alternations, and new construction.

This section reflects the balance between the need to provide access for persons with disabilities and the desire to impose limited cost on businesses. Because retrofitting existing structures to make them fully accessible is costly, a far lower standard of accessibility has been adopted for existing structures—a standard of "readily achievable." Because it costs far less to incorporate accessible design into the planning and constructing of new buildings and of alterations, a higher standard of "readily accessible to and usable by" persons with disabilities has been adopted in the ADA for new construction and alterations.

The Fair House Amendments Act of 1988 adopted the same "readily accessible to and usable by" standard for common areas in newly constructed multi-family housing units.

"Readily achievable" vs. "readily accessible to and usable by"

The "readily achievable" and "readily accessible" standards are quite different. Readily achievable is defined as meaning an action which is easily accomplishable without much difficulty or expense. In making this determination, many factors are to be taken into consideration, including the overall size of the business, the site involved, and the nature and cost of the action needed. These are the same factors used when determining whether a reasonable accommodation imposes an undue hardship on an employer in title I.[65]

"Readily accessible to and usable by" is a higher standard, and has been used in a number of previous laws requiring accessibility. It is intended to enable persons with disabilities to get to, enter and use a facility. Although it does not mean total accessibility in every part of every area of a facility, it does mean a high degree of convenient accessibility: for example, accessible routes to and throughout a facility, accessible entrances to buildings and spaces, usable bathrooms, water fountains and other features.[66]

For example, many banks provide automatic teller machines (ATMs) for use of their customers. A bank with existing ATMs would have to remove barriers associated with the ATM if removal is readily achievable—easily accomplished without much difficulty or expense. Providing a small ramp to avoid a few steps may be readily achievable, but raising or lowering the ATM may be too difficult or expensive. If no readily achievable changes were possible, then the bank would have to provide service through alternative methods.

For new construction and alterations, the purpose is to ensure that the service offered to persons with disabilities is equal to the service offered to others. It would be a violation of this title to build a new bank with ATMs that were not readily accessible to and usable by persons with disabilities. It is not sufficient that the person with a disability can conduct business inside the bank. The ATMs provide an additional service which must be made available to persons with disabilities.

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[65] As noted in the discussion of that title, the standard to be applied to these factors is significantly lower in determining whether an action is "readily achievable" than the standard used to determine whether a reasonable accommodation poses an undue hardship.

[66] Additionally, at supermarkets, for example, features erected to discourage the removal of shopping carts must meet established accessibility criteria for doors, including the required clearance, hardware, thresholds and operating pressure to allow for passage of persons with disabilities.

When identical features will generally be used in different ways once the new building is occupied, each one should be accessible in most situations. For example, in a convention center, each of the many identical meeting rooms should be accessible, because they will house meetings on different subjects when the buildings is in use. However, although each restroom in a new facility must be accessible, it is not necessary that every stall within the bathroom have access features.

Section 302(b)(2)(A)(iv)—Existing facilities

For existing facilities, it is discriminatory to fail to remove structural architectural and communications barriers, if such removal is readily achievable (i.e. easily accomplishable without much difficulty or expense). If it can be demonstrated that removal is not readily achievable, then goods or services must be provided through alternative methods, if such methods are readily achievable.

This readily achievable analysis must be done on a case by case basis. The Committee cannot give a blanket statement of what specific actions are readily achievable and thus required by this section. The readily achievable standard provides flexibility for public accommodations to remove barriers and provide access for persons with disabilities.

For example, questions were raised during the Subcommittee hearings concerning whether an existing retail store would have to raise, lower or remove its shelves to allow access. The obligation under this section is to remove barriers if such removal is readily achievable, that is, easily accomplishable without difficulty or expense. If it is not readily achievable, then the store must provide access through alternative methods, if the alternative methods are readily achievable.

Fixtures that pose barriers must be removed if doing so would be readily achievable. If removing a fixture means losing an insignificant amount of selling space, which would not be expensive or difficult, the fixture would have to be removed. By contrast, if removing the fixture would result in a significant loss of selling space, it would be difficult and expensive, and thus would not have to be removed.

The same principles apply to the question of whether aisles have to be widened for persons who use wheelchairs. Again, the test is whether the aisles would be readily achievable, that is, can it be done without difficulty or expense? If not, service must be provided in an alternative manner, if the alternative manner is readily achievable.

As another example, concerns were expressed regarding the use of temporary facilities brought to areas following natural disasters such as floods and tornados, to temporarily replace public accommodations. These temporary facilities must remove barriers if such removal is readily achievable. For example, if a pharmacy is temporarily operating in a trailer following a natural disaster, the pharmacy must explore whether providing access to the trailer is readily achievable, *i.e.*, would providing access, by a temporary ramp, for example, be easily accomplishable and able to be carried out without much difficulty or expense).

Section 302(b)(2)(A)(v)—Alternative methods for existing facilities

If an entity can demonstrate that removal of a barrier is not readily achievable, then there is an obligation to make goods services available through alternative methods, if the alternative methods are readily achievable.

If, in the retail store example above, the store could demonstrate that raising, lowering, or removing shelves would not be readily achievable, then the store must consider providing access through alternative methods. For example, a clerk could retrieve merchandise from inaccessible shelves, unless this alternative method is not readily achievable.

In the pharmacy example above, if the pharmacy could demonstrate that removing the barrier is not readily achievable, then it must consider methods of providing it services through alternative methods. In this case, a clerk could meet a customer at the foot of the trailer stairs to take or deliver prescription orders. This would satisfy the alternative methods requirement.

Section 302(b)(3)—Specific construction

The Committee adopted an amendment adding this provision which states that nothing in this title requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommoditions of an entity where an individual poses a direct threat to the health or safety of others. The term "direct threat" is defined as posing a "significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary and services."

The Committee does not wish to imply, by the addition of this provision, that people with disabilities necessary pose risks to others. Rather, this provision was added simply to address any concerns that may arise in this area and to establish clearly the strict standard that must be met before denying services or goods to an individual with a disability based on the fear that such individual poses a risk to others. This provision is identical to one added in the employment section, and the discussion of this issue there applies here as well.

Section 303. New construction and alterations in public accommodations and commercial facilities

New construction and alterations of both public accommodations and commercial facilities must be made readily accessible to and usable by individuals with disabilities. The requirements for new construction applies to facilities for first occupancy 30 months after enactment.

As noted above, the requirement of "readily accessible to and usable by" individuals with disabilities contemplates a high degree of convenient accessibility. Essentially, it is designed to ensure that patrons and employees of public accommodations and commercial facilities are able to get to, enter and use the facility.

For potential patrons, this means accessibility of parking areas, accessible routes to, from and into the facility, usable bathrooms and water fountains, and access to the goods, services, and programs of the facility. For example, a new building should be designed so that a potential patron can get to a store, get into the store, and get to the areas where goods are being provided.

For potential employees, the requirement of "readily accessible to and usable by" includes the same types of access, although such individuals require access to and around the employment area, rather than to the area where goods or services are being provided. For example, a new building should be designed so that a potential employee can get to the building, get into the building and get to and around the employment area. It is not required, however, that all individual workstations be constructed in a fully accessible manner, with, for example, accessible features such as lowered shelves and counters. Such modifications in a particular workstation would be instituted as a "reasonable accommodation" if a particular employee requires such modifications and if they did not constitute an undue hardship.[67]

The Committee adopted an amendment to move the section governing alterations for existing facilities from Section 302(b)(2)(vi), which only covered public accommodations, to Section 303 which covers both public accommodations and commercial facilities.

The rationale for making new construction accessible applies with equal force to alterations. The ADA is geared to the future—the goal being that, over time, access will be the rule rather than the exception. Thus, the bill only requires modest expenditures to provide access in existing facilities, while requiring all new construction to be accessible. The provision governing alterations is akin to new construction because it is only applicable to situations where the commercial facility itself has chosen to alter the premises.

This provision does not require alterations. Rather it simply provides that, when alterations are being made, they must be done in a manner such that, to the maximum extent feasible, the altered area is readily accessible to and usable by individuals with disabilities. It simply makes no sense to alter premises in a manner that does not consider access. Moreover, if alterations were not included in Section 303, governing commercial facilities, the anomalous situation could arise of a new accessible building being renovated to include barriers to access. If a business is going to build a new building or engage in alterations, the access requirements apply.

Alterations that affect or could affect usability of a public accommodation or commercial facility must be done in such a manner that the altered portions of the facility are readily accessible to and usable by persons with disabilities, to the maximum extent feasible. Minor changes such as painting or papering walls, replacing ceiling tiles, and similar alterations that do not affect usability do not trigger the requirement that the altered areas must be made accessible or that the path of travel to the alteration, or the bathrooms and other facilities must be made accessible. Usability should be broadly defined to include renovations which affect the use of facility, and not simply changes which relate directly to access.

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[67] Of course, it is always less expensive to build something new in an accessible manner, the Committee expects that if it would not affect the usability or the enjoyment of the public accommodation by members of the general public, consideration should be given in new construction to placing fixtures and equipment at a convenient height for accessibility. In addition, if such items are commercially available, and it would not affect usability or enjoyment by the general public, an effort should be made to purchase new fixtures and equipment that are adjustable so that reasonable accommodations in the future will be less likely to pose undue hardships.

If an alteration is done to an area that contains a primary function, to the maximum extent feasible, the alteration, the path of travel to the alteration, and bathrooms, telephones and drinking fountains serving the remodeled area must be readily accessible to and usable by individuals with disabilities. Areas containing primary functions refer to those portions of a public accommodation where significant goods, services, facilities, privileges, advantages, or accommodations are provided. It is analogous to the concept in existing Uniform Federal Accessibility Standards of "the rooms or spaces in a building or facility that house the major activities." [68] A mechanical room, boiler room, supply storage room, or janitorial closet is not an area containing a primary function; the customer services lobby or a bank, the dining area of a cafeteria, the meeting rooms in a conference center, and the viewing galleries of a museum are areas containing a primary function.

These additional obligations for areas containing primary functions must not be disproportionate to the overall alterations in terms of cost and scope. This disproportionality concept recognizes that, in some circumstances, achieving an accessible path of travel and accessible restrooms, telephones, and drinking fountains may be sufficiently significant in terms of cost or scope in comparison to the remainder of the alteration being undertaken as to render this requirement unreasonable. For example, it would clearly be disproportionate to require a public accommodation to double the cost of a planned alteration. The Committee believes, however, that it would be consistent with the ADA for the minimum guidelines or regulations to establish a specific standard, such as 30% of the alteration costs, for determining the disproportionality of the accessible path of travel and related accessibility features required.

The parameters of the concept of disproportionality will be addressed in minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board and established in the regulations promulgated by the Attorney General.

A public accommodation or commercial facility may not evade the path of travel, accessible restrooms, and other requirements by performing a series of small alterations which it would otherwise have performed as a single undertaking. For example, if a public accommodation has completed an alteration without incorporating an accessible path of travel, accessible restrooms, and other requirements, the total costs of the prior alterations plus others that are or will be proximate in time may be considered in determining whether providing an accessible path of travel, restrooms, telephones and bathrooms is disproportionate.

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[68] Section 3.5, Uniform Federal Accessibility Standards.

If the aggregate cost of an accessible path of travel, accessible restrooms, telephones, and drinking fountains would be disproportionate to the overall alteration cost, the public accommodation is not relieved of the obligation to provide a number of such features that are not disproportionate. The goal is to provide a maximum degree of accessibility in such features without exceeding the disproportionality limit.

If a selection must be made between accessibility features, those which provide the greatest use of the facility be selected. For example, an accessible entrance would generally be the most important path of travel features, since without it the facility will be totally unusable by many persons with disabilities. An accessible restroom would have greater priority than an accessible drinking fountain.

If there is no way to provide an accessible path of travel to an altered area because of the disproportionality limit, making restrooms, telephones and drinking fountains serving the area accessible is still required if it is not disproportionate. Some individuals with disabilities can negotiate steps but still need accessibility features in restrooms, drinking fountains, and telephones.

Elevators are not required in an alteration or new construction for facilities of fewer than 3 stories or that have less than 3000 square feet per story, unless the builidng is a shopping center or mall, a health care provider, or as determined by the Attorney General.

Section 306. Regulations

The Attorney General is required to issue regulations for this title, except for Sections 302(b)(2)(B) and (C), and Section 304. These other sections address transportation issues for which the Secretary of Transportation shall issue appropriate regulations.

The Attorney General is required to issue the regulation within 1 year after enactment. As with the other regulations required by this bill the regulations must be in an accessible format, and must be promulgated in accordance with the Administrative Procedure Act.[69]

These regulations should include standards for facilities and vehicles and such standards must be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board (ATBCB) in accordance with Section 504 of this Act.

Until final regulations are issued, compliance with the Uniform Federal Accessibility Standards (UFAS) will satisfy the requirements that facilities be "readily accessible to and usable by persons with disabilities," for alterations and new construction under Section 303.

If the Attorney General has not issued final regulations within 1 year after the ATBCB has issued supplemental minimum guidelines as required under section 504(a), then compliance with the ATBCB supplemental guidelines is required to satisfy the "readily accessible" standard, until final regulations are issued by the Attorney General.

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[69] U.S.C. 551, *et seq.*

The Committee adopted an amendment to clarify the interim accessibility standards under the ADA. The standard was modified to link the interim accessibility standards to when a builder has obtained a permit for a building and will build the facility within the time specified in the permit. This amendment added to the existing language to give builders a time frame with which to work.

Section 307. Exemptions for private clubs and religious organizations

The section creates an exemption from this title for private clubs and religious organizations. The exemption for private clubs is intended to operate in the same narrow manner as in title II of the Civil Rights Act of 1964.[70]

The Committee does not intend to cover under this title religious organizations or entities controlled by religious organizations, including places of worship. Thus a church sanctuary would not be required to make its facilities accessible to and usable by disabled persons, nor to construct new facilities in such a manner.

In order to qualify for this exemption, the entity must be controlled by a religious organization, as that concept has been applied in other civil rights laws, such as in the exemption provided under title IX of the Education Amendments of 1972, as amended by the Civil Rights Restoration Act.[71]

Section 308. Enforcement

Private Right of Action.—Section 308 sets forth the enforcement procedures available under this title. Section 308(a)(1) incorporates by reference the remedies and procedures provided under Section 204(a) of title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations on account of race, color, religion or national origin. Thus, a private civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order or other order, is provided under this title. Section 204(a) of the 1964 Act also provides that the Attorney General may intervene in a suit brought by a private plaintiff.

As with other titles of the bill, the Committee intends that persons with disabilities have remedies and procedures parallel to those available under comparable civil rights laws. Thus, if the remedies and procedures change in title II of the 1964 Act, for persons discriminated against in public accommodations on account of race, color, religion, or national origin, they will change identically in this title for persons with disabilities.

Section 308(a)(2) makes clear that for violations of Section 302(b)(2)(A)(iv), regarding removing barriers in existing facilities, and Section 303(a), regarding making new construction and alterations readily accessible, injunctive relief shall include an order to make these facilities readily accessible, injunctive relief shall include an order to make these facilities readily accessible to and usable by persons with disabilities to the extent required by this title. Also, where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

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[70] 42 U.S.C. 2001a(e).

[71] 29 U.S.C. 1681(a)(3).

Enforcement by the Attorney General.—Section 308(b) sets out enforcement procedures by the Attorney General. The Attorney General has a three part obligation: (1) to investigate alleged violations of title III and to conduct periodic reviews of compliance, (2) to certify that state laws or local building codes meet or exceed requirements of the bill and (3) to bring cases that indicate a pattern or practice of discrimination or that are of general public importance.

The Attorney General is required to investigate alleged violations of this title, and to conduct periodic reviews to evaluate whether covered entities are complying with this title. This duty of the Attorney General is essential to effective enforcement of this title. The Committee expects that the Attorney General will engage in active enforcement and will allocate sufficient resources to carry out this responsibility.

The Attorney General is empowered to certify that state or local laws meet or exceed the minimum standards for accessibility established in title, on application of a state or local government. Before certification may be granted, the Attorney General must give notice of a public hearing, and at such hearing allow persons, including persons with disabilities, an opportunity to testify against the certification. Certification shall be rebuttable evidence that the state or local law meets or exceeds the minimum requirements of this Act.

If the Attorney General proposes to grant certification for a particular law, code, or ordinance, a notice shall be issued in the Federal Register. An informal hearing shall be held before an official of the Department of Justice (not an Administrative Law Judge), at which interested persons shall have an opportunity to express their views, and the Attorney General shall also consider written comments. Certification is not to be considered rulemaking for purposes of the Administrative Procedure Act. The Attorney General may establish priorities for considering certification (*e.g.*, priority could be given to state documents before local documents, or to those that incorporated acceptable model building codes). The Attorney General may also establish procedures for revoking certification and establish the circumstances in which such action would be appropriate.

The Attorney General may bring a civil action in an appropriate court if he or she has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title. In addition, the Attorney General may bring a case where any person or group of persons has been denied any of the rights granted by this title, if such denial raises an issue of general public importance.

Section 308(b)(2) sets forth the authority of the court in actions brought by the Attorney General. The court may grant equitable relief, including making auxiliary aids available and making facilities readily accessible to and usable by persons with disabilities.

The court also may award monetary damages to the person aggrieved, if it is requested by the Attorney General. The court does not have authority to award monetary damages in situations where such relief is not requested by the Attorney General. The Committee intends that monetary damages may include compensatory damages. Such damages are not limited to out-of-pocket expenses. Monetary damages do not include punitive damages, as specifically stated in Section 308(b)(4).

To vindicate the public interest, the court may assess a civil penalty against a violator. Civil penalties may not exceed $50,000 for a first violation, and $100,000 for a subsequent violation. The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not to be automatically imposed in every case. When making a determination regarding the amount of penalty, the court should consider the nature and circumstances of the violation, the degree of culpability, any history of price violations the financial circumstances of the violator, the goal of deterrence, and other matters as justice may require.

Section 308(b)(5) states that the court should also consider whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

Section 308(b)(3) provides that for purposes of determining whether a "first" or "subsequent" violation has occurred, a determination of liability in the same trial counts as a single violation. Thus, multiple violations of the Act, determined in a first trial, cannot trigger the imposition of a $100,000 civil penalty based on the "subsequent" violations provision.

Section 309. Examinations and courses

The Committee adopted an amendment which provides that any person who offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

The purpose of this amendment is to fill a gap which is created when licensing certification and other testing authorities are not covered by Section 504 of the Rehabilitation Act or title II of the ADA. Any such authority that is covered by Section 504, because of the receipt of federal money, or by title II, because it is a function of a state or local government, must make all of its programs accessible to persons with disabilities, which includes physical access as well as accommodations in the way the test is administered, *e.g.* extended time or assistance of a reader.

However, it is the Committee's belief that many licensing, certification and testing authorities are not covered by either Section 504 of the Rehabilitation Act, because no federal money is received, or by title II of the ADA, because they are not state agencies. However, states often require the licenses provided by such authorities in order for an individual to practice a particular profession or trade. Thus, this provision was adopted in order to assure that persons with disabilities are not foreclosed from educational, professional or trade opportunities because an examination or course is conducted in an inaccessible site or without an accommodation.

Under this requirement an entity cannot offer its program in an inaccessible site without providing persons with disabilities an alternative accessible arrangement which provides comparable conditions to those provided to others. For example, the entity could not give a course or a test in an inaccessible classroom and then offer the person with the disability the test in a cold, poorly lit basement.

Section 310. Effective date

This title becomes effective 18 months after enactment.

Title IV—Telecommunications Relay Services

This title amends the Communications Act of 1934,[72] to make telecommunications services available to hearing and speech impaired persons. This title requires a national relay service to be established so persons with disabilities can communicate with other persons using telecommunications devices. These requirements were extensively addressed by the Committee with jurisdiction over communications issues.

Title V—Miscellaneous Provisions

Section 501. Construction

This section describes the relationship between the ADA and the Rehabilitation Act of 1973 and other laws. This section also describes the relationship between the ADA and insurance. Finally, the section provides an individual with a disability the right to decline a separate service or accommodation.

Under Section 501(a), nothing in the ADA is intended or should be construed to limit the scope of coverage or to apply lesser standards than are required under title V of the Rehabilitation Act of 1973, or the regulations implementing that title. Thus, for example, the standards of title V of the Rehabilitation Act shall apply for purposes of the ADA to the extent that the ADA has not explicitly adopted a different standard than Section 504 of the Rehabilitation Act.

In those instances where the ADA explicitly provides a different standard from Section 504 of the Rehabiliation Act, the ADA standard applies to the ADA, but not to Section 504. For example, Section 504 requires that all of the programs of a recipient of federal financial assistance be available to persons with disabilities. This may require major structural changes in existing facilities, if other means are ineffective in achieving program access. No financial limitation is imposed

By contrast, the ADA adopts a lower standard of access to public accommodations for existing buildings under title III. Access must be provided only if it can be provided in a manner that is "readily achievable," that is, if it can be easily accomplished without much difficulty or expense, under Section (301)(5)(A), in light of a number of factors which are set forth in 301(5)(B). This is an instance in which the ADA provides a lesser standard than set forth in Section 504 of the Rehabilitation Act. This lesser standard applies only to the ADA and not to Section 504

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[72] 47 U.S.C. 201 *et seq.*

Under Section 501(b) of the ADA, all of the rights, remedies and procedures that are available to people with disabilities under other federal laws, including Section 504 of the Rehabilitation Act, or other state laws (including state common law) are not preempted by this Act. This approach is consistent with that taken in other civil rights laws. The basic principle underlying this provision is that Congress does not intend to displace any of the rights or remedies provided by other federal or laws or other state laws (including state common law) which provide greater or equal protection to individuals with disabilities.

A plaintiff may choose to pursue claims under a state law that does not confer greater substantive rights, or even confers fewer substantive rights, if the plaintiff's situation is protected under the alternative law and the remedies are greater. For example, the California Fair Enforcement and Housing Act (FEHA) does not cover persons with mental disabilities. However, the FEHA has been construed to provide compensatory and punitive damages. Because the ADA covers mental disabilities, the FEHA could be construed as not conferring equal or greater rights than the ADA. However, a person with a physical disability may choose to sue under the FEHA, as well as under the ADA, because of the availability of damages under the FEHA. Section 501(b) ensures that the FEHA is not preempted by the ADA.

Moreover, state tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a state tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the state tort claim in order to prevail under that cause of action.

Insurance.—Section 501(c) specifies that titles I, II, and III shall not be construed to restrict various insurance practices on the part of insurance companies aned employers, as long as such practices are not used to evade the purposes of this Act.

The Committee added this provision because it does not intend for the ADA to affect legitimate classification of risks in insurance plans in accordance with the state laws and regulations under which such plans are regulated. Further, the Committee does not intend to affect the preemption provision of the Employment Retirement Income Security Act (ERISA), which has been interpreted to exempt self-insured plans from state insurance regulation. In order to make this clear, the Committee has added Sections 501(c)(1)–(3).

Specifically, Section 501(c)(1) makes it clear that insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually underwritten basis, or to service such insurance products, so long as the standards used are based on sound actuarial data and not on speculation.

Section 501(c)(2) recognizes the need for employers, and their agents, to establish and observe the terms of employee benefits plans, so long as these plans are based on legitimate underwriting or classification of risks.

Section 501(c)(3) provides that persons or organizations covered by the Act may continue to establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

Section 501(c)(3) is designed to clarify that self-insured plans, which are currently governed by the preemption provision of the Employment Retirement Income Security Act (ERISA), are still governed by that preemption provision and are not subject to state insurance laws. Concerns had been raised that Sections 501(c) (1) and (2) could be interpreted as affecting the preemption provision of ERISA. The Committee does not intend such an implication. Until the preemption provision of ERISA is modified, these self-insured plans are subject to state law only to the extent determined by the courts in their interpretatioun of ERISA's preemption provision. Of course, under the ADA, the provisions of these plans must conform with the requirements of ERISA, just as the provisions of other plans must be based on or not inconsistent with state law.

Section 501(c) may not, however, be used as a subterfuge to evade the requirements of this Act pertaining to employment, public services, and public accommodations regardless of the date an insurance or employer benefit plan was adopted.

For example, an employer could not deny a qualified applicant a job because the employer's current insurance plan does not cover the person's disability or because of an anticipated increase in the costs of the insurance. Moreover, while a plan which limits certain kinds of coverage based on classification of risk would be allowed under this section, the plan my not refuse to insure or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles, or is related to actual or reasonably anticipated experience.

For example, a blind person my not be denied coverage on blindness independent of actuarial classification. Likewise, with respect to group health insurance coverage, an individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy but cannot be denied coverage for illness or injuries unrelated to the non-existing condition. And as noted above, while it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments, coverage cannot be denied entirely to a perosn with a disability.

In sum, ADA requires that underwriting and classification of risks be based on sound actuarial principles or be related to actual or reasonably anticipated experience.

Accommodations and services.—Section 501(d) provides that nothing in the ADA shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit which the individual chooses not to accept. The Committee added this section to clarify that nothing in the ADA is intended to permit discriminatory treatment on the basis of disability, even when such treatment is rendered under the guise of providing an accommodation, service, aid or benefit to the individual with disability. For example, a blind individual may choose not to avail himself or herself of the right to go to the front of a line, even if a particular public accommodation has chosen to offer such a modification of a policy for blind individuals. Or, a blind individual may choose to decline to participate in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibits at his or her own pace with the museum's recorded tour.

Section 502. Prohibition against retaliation and coercion.

Section 502(a) protects individuals from retaliation based on the exercise of rights under the ADA. Discrimination is prohibited against any individual who has opposed any act or practice made unlawful by the ADA. Discrimination is also prohibited against any individual who participates in the enforcement process.

Section 502(b) makes it illegal to coerce, intimidate, threaten or interfere with any individual who exercised, enjoyed, aided or encouraged rights granted under the ADA.

Section 502(c) provides the same remedies and procedures for victims of retaliation and coercion as in the underlying title. For example, an individual who was retaliated against in an employment discrimination complaint would have the same remedies and procedures available under Section 107 as an individual alleging employment discrimination.

Section 503. State Immunity

This section removes immunity of states granted by the Eleventh Amendment of the Constitution. The Committee intends for states to be covered by the ADA, where applicable, and to be subject to suit in federal or state courts. The remedies available against state defendants are the same as those available against other defendants.

This section was included to meet the requirements of *Atascadero State Hospital* v. *Scanlon.*[73]

Section 504. Regulations by the Architectural and Transportation Compliance Board

This section requires the ATBCB to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for accessible Design (MGRAD).[74]

Those supplemental guidelines are required to be issued within 9 months of enactment. The Committee lengthened the time period from 6 months to 9 months to accommodate the existing procedures for promulgation and review used by ATBCB.

These supplemental guidelines will establish requirements, in addition to those currently existing in MGRAD, to ensure that buildings, facilities, and vehicles are accessible to individuals with disabilities in conformance with the ADA. These guidelines should include scoping requirements. The guidelines will provide invaluable guidance to entities covered under titles II and III, as to the specific technical requirements in a myriad of situations.

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[73] 473 U.S. 234 (1985).

[74] 36 C.F.R. Part 1190.

Qualified Historic Properties

Section 504(c) requires the supplemental guidelines to incorporate standards already developed under the Uniform Federal Accessibility Standards (UFAS)[75] for qualified historic buldings undergoing alterations.

This issue was raised by the American Institute of Architects during hearings before the Subcommittee. The Committee does not intend that qualfied historic structures be altered in such a manner that would threaten or destroy their historical significance.

This issue has been addressed by Section 4.1.7(1) and (2) of UFAS. The Committee intends that these standards be used for historic buildings as designated under federal law and under similar state or local laws.

Section 505. Attorney's fees

Section 505 provides that courts or agencies may award attorney's fees including litigation expenses, and costs to a prevailing party for actions brought under the ADA. The Committee intends that the attorney's fee provision be interpreted in a manner consistent with the Civil Rights Attorney's Fees Act,[76] including that statute's definition of prevailing party, as construed by the Supreme Court.[77]

Litigation expenses include the costs of expert witnesses. This provision explicitly incorporates the phrase "including litigation expenses" to respond to rulings form the Supreme Court that items such as expert witness fees, travel expenses, etc., be explicitly included if intended to be covered under an attorney's fee provision.[78] further, such expenses are included under the rubric of "attorney's fees" and not "costs" so that such expenses will be assessed against a plaintiff only under the standard set forth in *Christiansburg Garment.*

The Committee recognizes that the enforcement sections in titles I, II and III also include cross-referenced cites to attorney's fee provision in other laws, such as title VII and title II of the Civil Rights Act of 1964. Section 505 of this Act is a complimentary provision, which simply spells out clearly the elements that are included (and which the Committee assumes was always intended by Congress to be included) in such attorney's fee provisions.

Section 506. Technical assistance

Section 506(a) requires the Attorney General to develop and publish within 180 days a plan to assist covered entities and governments in understanding their obligations under the ADA. In developing this plan, the Attorney General is required to consult with the Secretary of Transportation, and the Chairs of the Equal Employment Opportunity Commission, National Council on Disability,

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[75] 49 Fed. Reg. 31528.

[76] 42 U.S.C. 1988.

[77] *See, Christiansburg Garment Co.* v. *EEOC*, 434 U.S. 412, 422 (1978) (a plaintiff shall not be assessed an opponent's attorney's fees unless a court finds that the plaintiff's claim is "frivolous, unreasonable or groundless."); *Hughes* v. *Rowe*, 449 U.S. 5 (1980).

[78] *See, Crawford Fitting Co.* v. *J.T. Gibbons*, 482 U.S. 437 (1987).

Architectural and Transportation Barriers Compliance Board and Federal Communications Commissions.

Section 506(b) allows the Attorney General to obtain assistance from other federal agencies.

Section 506(c) allows departments and agencies implementing the Act to render technical assistance to individuals and entities that have rights and responsibilities under the ADA. These departments and agencies are required to make technical assistance manuals available, within 6 months after final regulations have been issued.

Section 506(d) allows departments and agencies to make grants or enter into contracts for services necessary to effectuate the ADA, including the dissemination of information about rights and duties under the ADA, and the development and dissemination of information and technical assistance about techniques for effective compliance.

The Committee recognizes that the provision of technical information and assistance is important for effective implementation of the ADA. Because of the individualized nature of providing accommodations and removing barriers, technical information and assistance will aid persons in under their obligations under the law. Effective assistance will help to reduce unnecessary confusion and litigation over the requirements of the ADA.

Section 506(e) provides that covered entities are not excused from meeting the requirements of the ADA because of any failure to receive technical assistance or any failure by the appropriate agencies to develop or disseminate manuals. The Committee expects that assistance and manuals will be available in a timely fashion, but the lack thereof is not an excuse for noncompliance with the ADA.

Section 507. Federal wilderness areas

Section 507 requires the National Council on Disability to conduct a study and report to Congress within 1 year on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System.

Under current National Park Service regulations, wheelchairs (both manual and motorized) are allowed access onto park lands, including both designated public parks and protected wilderness areas.[79] Wheelchair users are considered by the Park Service to be pedestrians, and are treated the same way as pedestrians.

Section 508. Transvestites

Section 508 provides that the term "disabled" and "disability" shall not apply to an individual solely because that individual is a transvestite. Transvestism is also excluded from the definition of disability under Section 511.

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[79] 36 CFR 1.2(e), 1.4.

Section 509. Congressional inclusion

Section 509 provides that the ADA applies in its entirety to Congress, and provides an enforcement mechanism for the House of Representatives.

Section 510. Illegal use of drugs

Section 510 provides that an individual who is a current illegal user of drugs and is discriminated against on that basis in not considered an individual with a disability. The term "drugs" means controlled substances as listed in schedules I through V of Section 202 of the Controlled Substances Act.[80] The Controlled Substances Act makes unlawful the possession or distribution of listed drugs. The term "illegal use of drugs" does not include the use of controlled substances, including experimental drugs, taken under the supervision of a licensed health care professional. It also does not include uses authorized by the Controlled Substances Act or other provisions of federal law.

Section 510(a) and (b) are similar to sections 104(a) and (b) relating to employment, and should be interpreted in a consistent fashion.

Section 510(c) provides that if an individual is otherwise entitled to health or social services, that individual shall not be denied such services on the basis of current illegal use of drugs. For example, a current illegal user of drugs cannot be refused service at a hospital for a broken leg if that individual is otherwise entitled to that service. This is consistent with Section 407 of the Drug Abuse Office and Treatment Act of 1972,[81] and regulations implementing the Rehabilitation Act of 1973.[82]

Section 511. Definitions

Section 511(a) clarifies that homosexuality and bisexuality are not impairments and as such are not disabilities under the ADA. Sexual preference is not considered a disability under the ADA, and has not been considered a handicap under the Rehabilitation Act. Individuals who are homosexual or bisexual and are discriminated against because they have a disability, such as infection with the Human Immunodeficiency Virus, are protected under the ADA. The Committee specifically rejected amendments to exclude homosexuals with certain disabilities from coverage.

Section 511(b) clairifies that the definition of "disability" does not include the following conditions:

> Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairmants, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

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[80] 21 U.S.C. 812.

[81] 21 U.S.C. 1174.

[82] Appendix A—Analysis of final regulations, Subpart A—Definitions, 4. Drug Addicts and alcoholics, ¶ 5, 42 Federal Register 22686, reprinted in 45 CFR Part 84 Appendix A (1986).

These conditions are physical or mental impairments and would have been included under the ADA, but for this provision. Section 511 was not part of H.R. 2273 as introduced. This provision was adopted during Senate consideration of the bill, and was included with only minor clarifying changes in the bill adopted by the Committee

Section 512. Amendments to the Rehabilitation Act

This section makes amendments to the Rehabilitation Act to exclude protection for current illegal users of drugs when discrimination occurs on that basis, but to protect persons who are not current illegal users of drugs, and have been or are being rehabilitated, or are erroneously regarded as being illegal users of drugs. The Rehabilitation Act presently protects these individuals against discrimination as long as they are qualified to participate in the activity at issue or are qualified to perform the job and do not present a direct threat to property or the safety of others. Section 512 amends this standard so that the treatment of persons who engage in the current illegal use of drugs is parallel to Sections 104 and 511 of the ADA. The same definition for "drugs" as used in the ADA is also included in the Rehabilitation Act.

This section also amends the Rehabilitation Act to provide that if an individual is otherwise entitled to health services, or services provided under titles, I, II and III of the Rehabilition Act, that individuals cannot be denied such services on the basis of current illegal use of drugs. This is consistent with Section 407 of the Drug Abuse Office and Treatment Act of 1972, 21 U.S.C. 1174, and regulations implementing the Rehabilitation Act of 1973.[83] This provision is similar to Section 510(c) of the bill and should be interpreted in consistent fashion.

This section further amends the Rehabilitation Act regarding the ability of local education agencies to take disciplinary action based on the current illegal use of drugs or alcohol. Further, the amendment includes a provision regarding alcoholics whose current use of alcohol prevents them from performing the duties of the job in question or whose employment, by reason of the current alcohol abuse, would constitute a direct threat to the health or safety of others.

Section 513. Alternative Dispute Resolution

The Committee adopted this section during its consideration of the bill. This section encourages the use of alternative means of dispute resolution, where appropriate and to the extent authorized by law. These methods include settlement negotiations, conciliation, facilitation, mediation, factfinding, mini-trials and arbitration.

This amendment was adopted to encourage alternative means of dispute resolution that are already authorized by law. The Committee wishes to emphasize, however, that the use of alternative dispute resolution mechanisms is intended to supplement, not supplant, the remedies provided by this Act. Thus, for example, the Committee believes that any agreement to submit disputed issues to arbitration, whether in the context of a collective bargaining agreement or in an employment contract, does not preclude the affected person from seeking relief under the enforcement provisions of this Act. This view is consistent with the Supreme Court's interpretation of title VII of the Civil Rights Act of 1964, whose remedial provisions are incorporated by reference in title I. The Committee believes that the approach articulated by the Supreme Court in *Alexander* v. *Gardner-Denver Co.*[84] applies equally to the ADA and does not intend that the inclusion of Section 513 be used to preclude rights and remedies that would otherwise be available to persons with disabilities.

Section 514. Severability

This section provides that if any provision of the ADA is found to be unconstitutional, such provision will be severed from the Act and will not affect the enforceability of the remaining provisions.

OVERSIGHT

Pursuant to clause 2(l)(3) of rule XI of the Rules of the House of Representatives, no oversight findings have been presented to the Committee by the Committee on Government Operations. The findings of the Committee on the Judiciary are incorporated throughout this report.

BUDGETARY INFORMATION

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budgetary authority.

INFLATIONARY IMPACT

Pursuant to clause 2(l)(4) of rule XI of the rules of the House of Representatives, the Committee believes the legislation will have no significant inflationary impact on prices and costs in the operation of the national economy.

ESTIMATE OF COST

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee states that it concurs with the estimate submitted by the Congressional Budget Office as set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 1990.

Hon. JACK BROOKS,
Chairman, Commitee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of H.R. 2273, the Americans with Disabilities Act of 1990, as ordered reported by the Committee on the Judiciary on May 2, 1990.

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[84] 415 U.S. 36 (1974).

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number H.R. 2273.
2. Bill title: Americans with Disabilities Act of 1990.
3. Bill status: As ordered reported by the House Committee on the Judiciary on May 2, 1990.
4. Bill purpose: To prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunications services.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	5	7	19	31	31
Estimated outlays	5	7	19	31	31

Basis of Estimate

Equal Employment Opportunities Commission (EEOC).—Title I—Employment —would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. In addition, the EEOC would ensure the availability of a technical assistance manual to those entities with rights of responsibilities under this act. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $1 million in fiscal year 1991, $2 million in fiscal year 1992, $15 million in fiscal year 1993, and $27 million annually in fiscal years 1994-95. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Commission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation.—H.R. 2273 would direct the Secretary of Transportation to issue regulations including standards applicable to the facilities and vehicles covered by these provisions. Also, the Secretary of Transportation would make available technical assistance manuals to those with rights and responsibilities under this act. CBO estimates that the cost to the federal government of developing these regulations and manuals would be about $0.5 million in fiscal year 1991. In addition, the federal government might bear some part of the costs of making transit services accessible to the handicappped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board.—H.R. 2273 would require the board to issue minimum guidelines that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Atlhough no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1991. This estimate assumes salaries and expense costs of $104,000 and research contract costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1993.

Office of Technology Assessment (OTA).—The OTA would be required to undertake a study to determine (1) the needs of individuals with disabilities with regards to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. In conjunction with this study, the OTA is directed to establish an advisory committee to assist with and review the study. Although no specific authorization level is stated in the bill, CBO estimates the cost of the study and advisory committee would be $0.2 million in fiscal year 1991, $0.3 million in 1992, and $0.1 million in 1993. This estimate is based upon the assumption that the OTA will not have to conduct significant additional field research.

Department of Justice.—H.R. 2273 also would require the Attorney General to develop regulations to prohibit discrimination in public services and to investigate alleged violations of public accommodation provisions, which would include undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. In addition, H.R. 2273 would require the Department of Justice to make available technical assistance manuals to those with rights and responsibilities under this act. We estimate the cost of these activities would be $3 million in fiscal year 1991 and $4 million annually in fiscal years 1992-1995.

Federal Communications Commission (FCC).—H.R. 2273 requires the FCC to prescribe and enforce regulations with regard to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. In addition, H.R. 2273 would require the FCC to make available technical assistance manuals to those with rights and responsibilities under this act. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1991, $0.1 million in fiscal year 1992, $0.2 million in 1993, $0.2 million in 1994, and $0.1 million in 1995.

National Council on Disability.—H.R. 2273 would require the council to conduct a study on the effect that wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System. Although no authorization level is stated, CBO estimates the cost of this study would be $0.2 million in fiscal year 1991 and $0.1 million in fiscal year 1992.

Other Possible Effects.—In addition to the federal costs of establishing and enforcing new regulations, H.R. 2273 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

6. Estimated cost to State and local governments: Enactment of H.R. 2273 would result in substantial costs for state and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. In addition, some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements.

Public Buildings.—H.R. 2273 wold mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly-constructed, state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buldings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs if the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public Transit.—CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services.—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchse additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach $15 million by 1995. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 38 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,800 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estiamte that it would cost about $2 million in 1991, increasing to $15 million in 1995, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would use the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation. Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

New regulations recently proposed by the Department of Transportation concerning bus and paratransit services include requirements much the same as those in H.R. 2273. Should these proposed rules become final in their current form, the mandates of the bill would have much less effect.

Transit Facilities.—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over 20 years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, (*Urban Transportation for Handicapped Persons: Alternative Federal Approaches,* November 1979), that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO prepared an estimate of S. 933, the Americans with Disabilities Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on August 2, 1989. We also prepared estimates of other versions of H.R. 2273, the Americans with Disabilities Act of 1989: as ordered reported by the House Committee on Education and Labor on November 14, 1989; as ordered reported by the House Committee on Energy and Commerce on March 13, 1990; and as ordered reported by the

House Committee on Public Works and Transportation on April 3, 1990. The estimates in this bill are similar to those for the versions of H.R. 2273 ordered reported by the House Committees and are substantially different from those in the Senate bill.

9. Estimate prepared by: Cory Leach and Marjorie Miller.

10. Estimate approved by: C.G. Nuckols (For James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in [section 223 or 224] *section 223, 224, and 225* and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with instrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communications solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

* * * * * * *

TITLE II—COMMON CARRIERS

* * * * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a)

(b) Subject to the provisions of [section 301] *sections 225 and 301,* nothing in this Act shall be construed to apply, or to give the

Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

* * * * * * *

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in interastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communications, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communications in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commisson shall ensure that interstate and intrastate telecommunications relay services are available, to extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall provide telecommunications

relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

(d) REGULATIONS.—

(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communications services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications realy services.

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such converstation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.—

(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may

extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

(e) ENFORCEMENT.—

(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) CERTIFICATION.—

(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer waranted.

(g) COMPLAINT.—

(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

* * * * * * *

REHABILITATION ACT OF 1973

* * * * * * *

DEFINITIONS

SEC. 7. For the purposes of this Act: (1)

* * * * * * *

(8)(A) * * *

(B) [Subject to the second sentence of this subparagraph,] *Subject to subparagraphs (C) and (D),* the term "individual with handicaps" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. [For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.]

(C) For purposes of subchapter V of this Act the term "individual with handicaps" does not include an individual who is a current illegal user of drugs, when a recipient acts on the basis of such use.

[(C)] *(D)* For the purposes of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

* * * * * * *

(22) The term "drugs" means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal use of drugs" does not mean the use of controlled substances taken under supervision of a licensed health professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

* * * * * * *

ADDITIONAL VIEWS OF HON. F. JAMES SENSENBRENNER, JR., HON. BILL McCOLLUM, HON. GEORGE W. GEKAS, HON. WILLIAM E. DANNEMEYER, HON. LAMAR S. SMITH, AND HON. CRAIG T. JAMES

We are concerned that Section 107 of the Americans with Disabilities Act linking the employment remedies under the Act to remedies available under Title VII of the Civil Rights Act of 1964 should be amended to clarify that the ADA only calls for equitable relief as a remedy for employment discrimination.

If the remedies provision of the ADA is to be changed, there should be a conscious debate and a conscious vote on the issue, rather than a "bootstrap" to the pending Civil Rights Act of 1990.

BACKGROUND

As originally introduced, the Americans with Disabilities Act (H.R. 2273 and S. 933) would have provided greater remedies for the disabled than provided under current Title VII law. H.R. 2273 originally contained the following provision:

> **SEC. 205. ENFORCEMENT.**
>
> The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies and procedures available under section 1981 of the Revised Statues (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

The highlighted portion of the statute references Section 1981 of the Civil Rights Act of 1866. Section 1981 has been interpreted by the courst to allow for recovery of punitive and compensatory damages and jury trials in certain cases of employment discrimination. Inclusion of this language in the original version of the ADA would have allowed the recovery of expanded damages and jury trials for employment discrimination against the disabled under the ADA.

After intense negotiations between the Senate and the Bush Administration, an agreement was reached in August of 1989 to, among other items, delete the reference to Section 1981 procedures from the employment remedies provision in exchange for broadening the coverage under the public accommodations title. Thus, the ADA's employment remedies were limited to current Title VII remedies: back pay, injunctive relief, reinstatement and attorneys' fees. With this significant change, the Bush Administration and the business community gave their support to the bill. The Senate passed the bill on September 7, 1989 by a vote of 76 to 8 and it was sent to the House for consideration.

Four Committees of the House reviewed the Americans with Disabilities Act: the Committee on Education and Labor, Energy and Commerce, Public Works and Transportation and the Judiciary Committee. Of these Committees, Judiciary and Education and Labor have had jurisdiction to review Title I of the ADA prohibiting discrimination in employment against the disabled. In October and November or 1989, the Subcommittee on Civil and Constitutional Rights held hearings on H.R. 2273. On November 14, 1989, the Committee on Education and labor reported a version of H.R. 2273 which incorporated the changes made in S. 933 and as modified through additional negotiations among the Committee members.

On February 7, 1990, Senator Kennedy and Representative Hawkins introduced the Civil Rights Act of 1990 (H.R. 4000 and S. 2104). H.R. 4000 would exppand damages available in Title VII actions to authorize punitive and compensatory damages and jury trials. Because of the cross-reference to Title VII, amendment of Title VII as proposed in the Civil Rights Act of 1990 would amend the employment discrimination remedies of the ADA to provide for the expanded remedies.

At the time that the Subcommittee on Civil and Constitutional Rights held its hearings and the Committee on Education and Labor reported on the bill, the damages available for employment discrimination were limited to current Title VII remedies. Thus, the expansion of remedies proposed by H.R. 4000 had not previously been considered by the House and in fact had been explicitly rejected by the Senate in the context of the Americans with Disabilities Act.

PROPOSED AMENDMENT

Congressman Sensenbrenner offered an amendment in the Subcommittee on Civil and Constitutional Rights and at the Full Judiciary Committee Markup to "de-link" the remedies for employment discrimination in the Americans with Disabilities Act from the remedies contained in Title VII of the Civil Rights Act of 1964 amendments.

The amendment offered would have incorporated the remedies and procedures set forth in sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964 while limiting the remedies to current Title VII remedies: injunctive relief, attorneys' fees and back pay. The amendment was defeated in the Full Committee by a voice vote.

The amendment was offered for two reasons. First, the Administration and the business community view the possible effect of H.R. 4000 on the ADA as a substantial breach of the agreement reached last year with the Senate on the ADA.

In anticipation of the Judiciary Committee markup of the Americans with Disabilities Act, Attorney General Thornburgh sent a letter to Congressman Hamilton Fish, Jr., the Ranking Minority Member of the House Judiciary Committee on March 12, 1990. The letter stated, A very critical element of this bill was that, as under Title VII of the CIvil Rights Act of 1964, the remedies it made available for violations of the employment title were limited to non-damage remedies that can be obtained in a trial before a judge. That formulation was crucial to the thrust and structure of a number of critical sections of the legislation. Because we were emulating the remedial scheme of Title VII, those remedies were simply incorporated by reference. In return, the Administration agreed to broad coverage under the public accommodations title, e.g. retail stores, doctors' and lawyers' offices, drug stores and grocery stores—all establishments necessary for people with disabilities to be truly in the mainstream. This coverage is much broader than Title II of the Civil Rights Act of 1964, which essentially prohibits discrimination on the basis of race in hotels, motels, restaurants, gas stations, and places of public entertainment.

The Kennedy-Hawkins bill would greatly expand the remedies available under Title VII and hence, by reference, the remedies in the employment title of the ADA. The Administration is opposed to that aspect of Kennedy-Hawkins, as stated in our testimony on that legislation. The ADA need not be held hostage to the legislative outcome on Kennedy-Hawkins, however, in order to ensure that a critical element of the agreement struck previously will be observed.

Second, expansion of remedies, especially in the context of a new and comprehensive piece of legislation is ill-advised. Employers and employees have had more than 25 years of experience with the procedures and remedies of Title VII for discrimination based on race, color, religion, sex or national origin. In enacting Title VII and other employment discrimination statutes, Congress has consistently pursued a policy of encouraging mediation and conciliation in resolving disputes and in avoiding unnecessary litigation. The current remedies of Title VII are equitable, that is, they are intended to restore the individual to the position he or she would have been in but for the discrimination. As stated above, the relief available includes injunctions, back pay, promotion, reinstatement and attorneys' fees.

Although federal agencies and recipients of federal funds have been covered under the Rehabilitation Act prohibiting discrimination against the disabled since 1973, the "mainstream" of society, "the retail stores, doctors' and lawyers' offices, drug stores and grocery stores" have no experience in compliance with anti-discrimination laws against the disabled. The possibility of a compensatory and/or punitive damages award and a jury trial in employment disputes, therefore, raises the stakes much higher. In order to be effective at eliminating discrimination against the disabled, the active cooperation of business will be required.

We urge our colleagues to consider the consequences of the failure to remedy this problem. We should not let this dispute over remedies in the ADA undermine its promise and the business community's response to it. The employment titles of the ADA should be amended so that it clearly reflects the remedies of back pay, injunctive relief and attorneys fees as it was originally intended. To do otherwise is to take the risk of postponing, once again, the civil rights of many disabled Americans.

F. James Sensenbrenner, Jr.
George W. Gekas.
Craig T. James.
Bill McCollum.
William E. Dannemeyer.
Lamar Smith.

DISSENTING VIEWS OF HON. CHUCK DOUGLAS

Four different House committees have studied the Americans with Disabilities Act, and each has adopted amendments which greately clarify a poorly drafted bill which raced through the Senate attracting very little consideration. The original version was vague and subject to varying interpretations by those who would benefit from its provisions, as well as those who would be required to take the required corrective actions.

One of my amendments, which was unanimously adopted, specifically limited the rights and procedures available under the ADA to those which are available to women and minorities under Title VII of the Civil Rights Act of 1964. Without this amendment, persons claiming discrimination could have gone directly to court, avoiding all attempts at mediation and could have sued for all kinds of damages which were not anticipated by Congress. I am pleased the committee saw the wisdom of my remedies language.

Another amendment which was passed, addressed a concern which I had initially raised. That amendment, further defined *when* an employer could refuse to hire or continue to employ an employee. If the employee would pose a "direct threat" to the health or safety of individuals in the work place, the employer has a defense for refusing to hire that individual. The amendment clarified that a "direct threat" is one which would place those other workers at a "significant risk" from any harm. This was needed in order to address my concern about dangerous or unbalanced workers threatening co-workers.

I still have serious problems with those employers who are covered by the bill and those who are not. Even though the same exemption exists in the Civil Rights Act of 1964, I question the provision in the employment title of the bill which exempts "a bona fide private membership club (other than a labor organization) that is exempt from section 501(c) of the Internal Revenue Code." This bill should include as many organizations as possible and not just the businesses of this country which are *trying* to make profits.

It is also incredible to me that the largest employer in this country, the Federal Government, is exempt from this bill! While other laws are said to cover the Federal Government's responsibilities to the disabled, those laws do not contain the exact same provisions as this bill. How can we tell every State and political subdivision, as well as every business employing over 15 people, that they must comply but then say our largest employer does *not* have to comply with the same law. *All of us* are going to be *very embarrassed* when we try to explain why even churches must comply but the Federal Government and golf clubs get off scot-free. Churches should be exempt because of the First Amendment to the Constitution, but under this legislation those rights are violated.

It is my opinion that we are further complicating this area of law by introducing an almost impossible standard for employers to meet with the requirement that they must justify *all* their actions regarding the disabled as a "business necessity." The current standard which is applied in discrimination cases for women and minorities is "legitimate business purpose." Why complicate the law by establishing a new standard which does not parallel the law with other minority groups?

I believe that still more consideration should be given to the public safety issue at the pre-hire stage. When a police or sheriff's department is considering hiring an individual who will handle a deadly weapon, it should be free to inquire as to an individual's mental stability, well *before* it has extended an offer of employment. The City of Los Angeles is an excellent example. According to Dr. Sheldon Kay, Chief Psychiatrist for the Los Angeles Police Department, *before* an applicant is extended an invitation to attend the police academy, the individual is given a battery of medical tests and undergoes a background check. The very last test the individual undergoes is a psychological test and interview to determine if the individual is stable enough to perform the duties of a police officer.

The way the legislation now reads, *none* of these tests could be run until *after* an offer of employment has been extended, even though that offer may be conditioned on succesfully passing these tests. According to Dr. Kay, moving the timing of the test to the *end* of the hiring sequence would be extremely disruptive. As things currently stand, once an applicant has an offer of employment he gives notice to his or her present employer. Under the legislation as drafted, he would not be certain he had a job until after he had passed all the exams. Dr. Kay indicated that an applicant could be in the embarrassing position of telling his associates that he had been offered a position and then have to tell them he had failed the mental stability test portions of the job.

In essence, a department would have to offer everybody a job and then test to see who was disqualified totally rather than being able to weed out unqualified applicants at any point during the process. This would certainly place a chilling effect on these types of tests which are designed to *protect* the public safety. Hundreds of other police and private security agencies work this way. Does it not make sense for these departments to be able to screen out individuals who cannot perform the "essential functions" of the job *before* they even consider hiring an individual? Let's not make the job of the police even tougher than it is.

We also do not want to force establishments like restaurants out of business causing the ultimate "undue hardship." Under H.R. 2273, as presently drafted, a food service operator could not even *transfer* an employee with AIDS, or one who has tested positive for the AIDS virus out of a food-handling position even if the employer continued to pay the same wages and benefits. The reasons the employer could not are the following:

(1) The person *does not* pose a direct threat to the health and safety of other workers and patrons. Center for Disease Control guidelines consistently state that the AIDS virus is not transmitted through food or drink or casual contact.

> (2) While the disease is in the very early stages, an employee could certainly continue to perform the essential functions of the job because he or she would not "be sick."

Unfortunately, there are many Americans who panic at the mention of the word AIDS and would refuse to patronize any food establishment if an employee were known to have the virus. Very few restaurants have the luxury of a captive audience of customers who have no place else to go to get a meal. It is a very competitive business, and for the restaurant with an employee known to have AIDS, it will translate to *no customers* and *no business* at all. With over 600,000 restaurants in this country all you need to do is go to another establishment down the street. It will be too late after the business has lost all its customers for "the undue harship" defense to do much good.

There are also sections of the bill which either have not been explained carefully or are not capable of being understood. A good example comes in Section 501(c) which deals with insurance. After spending a great deal of time explaining what insurance plans are permissible, the Act seems to say that these same plans which were previously approved are not permissible if they act as a subterfuge to the purposes of the Act. What does that mean? How does an employer or employee know when a subterfuge has been created?

One of the purposes of this and every piece of legislation is to provide a basis for reasonable expectation between parties in conflict. Even though great strides have been made in cleaning up this bill in that regard, it is still nebulous. What the meaning of "undue hardship" or "reasonable accommodation" is will vary depending upon where you sit. This legislation should attempt to narrow the gap between those expectation levels. At this point, those expectations are left for courts all over this country to decide. No one will ever be certain that they have complied. Let's make them at least a little more certain. Congress is abrogating it constitutional duty by writing vague laws which must be clarified by the Federal courts. Our *responsibility* is to write laws which can be clearly understood when reading them—not have another branch of government do our job.

CHUCK DOUGLAS.

○

101st Congress | HOUSE OF REPRESENTATIVES | Rept. 101-485
2d Session | | Part 4

AMERICANS WITH DISABILITIES ACT OF 1990

May 15, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Dingell, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Defenses.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Posting notices.
Sec. 104. Regulations.
Sec. 105. Enforcement.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Regulations.
Sec. 204. Enforcement.
Sec. 205. Effective date.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

Sec. 211. Actions applicable to public transportation considered discriminatory.
Sec. 212. Regulations.
Sec. 213. Enforcement.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

Sec. 221. Definitions.
Sec. 222. Intercity and commuter rail actions considered discriminatory.
Sec. 223. Conformance of accessibility standards.
Sec. 224. Interim accessibility requirements.
Sec. 225. Regulations.
Sec. 226. Enforcement.
Sec. 227. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and commercial facilities.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Regulations.
Sec. 306. Enforcement.
Sec. 307. Effective date.

TITLE IV—TELECOMMUNICATIONS

Sec. 401. Telecommunications relay services for hearing-impaired and speech-impaired individuals.
Sec. 402. Closed-captioning of public service announcements.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.
Sec. 507. Illegal use of drugs.
Sec. 508. Definitions.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the powers to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) Auxiliary aids and services.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) **STATE**.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 4. DEFENSES.

(a) **IN GENERAL**.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards, or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular service, program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(b) **QUALIFICATION STANDARDS**.—The term "qualification standards" may include—

(1) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(2) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) **COMMISSION**.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) **EMPLOYEE**.—

(A) **IN GENERAL**.—The term "employee" means an individual employed by an employer.

(B) **EXCEPTION**.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) **LIMITATION ON EXCEPTION**.—The exception contained in subparagraph (B) shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(3) **EMPLOYER**.—

(A) **IN GENERAL**.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) **EXCEPTIONS**.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) **PERSON, ETC**.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) **QUALIFIED INDIVIDUAL WITH A DISABILITY**.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 102. DISCRIMINATION.

(a) **GENERAL RULE**.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization, or joint labor-management committee of qualification standards, tests, selection criteria, or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests, or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 103. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 104. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 105. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–8, and 2000e–9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 104, concerning employment.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination

SEC. 201. DEFINITION.

As used in this subtitle, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government, commuter authority (as defined in section 103(8) of the Rail Passenger Service Act), or the National Railroad Passenger Corporation.

SEC. 202. DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a State or local government, any department, agency, special purpose district, or other instrumentality of a State or local government, a commuter authority (as defined in section 103(8) of the Rail

Passenger Service Act), or the National Railroad Passenger Corporation, or be subjected to discrimination by any such government or entity.

SEC. 203. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle, and such regulations shall be consistent with this subtitle and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

SEC. 204. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this subtitle.

SEC. 205. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 203 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SEC. 211. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITIONS.—As used in this part:

(1) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than transportation by aircraft, intercity or commuter rail transportation, as defined in section 221, or rail transportation covered by title III) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(2) VEHICLE.—The term "vehicle" does not include an intercity or commuter rail car described in section 222 or a rail passenger car covered by title III.

(b) VEHICLES.—

(1) NEW BUSES, RAPID AND LIGHT RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, rapid rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, RAPID RAIL AND LIGHT RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID AND LIGHT RAIL SYSTEMS.—With respect to vehicles operated by light and rapid rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make key stations in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 212. REGULATIONS.

(a) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 211.

(b) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 213. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of section 211, or regulations issued under section 212, concerning public services.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SEC. 221. DEFINITIONS.

As used in this part—

(1) the term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C 502(8));

(2) the term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C 502(9));

(3) the term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation;

(4) the term "public entity" means the National Railroad Passenger Corporation, any commuter authority, any State or local government, and any department, agency, special purpose district, or other instrumentality of a State or local government;

(5) the term "rail passenger car" means, with respect to intercity rail transportation, single level and bi-level coach cars, single level and bi-level dining cars, single level and bi-level sleeping cars, single level and bi-level lounge cars, and food service cars;

(6) the term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(7) the term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 222. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(B) SPECIAL RULE FOR SINGLE LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE LEVEL DINING CARS.—On any train in which a single level dining car is used to provide food service—

(i) if such single level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(B) ACCESSIBILITY.—For purposes of this part, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease such a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless

the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs,' upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SEC. 223. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 224. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 225, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 222(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—A person shall be considered to have complied with the requirements of section 222(a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws, regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act), and any standard for accessibility issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) governing accessibility of such cars, to the extent that such laws, regulations, guidelines, and standards are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 225. REGULATIONS.

The Secretary of Transportation shall, within one year after the date of enactment of this Act, issue regulations, in an accessible format, necessary for carrying out this part.

SEC. 226. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this part.

SEC. 227. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) **Exception**.—Sections 222 and 225 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) **Commerce**.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) **Commercial facilities**.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) **Public accommodation**.—The term "public accommodation" means—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation,

if such entities are privately operated and their operations affect commerce.

(4) **Public transportation**.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, but does not include commuter rail transportation or intercity rail transportation as such terms are defined in section 221(2) and (3).

(5) **Rail and railroad**.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(6) **Readily achievable**.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, the overall financial resources of the entity and the financial resources of its facility or facilities involved in the removal of the barrier;

(B) the type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship to the extent that such factors contribute to a reasonable determination of whether the action is readily achievable; and

(C) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(b) Construction.—

(1) General prohibitions.—

(A) Activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, accommodation, or other opportunity that is as effective as that provided to others.

(iv) Limitation.—For purposes of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing, or other arrangement.

(B) Integrated settings.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.—As used in subsection (a), the term "discriminated against" includes—

(A) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(B) a failure to make reasonable modifications in policies, practices, and procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(C) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(D) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable;

(E) where an entity can demonstrate that the removal of a barrier under subparagraph (D) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable;

(F) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, and where the entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General), except that this clause shall no' be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) Application of Term.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) commercial facility,

it shall be considered discrimination to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the standards set forth or incorporated by reference in regulations issued under this title.

(b) Elevator.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjcyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) Construction.—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(B);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(C); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(D), (E), and (F);

(3) the purchase or lease of a new rail passenger car that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(4) the remanufacture of a rail passenger car that is to be used to provide public transportation so as to extend its usable life for 10 years or more, or the purchase or lease of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or Antiquated Cars.—

(1) Exception.—To the extent that compliance with subsection (b)(2)(C) or (4) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition.—As used in this subsection, the term "historical or antiquated rail passenger cars" means rail passenger cars—

(A) which are not less than 30 years old at the time of their use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

SEC. 305. REGULATIONS.

(a) Accessibility Standards.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out section 304 that shall include standards applicable to rail facilities and rail passenger cars covered under such section.

(b) Other Provisions.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations, in an accessible format, to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) Standards.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

(d) Interim Accessibility Standards.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirements that buildings and facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(F) and 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that buildings, facilities, vehicles, and rail passenger cars be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 306. ENFORCEMENT.

(a) In General.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) shall be available to any individual who has reasonable grounds for believing that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) Injunctive relief.—In the case of violations of section 302(b)(2)(D) and (F) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) Denial of rights.—

(A) Duty to investigate.—

(i) In general.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) Attorney general certification.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which individuals with disabilities are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) Potential violation.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General, but not including punitive damages; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a

single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Judicial consideration.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 307. EFFECTIVE DATE.

(a) General Rule.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) Exception.—Sections 304(b)(3) and 305 shall become effective on the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) Telecommunications.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) Definitions.—As used in this section—

"(1) Common carrier or carrier.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) Telecommunications relay services.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) Availability of Telecommunications Relay Services.—

"(1) In general.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) Use of General Authority and Remedies.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a vioiation of this Act by a common carrier engaged in interstate communication.

"(c) Provision of Services.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, within the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) Regulations.—

"(1) In general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) Jurisdictional separation of costs.—

"(A) In general.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) Recovering costs.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) Enforcement.—

"(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) Certification.—

"(1) State documentation.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(3) **Method of funding.**—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) **Suspension or revocation of certification.**—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) **Complaint.**—

"(1) **Referral of complaint.**—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) **Jurisdiction of commission.**—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) **Conforming Amendments.**—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "sections 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows:

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) **Rehabilitation Act of 1973.**—Except as otherwise provided in this Act, nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) **Other Laws.**—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation, in places of employment, in public transportation as defined in sections 211(a)(1) and 301(4), in commuter rail transportation as defined in section 221(2), or in intercity rail transportation as defined in section 221(3).

(c) **Insurance.**—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) Retaliation.—No individual shall discriminate against any other individual because such other individual has lawfully opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, Coercion, or Intimidation.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedures.—The remedies and procedures available under sections 105, 204, 213, 226, and 306 of this Act shall be available to persons aggrieved by violations of subsections (a) and (b) with respect to title I, subtitle A of title II, parts I and II of subtitle B of title II, and title III, respectively.

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) Issuance of Guidelines.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) Contents of Guidelines.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified Historic Properties.—

(1) In general.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in national register.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEYS' FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, reasonable attorneys' fees, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) Plan for Assistance.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) Publication of plan.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) Agency and Public Assistance.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation.—

(1) Rendering assistance.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) Implementation of titles.—

(A) Title I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) Title II.—

(i) Subtitle A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) Subtitle B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) Title III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) Grants and Contracts.—

(1) In general.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or enter into contracts to effectuate the purposes of this Act.

(2) Dissemination of information.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) Failure to Receive Assistance.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. ILLEGAL USE OF DRUGS.

(a) In General.—For purposes of this Act, except as provided in subsection (c), the current illegal use of a drug does not constitute a disability.

(b) Limitation.—For purposes of this section, an individual shall not be considered a current illegal user of a drug if such individual—

(1) has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs;

(2) is participating in a supervised drug rehabilitation program and is no longer illegally using drugs; or

(3) is erroneously regarded as being an illegal user of drugs but is not illegally using drugs.

It shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures designed to ensure that an individual described in paragraph (1) or (2) is no longer illegally using drugs.

(c) Health and Social Services.—Notwithstanding subsection (a) and section 508(b)(3), an individual shall not be denied health or social services on the basis of the current illegal use of drugs, if such individual is otherwise entitled to such services.

(d) Drug Testing.—Nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of drug testing.

(e) Definitions.—For purposes of this section—

(1) the term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812); and

(2) the term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

SEC. 508. DEFINITIONS.

(a) Homosexuality and Bisexuality.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality shall not be considered impairments.

(b) Certain Conditions.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current use of illegal drugs.

Purpose and Summary

The purpose of the Americans with Disabilities Act (ADA) is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The Energy and Commerce Committee's action on the bill was limited to those matters within the Committee's sole or shared jurisdiction. Those matters include provisions affecting rail transportation services provided by Amtrak, commuter authorities, and private entities; provisions affecting telecommunications services for the speech- and hearing-impaired; and provisions generic to the entire bill, including certain definitions, defenses, and limitations on the scope of coverage.

H.R. 2273, as amended by the Committee, requires that, within five years, Amtrak and all commuter authorities have at least one car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. It also requires that, with certain specified exceptions, all new rail passenger cars purchased or leased for intercity and commuter rail transportation be fully accessible to all disabled individuals. Wheelchair accessibility is not required in all cases for certain types of new rail cars, including single-level Amtrak passenger coaches. However, Amtrak must take various steps specified in the bill to accommodate individuals who use wheelchairs by other means.

The legislation also requires that Amtrak stations and key commuter stations, within 20 years and 3 years respectively, be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. A waiver procedure is provided in the case of certain extraordinarily expensive structural changes, permitting an extension of up to 20 years to accomplish these changes at key commuter stations. The bill also requires that any new Amtrak or commuter stations be constructed so as to be accessible to disabled individuals. It improves current law by clearly delineating the legal responsibility of Amtrak, commuter authorities, other public owners, and private owners for making stations accessible.

In the area of telecommunications, the bill requires the Federal Communications Commission (FCC) to ensure that interstate and intrastate relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals. These services must be provided by common carriers within three years, using any of several methods specified in the legislation. FCC certification would be available to state programs designed to make relay services available on an interstate basis. In addition, the Committee added a provision requiring any television public service announcement produced or funded in whole or in part by any Federal agency or instrumentality to include closed captioning for the hearing-impaired.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 2273 would provide broad-based protection against discrimination for 43 million Americans with disabilities. It covers employment, public transportation, other programs and services provided by public entities, public accommodations and services (including transportation) provided by private entities, and telecommunications.

Under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, Federal agencies, the United States Postal Service, and all other programs and activities receiving Federal financial assistance are prohibited from discriminating against an otherwise qualified individual with a disability on the basis of such disability. However, section 504 does not apply to private sector entities that do not receive Federal funds. Moreover, 17 years of experience with section 504—in the development and issuance of regulations, guidelines, and standards, in the implementation of those requirements, and in the interpretation of the law—have demonstrated the need for further legislative action in this area.

The ADA was introduced in both the House (H.R. 2273) and Senate (S. 933) on May 9, 1989. Similar legislation had been introduced in the 100th Congress. These bills originated in a proposal from the National Council on Disability, an independent Federal agency authorized to make recommendations to Congress regarding individuals with disabilities. 29 U.S.C. 781. Legislation of this type was also recommended in the 1988 report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic chaired by Admiral James Watkins.

In the House, H.R. 2273 was referred to four Committees—Energy and Commerce, Education and Labor, Judiciary, and Public Works and Transportation. The Energy and Commerce Committee's action on the bill was limited to those matters within its sole and shared jurisdiction. Accordingly, the remainder of this discussion is confined to those matters.

TRANSPORTATION

Transportation plays a central role in the lives of all Americans. It is a veritable lifeline to the economic and social benefits that our Nation offers its citizens. The absence of effective access to the transportation network can mean, in turn, the inability to obtain satisfactory employment. It can also mean the inability to take full advantage of the services and other opportunities provided by both the public and private sectors.

The absence of adequate and accessible transportation can present a serious barrier to disabled individuals seeking integration into the community, impeding their efforts to lead spontaneous, independent lives. For this reason, the National Council on Disability has declared that "accessible transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities."

The United States has made significant progress in this area since enactment of the Rehabilitation Act of 1973. That Act and regulations issued under it mandate that transportation systems receiving Federal financial assistance be made accessible to individuals with disabilities. As a witness before the Subcommittee on Transportation and Hazardous Materials observed in his testimony on the ADA, "The only question at this point is not whether transportation systems and all aspects of those systems should be covered, it is how they should be covered." See *Americans with Disabilities Act: Hearings on H.R. 2273 and S. 933*, Serial No. 101-95 at p. 144 (September 28, 1989) (statement of Tim Cook).

The ADA renews the commitment made by Congress in enacting section 504 to promote the mainstreaming of individuals with disabilities by providing clear, consistent, and enforceable standards addressing discrimination on the basis of disabilities and by ensuring that the Federal government plays a central role in enforcing those standards. Thus, the bill is designed to eliminate discrimination on the basis of disability in, among other areas, passenger rail transportation provided by both the public and private sectors. At the same time, 17 years of experience with the Rehabilitation Act has enabled the Congress in this legislation to address several important issues related to the accessibility of passenger rail transportation that have arisen in the administration of section 504.

First, while the Department of Transportation's (DOT) section 504 regulations, issued in 1979, set forth specific accessibility requirements for the stations and passenger cars of railroads receiving Federal financial assistance, 49 C.F.R. 27.73, the Federal Railroad Administration (FRA) apparently takes the position that those regulations apply only to Amtrak and not to commuter railroads.[1] Moreover, not all commuter railroads receive Federal financial assistance. Thus, while some commuter authorities have undertaken, as a matter of policy or pursuant to other laws, to provide accessible transportation to individuals with disabilities, others have not been willing to adopt this approach as readily or as fully.

Second, to the extent if any that the regulations cited above do apply to commuter railroads, those regulations do not distinguish appropriately between the differing operational characteristics of Amtrak and the commuter railroads. Thus, statutory clarification is needed to guide the relevant agencies—meaning not only DOT and FRA but also the Architectural and Transportation Barriers Compliance Board (ATBCB)—in the promulgation of accessibility regulations and guidelines that are sensitive to the specific nature and functions of intercity and commuter rail transportation, respectively.

Third, the section 504 regulations applicable to Amtrak demonstrate little regard for the different types of equipment used in various Amtrak trains. Instead, they simply provide that to be considered accessible a rail passenger car must have (1) space to park and secure one or more wheelchairs, (2) space to store and fold one or more wheelchairs, and (3) a restroom large enough to accommodate a wheelchair. 49 C.F.R. 27.73(b)(2). Accessibility issues, however, differ from car type to car type and from train to train, depending on the function a car is intended to serve and on whether the train is composed of single-level or bi-level cars. Legislation should require refinement of the section 504 regulations to address the need to treat these differing cars and trains appropriately.

Fourth, experience suggests that while the goals set by the Rehabilitation Act for the attainment of accessibility were commendable and worthy, the deadlines for achieving the goals set by the 1979 regulations were too ambitious relative to the resources that have been provided to Amtrak by the Federal government. The appropriation for Amtrak in fiscal year 1980, one year after the section 504 regulations were promulgated, was $873.4 million. Of that amount, $203 million was allocated for capital acquisitions and improvements. During the last decade, however, Federal support for Amtrak service has dropped dramatically. In fiscal year 1986, the amount appropriated for capital was a mere $2 million, with a total appropriation of $590.7 million. The fiscal year 1990 appropriation was $604.7 million, of which approximately $83 million was allocated for capital—a reduction over 10 years in *real* terms of more than 50 percent in the overall subsidy and more than 70 percent in the capital subsidy.

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[1] In 49 C.F.R. Part 609, the Urban Mass Transportation Administration (UMTA) has established accessibility requirements for rapid rail vehicles (49 C.F.R. 609.17) and light rail vehicles (49 C.F.R. 609.19). Obviously, these provisions do not apply to commuter rail passenger cars, whose design and safety features are regulated by the Federal Railroad Administration under the Federal Railroad Safety Act of 1970.

Torn between having to operate a viable national passenger railroad and having to invest funds to make every one of its nearly 500 stations accessible within ten years, Amtrak appropriately chose to give priority to the mission described in section 101(a) of the Rail Passenger Service Act: "provid[ing], to the extent that the Corporation's budget allows, modern, cost-efficient, and energy-efficient intercity railroad passenger service between crowded urban areas and in other parts of the country." It has not been suggested by Amtrak or any other interested party that a passenger railroad receiving Federal funds should not be required to make its system accessible; indeed, it would be inappropriate and unjustified to suggest that the civil rights of disabled Americans should be held hostage to economic considerations. However, legislation is necessary to ensure that accessibility is achieved in a manner and within a time frame that is reasonable to both Amtrak and to disabled individuals, recognizing the realities of the Federal budget process and Amtrak's financial limitations.

Finally, because the Rehabilitation Act covers only programs and agencies receiving Federal financial assistance, it does not address the need for accessibility in public transportation services provided by private entities. While very little rail passenger service is supplied by wholly private firms, there are a handful of such operations. Like all other privately owned entities serving the general public, these private railroads should be addressed by the ADA.

TELECOMMUNICATIONS

With the enactment of the Communications Act of 1934, Congress established the goal of universal telephone service for all Americans. That goal is even more important today than it was when first enunciated a half-century ago because telecommunications and the need for information drive modern society. The telephone is therefore no longer a luxury item but an essential component of our daily lives. Yet for many of the Nation's 26 million hearing- and speech-impaired persons, the goal of universal service remains an unfulfilled promise.

The inadequacy or absence of telecommunications service for these Americans is not the result of a technology gap. By connecting telecomunications devices for the deaf (TDDs) to an operator relay system, a handful of states have already put programs in place for provision of such service. In these systems, a relay operator, acting as an intermediary between the parties, translates typed TDD messages by voice and vice versa. Through these relay systems, a large segment of the population has been given an opportunity to escape from a world of virtual silence and enter into the world of modern communication. In California alone, the call volume has reached approximately 245,000 calls per month.

Yet most States have not progressed as rapidly in the deployment of this technology as some others. And in July 1989, the FCC found that interstate TDD relay systems are virtually nonexistent. This situation is incompatible both with the universal service goal embodied in the Communications Act and with other actions taken by the Congress in recent years to improve telephone service for the hearing- and speech-impaired.[2] Legislation therefore appears necessary to establish a seamless interstate and intrastate relay system for the use of TDDs that will allow a communications-impaired caller to communicate with anyone who has a telephone, anywhere in the country.

Telephone usage among the general population continues to increase dramatically every year. It is reasonable to expect, therefore, that when an effective TDD relay network becomes a reality in the United States, it will not only enjoy heavy usage among hearing- and speech-impaired Americans but will also help integrate them into the business and social maintstream of the Nation. Legislation will thus ensure that the full benefits of the telephone network are extended and shared equally by all our citizens.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held one day of hearings on Title V of H.R. 2273 on September 27, 1989. Testimony was received from six witnesses, with additional material submitted for the record by two parties. The witnesses testifying at the hearing were the Honorable Steny H. Hoyer, Member of Congress; Linda D. Hershman, General Manager for Government Relations, Southern New England Telephone Co. on behalf of the United States Telephone Association; Dr. I. King Jordan, President, Gallaudet University; The Honorable Gail Garfield Schwartz, Deputy Chairman, New York State Public Service Commission; Karen Peltz Strauss, Esquire, National Center for Law and the Deaf, Gallaudet University; and Merrill R. Tutton, Vice President for Consumer Services, American Telephone and Telegraph Co. Additional material was submitted for record by the Honorable Steve Gunderson, Member of Congress, and Direct Connect (Minnesota Relay Service).

The Committee's Subcommittee on Transportation and Hazardous Materials held one day of hearings on H.R. 2273 and the related bill S. 933 on September 28, 1989. Testimony was received from 13 witnesses, with additional material submitted for the record by three parties. The witnesses testifying at the hearing were The Honorable Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, Department of Transportation, accompanied by Mark Lindsey, Chief Counsel, Federal Railroad Administration and John Cline, Associate Administrator for Budget and Policy, Urban Mass Transportation Administration; W. Graham Claytor, Jr., President, National Railroad Passenger Corporation (Amtrak), accompanied by David Carol, Senior Director, Government Affairs; Lawrence Roffe, Executive Director, Architectural and Transportation Barriers Compliance Board, accompanied by Dennis Cannon, Accessibilities Specialist; Philip Calkins, Director of Public Affairs, President's Committee on Employment of People with Disabilities; Tim Cook, Executive Director, National Disability Action Center;

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[2] In the Hearing Aid Compatibility Act of 1988 (47 U.S.C. 610), for example, Congress required all telephones to be able to be used with a hearing aid. In the Telecommunications Accessibility and Enhancement Act (40 U.S.C. 762), the Federal government was required to provide TDD relay systems so that hearing- and speech-impaired citizens could communicate with their Government officials and elected representatives.

Scott Fazekas, American Institute of Architects; Philp A. Pagano, Assistant Executive Director for Corporate Administration, Chicago METRA; Henry Miller, Director of Government and Community Relations, New York Metropolitan Transit Authority; and Carol Lavoritano, Director, Program Policy and Analysis Department, Southeastern Pennsylvania Transportation Authority.

COMMITTEE CONSIDERATION

On October 12, 1989, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 2273, amended, by a voice vote, a quorum being present.

On March 13, 1990, the Committee met in open session and, by unanimous consent, discharged the Subcommittee on Transportation and Hazardous Materials from the further consideration of the bill H.R. 2273. On the same day, the Committee ordered reported the bill H.R. 2273, with an amendment, by a recorded vote of 40 to 3, a quorum being present.

SUBSEQUENT ACTION IN THE HOUSE

H.R. 4807, a bill to establish clear and comprehensive prohibition of discrimination on the basis of disability, was introduced on May 14, 1990 and constitutes an amalgamation of the differing versions of H.R. 2273 ordered reported by the four Committees that considered the earlier bill. When H.R. 2273 is considered on the floor, the text of H.R. 4807 is expected to be made in order under the rule as original text. H.R. 4807 contains the language ordered reported by the Committee on Energy and Commerce applicable to intercity and commuter rail transportation, as well as to rail transportation service provided by private entites. Accordingly, the section-by-section analysis in this report covering these rail transportation matters serves as the relevant analysis for the text of the legislation to be considered by the House.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee makes the oversight findings and recommendations reflected in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings have been submitted to it by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost of implementing and administering H.R. 2273, as amended, will be no more than that stated by the Congressional Budget Office in the estimate accompanying this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 1990.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate of H.R. 2273, the Americans with Disabilities Act of 1990, as ordered reported by the Committee on Energy and Commerce on March 13, 1990. This revision includes an estimate of the impact of the bill on the National Railroad Passenger Corporation (Amtrak).

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

Attachment.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 2273.
2. Bill title: Americans with Disabilities Act of 1990.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce on March 13, 1990.
4. Bill purpose: To prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	5	6	19	31	31
Estimated outlays	5	6	19	31	31

Basis of estimate: Equal Employment Opportunities Commission (EEOC). Title I—Employment—would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. In addition, the EEOC would ensure the availability of a technical assistance manual to those entities with rights of responsibilities under this act. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $1 million in fiscal year 1991, $2 million in fiscal year 1992, $15 million in fiscal year 1993, and $27 million annually in fiscal years 1994–95. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Commission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation: H.R. 2273 would direct the Secretary of Transportation to issue regulations including standards applicable to the facilities and vehicles covered by these provisions. Also, the Secretary of Transportation would make available technical assistance manuals to those with rights and responsibilities under this act. CBO estimates that the cost to the federal government of developing these regulations and manuals would be about $0.5 million in fiscal year 1991.

In addition, the bill would require the National Railroad Passenger Corporation (Amtrak) to take a number of steps to make stations and trains accessible to the handicapped. Based on information provided by Amtrak, CBO estimates that these requirements would increase its costs by $2 million to $3 million per year, mostly to make stations accessible. Amtrak is a private corporation and is not part of the federal government. However, it receives a substantial subsidy in the form of government grants each year, and some of its additional costs could be borne by the government through the grant program.

The federal government might also bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. Like Amtrak, the capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Department of Transportation. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board: H.R. 2273 would require the board to issue minimum guidelines that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Although no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1991. This estimate assumes salaries and expense costs of $104,000 and research contract costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1993.

Department of Justice: H.R. 2273 also would require the Attorney General to develop regulations to prohibit discrimination in public services and to investigate alleged violations of public accommodation provisions, which would include undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. In addition, H.R. 2273 would require the Department of Justice to make available technical assistance manuals to those with rights and responsibilities under this act. We estimate the cost of these activities would be $3 million in fiscal year 1991 and $4 million annually in fiscal years 1992-1995.

Federal Communications Commission (FCC): H.R. 2273 requires the FCC to prescribe and enforce regulations with regard to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point to origination to point of termination. In addition, H.R. 2273 would require the FCC to make available technical assistance manuals to those with rights and responsibilities under this act. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1991, $0.1 million in fiscal year 1992, $0.2 million in 1993, $0.2 million in 1994, and $0.1 million in 1995.

H.R. 2273 would require all federally funded public service announcements to include closed captioning. CBO estimates that the cost to the federal government for closed captioning public service announcements would be an additional $235 for a 60-second spot. The cost could be lower if the public service announcement is only partially funded by the federal government. It is difficult to determine how many public service announcements—funded in whole or part by the federal government—are produced each year. Based on information from several federal agencies, CBO expects that the Department of Defense would have to close caption its public service announcements and the Department of Agriculture would have to close caption its Woodsy Owl announcements. The additional cost to the federal government for these announcements would be less than $10,000 annually. This estimate does not include announcements that are produced and broadcast locally or announcements that are produced for use in public schools. For example, local guard and reserve organizations produce and broadcast their own public service announcements, but the production cost is picked up by the Department of Defense.

In addition to the federal costs of establishing and enforcing new regulations, H.R. 2273 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

6. Estimated cost to State and local governments: Enactment of H.R. 2273 would result in substantial costs for State and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. In addition, some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements.

Public buildings.—H.R. 2273 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly-constructed, state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs if the accessibility features are included in the original building design. Otherwise the costs could be much higher.

Public transit.—CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services.—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach $15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 38 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,800 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1991, increasing to $15 million in 1995, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would use the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may very considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation. Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratranist requirement, but it could be singificant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

New regulations recently proposed by the Department of Transportation concerning bus and paratransit services include requirements much the same as those in H.R. 2273. Should these proposed rules become final in their current form, the mandates of the bill would have much less effect.

Transit Facilities.—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over 20 years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, (*Urban Transportation for Handicapped Persons: Alternative Federal Approaches*, November 1979), that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapted key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaption of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

7. Estimate comparison: None.

8. Previous CBO estimate:

CBO prepared an estimate of S. 933, Americans with Disabilities Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on August 2, 1989. We also prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1989, as ordered reported by the Committee on Education and Labor on November 14, 1989. The estimates in this bill are similar to those of the Education and Labor version of H.R. 2273 and are substantially different from those in the Senate bill.

9. Estimate prepared by: Cory Leach (226-2820) and Marjorie Miller (226-2860).

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

Federal expenditures on Americans with disabilities now exceed $60 billion annually, with $57 billion spent on disability benefits and other programs that are premised on the dependency of the people being served and the remainder spent on education, training, and rehabilitation. These figures do not include the funds expended by State and local governments, or by private firms and organizations. Eligibility for most of these benefits is based upon the inability to engage in substantial gainful activity or upon low income criteria. The Committee believes that this legislation—by substantially increasing the likelihood that many of the 12 million disabled Americans of working age who are unemployed but want to work will become taxpayers and consumers, and by otherwise greatly reducing the cost of dependency—will have no inflationary effect and may well have an anti-inflationary effect.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Subsection (a) provides that this Act may be cited as the "Americans with Disabilities Act of 1990".

Subsection (b) sets forth a table of contents for the bill.

SECTION 2. FINDINGS AND PURPOSES

Subsection (a) sets forth the Congressional findings demonstrating the need for enactment of this legislation.

Subsection (b) describes the purposes of the legislation.

SECTION 3. DEFINITIONS

Section 3 contains definitions for certain terms used throughout the bill.

The term "auxiliary aids and services" is defined to include (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.

The term "disability" is defined to mean, with respect to an individual, (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. These three prongs of the definition are intended to have the same meanings given to the corresponding provisions used in the definitions of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act of 1973 and the term "handicaps" in section 802(h) of the the Fair Housing Act, and in regulations issued under those statutes. The change to the use of the word "disability" rather than "handicap" in the defined term itself is intended simply to make use of currently accepted terminology, not to have any substantive effect.

The term "State" is defined to mean each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SECTION 4. DEFENSES

Subsection (a) provides that, in general, it shall be a defense to a charge of discrimination under the bill that an alleged application of qualification standards, selection criteria, performance standards, or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the individual's ability to perform or participate in, or take advantage of the essential components of, such service, program, activity, benefit, job, or other opportunity, notwithstanding the provision of applicable reasonable accommodations, modifications, or auxiliary aids or services.

Subsection (b) permits the "qualification standards" described in subsection (a) to include a requirement that (1) the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; or (2) an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

In order to meet the "direct threat" standard under the latter of these two provisions, a person must pose a significant risk of transmitting the disease or infection to others in the workplace or program that cannot be eliminated by reasonable accommodation. See *School Board of Nassau County v. Arline,* 480 U.S. 273, 287 n.16 (1987).

TITLE I—EMPLOYMENT

Title I prohibits employment discrimination against any qualified individual with a disability. The Committee notes that the matters addressed in this title fall outside the Committee's jurisdiction and that, accordingly, no changes in the introduced bill have been made by the Committee in this title. The analysis below reflects the provisions of the bill as introduced. Those provisions were considered separately by the Committee on Education and Labor during its markup on November 14, 1989. Readers should consult the report of the Education and Labor Committee for an analysis of that Committee's action in this regard.

SECTION 101. DEFINITIONS

This section provides definitions for the following terms: "Commission", "employee", "employer", "person" (and related terms), and "qualified individual with a disability".

SECTION 102. DISCRIMINATION

Subsection (a) specifies in general that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment.

Subsection (b) sets forth several specific examples of discrimination that are prohibited.

SECTION 103. POSTING NOTICES

This section incorporates by reference the notice-posting requirements in section 711 of the Civil Rights Act of 1964.

SECTION 104. REGULATIONS

This section requires the Equal Employment Opportunity Commission (EEOC) to issue regulations to carry out this title within 180 days after enactment.

SECTION 105. ENFORCEMENT

This section incorporates by reference the enforcement provisions in sections 706, 709, and 710 of the Civil Rights Act of 1964, and, for acts of intentional discrimination, the remedies and procedures of 42 U.S.C. 1981.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination

SECTION 201. DEFINITION

This section defines the term "qualified individual with a disability" for purposes of this subtitle to mean an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a commuter authority (as defined in section 103(8) of the Rail Passenger Service Act (RPSA)), the National Railroad Passenger Corporation (commonly known as Amtrak), or a department, agency, special purpose district, or other instrumentality of a State or local government.

The statutory requirement that a person with a disability must be able to meet the "essential eligibility requirements" of a program reflects the long-standing section 504 principle that, to the extent of the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of the program—for example, by causing substantial interference with the operation of the program or by posing a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation (subject, of course, to the same limitations on the application of this concept as are applicable in other titles of the bill)—that manifestation of the person's disability may be taken into account by the operator of the program in denying service to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a program. Consistent with current law, the assessment as to whether an individual with a disability meets the essential eligibility requirements of a program must take into account whether a reasonable modification to rules, policies, and procedures, or the provision of auxiliary aids or services, would enable the person to meet the essential eligibility requirements.

SECTION 202. DISCRIMINATION

This section provides that, subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disabiity, be excluded from participation in or be denied the benefits of the services, programs, or activities of a commuter authority (as defined in section 103(8) of the RPSA), the National Railroad Passenger Corporation (commonly known as Amtrak), a State or local government, or any department, agency, special purpose district, or other instrumentality of a State or local government.

SECTION 203. REGULATIONS

This section requires the Attorney General, within one year after the date of enactment, to promulgate regulations in an accessible format implementing this subtitle. With respect to "program accessibility, existing facilities" and "communications", these regulations are required to be consistent with the regulations and analysis found in 28 C.F.R. Part 39 applicable to Federally conducted activities under section 504 and this subtitle. In all other respects, the regulations are required to be consistent with this subtitle and with the coordination regulations found in 28 C.F.R. Part 41 (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978) applicable under section 504 to recipients of Federal financial assistance.

SECTION 204. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this subtitle.

SECTION 205. EFFECTIVE DATE

Under this section, the requirements imposed on the Attorney General in section 203 with respect to the issuance of regulations become effective on the date of enactment. In all other respects, this subtitle shall become effective 18 months after the date of enactment.

Subtitle B—Actions Applicable to Public Transportation Provided by Pubic Entities Considered Discriminatory

Part I—Public Transportation Other Than By Aircraft or Certain Rail Operations

This part prohibits discrimination against individuals with disabilities in the provision by certain public entities of public transportation other than by aircraft, intercity rail, commuter rail, or rail transportation covered by title III. The Committee notes that the matters addressed in this part—specifically, requirements imposed on public entities operating buses, rapid rail vehicles, light rail vehicles, and other fixed route vehicles, including requirements with respect to paratransit, demand responsive systems, and facilities and stations of such entities—fall outside the Committee's jurisdiction. Accordingly, no changes in the introduced bill other than those of a technical or conforming nature have been made by the Committee in this part. Readers should consult the report of the Committee on Public Works and Transportation for an analysis of that Committee's action with respect to these matters.

Under Rule X, clause 1(h)(11) of the Rules of the House of Representatives, the Committee on Energy and Commerce has exclusive jurisdiction over matters pertaining to intercity and commuter railroads. The requirements of the bill with respect to these entities are analyzed under part II, *infra*.

SECTION 211. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY

Subsection (a) provides definitions for the terms "public transportation" and "vehicle" as used in this part. The definition of the term "public transportation" explicitly excludes transportation by aircraft, intercity or commuter rail transportation as defined in section 221, or rail transportation covered by title III. The definition of the term "vehicle" explicitly excludes an intercity or commuter rail car described in section 222 or a rail passenger car covered by title III.

Subsection (b) describes various actions with respect to public transportation that shall be considered discriminatory under the bill. (In the following analysis of this section and succeeding sections of this subtitle, it should be assumed that any prohibition on discrimination applies for purposes of both the ADA and section 504 of the Rehabilitation Act unless otherwise specified.)

—Paragraph (1) specifies that it shall be considered discrimination for an individual or entity to purchase or lease a new fixed route bus of any size, a new rapid rail vehicle, a new light rail vehicle, or any other new fixed route vehicle to be used for public transportation and for which a solictation is made later than 30 days after the date of enactment, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (2) specifies that if an individual or entity purchases or leases a used vehicle after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (3) specifies that if an individual or entity remanufacturers a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for five years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (c) specifies that if an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a level of services comparable to that provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities, in accordance with service criteria established under regulations issued by the Secretary of Transportation (Secretary).

Subsection (d) specifies that if an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

Subsection (e) provides that it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (f) provides that with respect to a facility or any part thereof that is used for public transportation and that is altered by, or on behalf of, or for the use of an individual or entity later than one year after the date of enactment, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination for such individual or entity to fail to make the alternations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (g) sets forth the requirements for making existing facilities, rapid and light rail systems, and key stations in such systems, accessible to and usable by individuals with disabilities.

—Paragraph (1) provides that, except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to an usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (2) provides that, with respect to vehicles operated by light and rapid rail systems, it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than five years.

—Paragraph (3) provides that it shall be considered discrimination for an individual or entity to fail to make key stations in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than three years after the date of enactment. The paragraph also provides an exception under which the time limit may be extended by the Secretary up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SECTION 212. REGULATIONS

Subsection (a) provides that the Secretary shall, not later than 240 days after the date of enactment, issue regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 211.

Subsection (b) provides that the standards described in subsection (a) shall be consistent with the minimum guidelines issued by the ATBCB under section 504(a) of the ADA.

SECTION 213. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of section 211, or regulations issued under section 212, concering public services.

Part II—Public Transportation by Intercity and Commuter Rail

SECTION 221. DEFINITIONS

This section sets forth the definitions of key terms used in this part.

Paragraph (1) defines the term "commuter authority" to have the meaning given such term in section 103(8) of the RPSA.

- —Paragraph (2) defines the term "commuter rail transportation" the have the meaning given the term "commuter service" in section 103(9) of the RPSA.
- —Paragraph (3) defines the term "intercity rail transportation" to mean transportation provided by Amtrak.
- —Paragraph (4) defines the term "public entity" to mean Amtrak, any commuter authority, any State or local government, and any department, agency, special purpose district, or other instrumentality of a State or local government.
- —Paragraph (5) defines the term "rail passenger car" to mean, with respect to intercity rail transportation, the following: single-level and bi-level coach cars; single-level and bi-level dining cars; single-level and bi-level sleeping cars; single-level and bi-level lounge cars; and food service cars.
- —Paragraph (6) defines the term "responsible person" to mean (A) in the case of a station more than 50 percent of which is owned by a pubic entity, such public entity; (B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulations by the Secretary; and (C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulations by the Secretary.

The inclusion in the ADA of the term "responsible person" is designed to improve upon current law, which arguably subjects private parties owning passenger rail stations to the legal and financial obligations imposed under 49 C.F.R. 27.73(a)(2). These regulations set forth the requirements and timetable for making existing passenger rail stations accessible. As a matter of equity and sound transportation policy, the Committee views it as unfair and unwise to impose these obligations on private parties. The vast majority of

Amtrak's 499 stations, for example, are owned by freight railroads who have little or no business interest in the continuation of rail passenger service at these stations. The Committee believes that the legal an financial responsibilities associated with making existing intercity and commuter passenger rail stations accessible or with making alterations to such stations in an accessible manner should be improved upon those parties that actually operate the rail service being provided to passengers at each location or, where applicable, upon those public entities that own all or a share of such stations.

Under the bill, the Secretary is directed to issue regulations allocating responsibility in various circumstances "on an equitable basis" among Amtrak and the commuter railroad (or railroads) providing service to a station, or among the various railroads and other public entity owners. In making this allocation, the Committee expects the Secretary to apply the principle of "costs to the cost-causer," at least to the extent it is practicable to ascertain cost causation, and in addition to weigh such other sound economic, transportation, and other public policy considerations as will lead to an "equitable" result.

Paragraph (7) defines the term "station" to mean the portion of a property located appurtenant to a right-of-way on which Amtrak or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such pubiic entity exercises control over the selection, design, construction, or alteration of the property. However, the term does not include flag stops, which are locations that are not regularly scheduled stops and at which trains will stop to entrain or detrain passengers only on signal or advance notice.

The Committee notes its awareness of the many different circumstances in which a "station" may be found and thus emphasize the control requirement as an essential element of the definition. By way of example, the "station" (as defined in the bill) at the building and surrounding property commonly known as Washington Union Station is acutally only a part of that building and surrounding property. Thus, restrooms located in the designated passenger waiting areas adjacent to the gates would clearly be part of the "station" for purposes of the legislation. However, restrooms in a pubiic accommodation or common area located in another part of the building not under the control of Amtrak or another public entity providing rail transportation would not be part of the "station".

SECTION 222. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY

In general

This section sets forth the actions and omissions by Amtrak and commuter railroads that would constitute discrimination for purposes of the ADA and section 504 of the Rehabilitation Act of 1973. In general, these provisions may be read as imposing various requirements on the railroads in three areas: accessibility of rail passenger cars, accessibility of rail passenger trains, and accessibility of rail passenger stations. In the interest of clarity and convenience, certain language recurring throughout the section and pertaining to multiple provisions is addressed at this point.

In describing cars and stations, the section frequently uses the phrase "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs". This term refers to the ability of individuals with disabilities, including individuals who use wheelchairs, to enter into, exit from, and safely and effectively use a rail passenger car or station used in public transportation. Nothing in this legislation is intended to supersede or supplant the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.). Accordingly, modifications designed to improve or achieve accessibility and usability be compatible in all respects with all rules, regulations, standards, and orders issued under that Act.

The Committee notes that the concepts of accessibility and usability entail more than simply the notion of wheelchair accessibility. For example, the design of new railroad cars might be required to include non-slip surfaces and contrast edges on steps, as well as handrails in boarding areas, to make the car accessible to and usable by individuals with mobility impairments who do not use wheelchairs. In addition, the design might be required to include adequate illumination in boarding areas, tactile markings for identifying basic amenities and circulation needs, contrasting characters on signage, a public address system for audible announcements, and automatic door closing alarms to make the care accessible to and usable by individuals with other disabilities.

The section specifically refers to "individuals who use wheelchairs" among the individuals with disabilities who must be provided access in order to emphasize clearly that the section's requirements apply even to those individuals whose particular disability requires the most extensive modifications in order to assure access. This specific reference to individuals who use wheelchairs is made because of past misinterpretations of the nature and extent of obligations under section 504 of the Rehabilitation Act of 1973. The Committee nevertheless wishes to emphasize that the obligation to provide public transportation in a non-discriminary fashion applies to all persons with disabilities, including people with sensory impairments, all forms of mobility impairments, and those with cognitive impairments such as mental retardation. For example, it is the Committee's intent that the obligation to provide lift service applies not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. Thus, for example, people who use crutches or walkers should be allowed to use a lift.

Except as specifically provided, however, the section does not *require* the provision of lifts, ramps, or other equipment in any *particular* circumstance. In this vein, the Committee believes it is important to distinguish between the accessibility of cars and the accessibility of stations because the two concepts, although related, are nonetheless quite different. A single car stops at many stations, each of which may have differing design characteristics; a single station may be visited by many different types of cars. This simple reality requires some flexibility in the achievement of the ADA's goals. Thus, the requirement that newly purchased cars be accessible to and usable by individuals with disabilities does not require that the car be equipped with an on-board lift. Nor does the section necessarily dictate the raising of the passenger platform at any given station. In many instances on both Amtrak and commuter railroads, raising the platform would create clearance problems and safety hazards for freight cars using the same track as that running through a station. This problem, and the engineering complications it creates, were well-summarized in a recent trade publication:

> High level platforms represent the most workable solution to the problem of handicapped access, and they can significantly reduce station dwell times required for passenger boarding and alighting. High level platforms can readily be installed in terminals or on-line stations where passenger trains are operated exclusively, but freight equipment clearances can present a problem whenever mixed traffic must be provided for.
>
> On a few multiple track routes, such as the Northeast Corridor, freight traffic can be limited to certain tracks, permitting the use of high level platforms on exclusive passenger tracks. For a new station on the CSX main line at Greenbelt, Md., where the [*sic*] Maryland's MARC commuter service will be linked with the Washington Metro, the agency is simply building a side track in order to use high level platforms. Still another alternative that's been considered by some roads has been the use of gauntlet tracks to provide adequate clearance for freight trains passing high level platforms. [From "Commuter Rail: 'All Aboard, America!,'" *Railway Age*, p. CG3, CG7 (October 1988).]

While such creative solutions are certainly acceptable means of achieving accessibility under this legislation, they are also extremely expensive and will entail negotiations with freight railroads who do not carry passengers at all. It is therefore *not* the Committee's intention to require the addition, removal, modification, or movement of any tracks in the manner described by the article, whether for Amtrak or for commuter service. For low-platform stations where freight equipment is also operated, portable ramps or lift devices on the station platform may be the only feasible means available to make the station accessible. In other cases, so-called "mini-high" platforms in one or more locations at the station may be preferable. The same considerations apply to the construction of new stations in these situations.

Commuter railroads are given a maximum of three years from the date of enactment to make their key stations accessible, and they may seek an extension of up to 20 years for certain extraordinarily expensive structural changes; Amtrak is given a maximum of 20 years to make its stations accessible. In light of the Committee's intention expressed above not to mandate the installation of on-board lifts in new cars or the raising of all low-level station platforms, there may be times at which a new car is itself accessible and usable but not able to be entered from every station it serves or from every point within a station. In this circumstance, so long as the railroad is complying or has complied with the requirement of this section that existing stations be made accessible and usable "as soon as practicable", the Committee does not intend that the railroad be chargeable with discrimination. Of course, nothing in this section is intended to prohibit a railroad from designing onboard lifts into its cars if that railroad determines that such devices provide a feasible means of ensuring accessibility on its system.

Intercity rail transportation

Subsection (a) sets forth the requirements of the ADA applicable to Amtrak cars and trains, as well as to certain services provided on such cars and trains.

Paragraph (1) of the subsection states that it shall be considered discrimination for Amtrak to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable but in no event later than five years after the date of enactment. Under the "as soon as practicable" standard, Amtrak, to the extent that its accessible rolling stock is limited, shall have discretion to determine where and how such rolling stock is to be deployed, taking into account differing ridership levels on its respective routes, in the course of achieving full compliance with this subsection by the end of the five-year period.

Paragraph (2)(A) sets forth a general rule with respect to the purchase of new Amtrak cars. The paragraph states that, except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225. The use of the phrase "except as otherwise provided . . . with respect to individuals who use wheelchairs" reflects the Committee's intent, as described above, to require the design of all new cars to incorporate accessibility and usability features for disabled individuals other than those who use wheelchairs, even if in certain cases special rules or alternative requirements are prescribed in order to balance the needs of wheelchair users with the operational or structural limitations posed by a particular type of railroad car.

In those cases where no special rule or alternative requirement is prescribed, the Committee intends that the accessibility features with respect to wheelchairs found in current Federal Railroad Administration regulations at 49 C.F.R. 27.73(b)(2) should apply. In this regard, the Committee emphasizes that neither the ATBCB nor the Secretary of Transportation is granted authority under this Act to require the widening of aisles or passageways in railroad cars to accommodate wheelchairs. In light of the discussion of paragraph (4)(A) below regarding the Committee's determination not to sanction the car-to-car movement of individuals who use wheelchairs (except in one narrow circumstance), the Committee sees no valid purpose to be served by permitting this legislation to serve as authority to mandate the narrowing of seats, bedrooms, kitchen facilities, or other train amenities, which would have to occur in order to widen such aisles and passageways. Such a move would unduly and unnecessarily inconvenience other passengers, threaten Amtrak revenues, and put Amtrak to the tremendous expense of redesigning virtually all of its cars.

Paragraphs (2)(B) through (2)(D) set forth several special rules with respect to wheelchair accessibility in certain specific types of Amtrak cars. Paragraph (2)(B) provides that single-level passenger coaches shall be required to:

—be able to be entered by an individual who uses a wheelchair;
—have space to park and secure a wheelchair;
—have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and
—be equipped with a restroom usable by an individual who uses a wheelchair;

but only to the extent provided in paragraph (3), which is described below.

Paragraph (2)(C) provides that single-level dining cars shall not be required to:

—be able to be entered from the station platform by an individual who uses a wheelchair (with or without a lift or similar device); or
—have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

Paragraph (2)(D) provides that bi-level dining cars shall not be required to:

—be able to be entered by an individual who uses a wheelchair;
—have space to park and secure a wheelchair;
—have a seat to which a passenger in a wheelchair can transfer, or space to fold and store such passenger's wheelchair; or
—have a restroom usable by an individual who uses a wheelchair.

Paragraph (3) sets forth the requirements with respect to wheelchair accessibility for single-level passenger coaches referred to in paragraph (2)(B) above. The paragraph requires that as soon as practicable, but in no event later than five years after the date of enactment, on each train that includes one or more single-level rail passenger coaches, Amtrak must provide a number of spaces:

—to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and
—to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train.

The paragraph further requires that as soon as practicable, but in no event later than ten years after the date of enactment, on each train that includes one or more single-level rail passenger coaches, Amtrak must provide a number of spaces:

- —to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and
- —to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train.

These spaces are required by the bill to be located in single-level rail passenger coaches or food services cars. However, not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car. Single-level coaches and food service cars on which the required spaces are located must be equipped under the bill with a restroom usable by an individual who uses a wheelchair. Finally, the coach or food service car must be able to be entered from the station platform by an individual who uses a wheelchair.

Paragraph (4) addresses the provision of food service on Amtrak trains to passengers who use wheelchairs and to others traveling with such passengers. The requirements vary, depending on whether the dining car on a train is a single-level or bi-level car, and on whether the dining car was purchased before or after the ADA's date of enactment.

Paragraph (4)(A) provides that on any train which includes a single-level dining car purchased after the date of enactment, table service in that dining car shall be provided to a passenger who uses a wheelchair if the following three conditions are met:

- —the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;
- —the passenger using the wheelchair can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described above without the necessity of the train being moved within the station; and
- —space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining care at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat).

Paragraph (4)(A) further requires that unless not practicable, Amtrak shall place an accessible car adjacent to the end of a dining car described above through which an individual who uses a wheelchair can enter. The Committee notes that this provision represents the *only* instance in the legislation in which the right of a passenger who uses a wheelchair to pass between cars is recognized. During consideration of the bill, considerable attention was devoted to the question of whether the movement of a passenger who uses a wheelchair through the vestibule connecting adjacent cars should be permitted. In the Committee's judgment, such movement as a general rule constitutes an unsafe practice that can seriously endanger the passenger and in turn subject Amtrak or other passenger railroads to major lawsuits. Thus, it is not the intention of the bill to require any railroad or commuter authority to provide access between cars on a train for passengers using wheelchairs, except in the single instance described in this paragraph. In that single instance, the right of a disabled passenger to have an opportunity to eat in an integrated setting appeared to the Committee, on balance, to outweigh the safety concerns, particularly because the movement between cars is likely to occur when the train is stopped. There are situations, however, in which a train, in departing from a station, will be required to switch from one track to another, subjecting any passenger in the vestibule at that moment to some degree of danger. The Committee does not believe that Amtrak should be held responsible for any injuries to such a passenger, whether disabled or not, who enters the vestibule at that inopportune moment.

In addition to the requirments set forth above with respect to trains containing single-level dining cars purchased after the date of enactment, paragraph (4)(A) also requires that on any train in which a single-level dining car (regardless of date of purchase) is used to provide food service, appropriate auxiliary aids and services, including a hard service on which to eat, shall be provided at the passenger's seat or sleeping compartment to ensure that other food service equivalent to that in the dining car is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Paragraph (4)(B) similarly provides that on any train in which a bi-level dining car (regardless of date of purchase) is used to provide food service, appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided at the passenger's seat or sleeping compartment to ensure that other food service equivalent to that in the dining car is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. If such train also includes a bi-level lounge car purchased after the date of enactment, table service shall be provided in such lounge car to individuals who use wheelchairs and to other passengers.

The Committee notes that the requirement to provide table service to other passengers in such a lounge car does not require that Amtrak, in effect, treat the table area of the lounge car as through it were itself a dining car. Although the Committee expects Amtrak in most instances to provide table service in the lounge car as a matter of course to passengers dining with a disabled individual, Amtrak has discretion to establish reasonable conditions for the availability to other passengers of table service in the lounge car.

Commuter rail transportation

Paragraph (2) of subsection (b) states that it shall be considered discrimination for a commuter authority to fail to provide at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable but in no event later than five years after the date of enactment. Under the "as soon as practicable" standard, a commuter authority, to the extent that its accessible rolling stock is limited, shall have discretion to determine where and how such rolling stock is to be deployed, taking into account differing ridership levels on its respective routes, in the course of achieving full compliance with this subsection by the end of the five-year period.

Paragraph (2)(A) sets forth a general rule with respect to the purchase of new passenger cars for use in commuter rail transportation. The paragraph states that it shall be considered discrimination for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225.

Paragraph (2)(B) provides that for purposes of this part and section 504 of the Rehabilitation Act of 1973, the requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require any of the following:

—a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

—space to fold and store a wheelchair; or

—a seat to which a passenger who uses a wheelchair can transfer.

In all other aspects, the Committee intends that the accessibility features with respect to wheelchairs found in current Federal Railroad Administration regulations at 49 C.F.R. 27.73(b)(2) should apply. The Committee's comments above with respect to the question of whether this Act permits regulations to mandate the widening of aisles and passageways on Amtrak trains apply with equal force here as well.

Used Rail Cars

Subsection (c) sets forth the requirements applicable to the purchase or lease of used rail passenger cars for use in intercity or commuter rail transportation. Under this provision, it shall be considered discrimination for a person to purchase or lease a used rail passenger car for such use unless that person makes demonstrated good faith efforts to purchase or lease one that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary in regulations issued under section 225.

Remanufactured Rail Cars

Subsection (d) sets forth the requirements applicable to the remanufacturing of rail passenger cars, and the purchase or lease of such cars, for use in intercity or commuter rail transportation Under this provision, it shall be considered discrimination for a person to remanufacture a rail passenger car for such use so as to extend its usable life for 10 years or more unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary in regulations issued under section 225. Similarly, it shall be considered discrimination for a person to purchase or lease a remanufactured rail car for such use unless the car was remanufactured as required above.

The phrase "to the maximum extent feasible" is included to make clear that the Committee does not intend to require accessibility for a remanufactured vehicle if it would destroy the structural integrity of the vehicle.

Stations

Subsection (e) sets forth the requirements applicable to stations in the Amtrak system and in commuter rail systems, respectively. The provision covers both new stations and existing stations.

Under paragraph (1) it shall be considered discrimination for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225.

The requirements applicable under paragraph (2)(A) to existing stations differ in part as between Amtrak and the commuter railroad. Amtrak is required to make *all* stations in its systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 20 years after the date of enactment. The Committee recognizes that Amtrak's funds for station modernization and rehabilitation have been and are likely to remain limited. The Committee further recognizes that the effect of these limitations will be exacerbated by the expense of complying with the requirements of this legislation. It is the hope and expectation of the Committee that those inside and outside government who have lent their support to the ADA will give that support meaning and content by also endorsing and working for additional funds for Amtrak to use in meeting the ADA's requirements.

In recent years, Amtrak has been able to increase the effectiveness of its funds by arranging for partnerships with State and local entities that agree to assume or defray the expenses of station construction and rehabilitation. The Committee wishes to encourage the continuation and expansion of this highly successful and innovative procedure. Especially in the case of smaller stations where the revenue contribution to a particular Amtrak service route may be quite small, support of station construction and modification through State and local funding sources may well mean the difference between closure of a station or continued rail passenger service for a particular community. The Committee expects, however, that with respect to existing stations, Amtrak will give the mandated modifications sufficient funding priority to prevent closures except as a last resort.

In the same vein, the Committee notes that the FRA's budget submission to the congressional Appropriations Committees for fiscal year 1991 provide for the elimination of funds "for Amtrak to research and improve elderly and disabled access between rail passenger cars and station platforms." In fiscal year 1990, $392,000 was appropriated for this purpose. With the passage of the ADA, the Committee questions whether this is an appropriate time to make the cut recommended by FRA and strongly recommends that resources in this area be ehhanced, not reduced.

Commuter railroads are required only to make *key* stations in their systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. These stations must be made accessible and usable as soon as practicable but in no event later than three years after the date of enactment. Commuter railroads may seek an extension of up to 20 years from the Secretary under this provision in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

The Committee viewed it as important to provide commuter authorities with statutory guidance to aid them in the task of designating key stations, as well as to mandate in the statute a process for doing so. Thus, the bill requires each commuter authority to designate the key stations in its system, in consultation with individuals with disabilities and organizations representing such individuals, taking into account such factors as high ridership and whether such station serves as a transfer or feeder station. In addition, before the final designation of key stations under the bill, the commuter authority is required to conduct a public hearing. The bill does not mandate adherence to a particular public hearing procedure. However, the Committee expects that such hearings will include a fair opportunity to be heard from, at a minimum representatives of the local disabilities community and of such organizations, local governments, business interests, and commuters that have a direct interest in the proposed designation.

The Secretary is directed under this paragraph to require the appropriate person to develop a plan for executing the provisions set forth above with respect to existing stations The plan should reflect consultation with individuals with disabilities affected by it and establish milestones for the achievement of the requirements of this provision.

The Committee does not intend this legislation to upset in any manner the settlement agreements recently reached by commuter authorities in New York and Philadelphia with respect to key stations.

Paragraph (2)(B) addresses the manner in which alterations to existing stations are made. As a general rule, it shall be considered discrimination for a responsible person, owner, or person in control of an Amtrak or commuter station to fail to make alterations that affect or could affect the usability of the station or a part thereof in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations. In addition, where alterations are made that affect or could affect the usability of or access to an area of the station containing a primary function, it shall be considered discrimination for the responsible person, owner, or person in control to fail to make such alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

As alluded to above, the ownership, leasing, control, and occupancy arrangements governing passenger railroad stations differ markedly from case to case. Accordingly, the Committee believed it important to ensure that a responsible person under the legislation would have the ability to make existing stations accessible under paragraph (2)(A) and to make alterations as required by paragraph (2)(B) even where that person was not also the owner or person in control of the station. Thus, paragraph (2)(C) provides that it shall be considered discrimination in these cases for such an owner or person in control to fail to provide reasonable cooperation to a responsible person in that responsible person's efforts to comply with the requirements of this paragraph with respect to such station. For example, an owner or person in control would be prohibited under this provision from requiring an unreasonable insurance bond from the responsible person as a condition of performing the work.

While the failure to receive reasonable cooperation required by this provision would not be a defense to a claim of discrimination under the ADA, the bill provides a cause of action to the responsible person to redress such failure against the owner or person in control. Thus, for example, an owner or person in control may be liable to a responsible person for damages caused by a construction delay engendered by the failure to provide reasonable cooperation or may be required to idenfity the responsible person for damages recovered by a disabled plaintiff. Alternatively, a responsible person may obtain an injunction requiring the owner or person in control to provide the necessary cooperation in order to carry out the requirements of this paragraph.

No paratransit obligation imposed

The bill imposes no requirement that Amtrak or commuter railroads provide paratransit or other special transportation services of the nature described in section 211(c). Nor should the bill be read to imply any obligation on Amtrak or commuter railroads to provide paratransit or other special transportation services merely because Amtrak or any commuter railroads are associated with a person who is subject to the requirements of section 211(c). The Committee specifically rejects any notion that Amtrak or commuter railroads should be required to provide paratransit or other special transportation services. This issue was discussed at the hearing on H.R. 2273 and S. 933 held by the Subcommittee on Transportation and Hazardous Materials. Witnesses uniformly indicated that there was no intention to impose paratransit or other special transportation service obligations upon either Amtrak or any commuter railroad under the legislation. See *Americans with Disabilities Act: Hearings on H.R. 2273 and S. 933,* Serial No. 101-95 at pp. 123-24, 150 (September 28, 1989). To the extent that Amtrak or a commuter authority provides transportation other than intercity or commuter rail transportation as defined in section 221, this part does not address paratransit or other special transportation service obligations that may be applicable to such other forms of transportation.

SECTION 223. CONFORMANCE OF ACCESSIBILITY STANDARDS

This section directs that accessibility standards included in regulations issued under this part be consistent with the minimum guidelines issued by the ATBCB under section 504(a) of the ADA.

SECTION 224. INTERIM ACCESSIBILITY REQUIREMENTS

This section addresses the issue of compliance with the requirements of section 222 during the period prior to the effective date of final regulations issued under this part with respect to the accessiblity of stations and rail passenger cars.

Subsection (a) provides that, if final regulations have not been issued pursuant to section 225, for new construction or alterations for which a valid and appropriate State of local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards (UFAS) in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 222(e). However, if such final regulations have not been issued one year after the ATBCB has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subsection (b) provides that a person shall be considered to have complied with the accessibility and usability requirements of section 222 (a) through (d) if the design for a rail passenger car complies with the laws, regulations (including MGRAD and such supplemental minimum guidelines as are issued under section 504(a) of the ADA), and any standard for accessibility issued under the Architectural Barriers Act of 1968 governing accessibility of such cars, to the extent that such laws, regulations, guidelines, and standards are not inconsistent with this part and are in effect at the time such design is substantially completed. Reference to the UFAS is omitted in this subsection because the UFAS does not and is not contemplated to contain standards applicable to rail passenger cars.

SECTION 225. REGULATIONS

This section requires the Secretary, within one year after the date of enactment, to issue regulations in an accessible format necessary for carrying out this part. The Committee expects the Secretary to delegate the task of drafting and issuing regulations with respect to commuter railroads to the Federal Railroad Administration, which has the background and expertise necessary to coordinate these regulations with existing railroad safety laws, to which the commuter railroads are subject.

SECTION 226. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be available to individuals alleging discrimination on the basis of disability in violation of this part.

SECTION 227. EFFECTIVE DATE

Under this section, part II of subtitle B of this title shall become effective 18 months after the date of enactment, except for sections 222 and 225, which shall become effective on the date of enactment.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SECTION 301. DEFINITIONS

This section sets forth the definitions of key terms used in this title.

Paragraph (1) defines the term "commerce" to mean travel, trade, traffic, commerce, transportation, or communication (A) among the several States; (B) between any foreign country or any territory or possession and any State; or (C) between points in the same State but through another State or foreign country.

Paragraph (2) defines the term "commercial facilities" to mean facilities (A) that are intended for nonresidential use, and (B) whose operations will affect commerce. Excluded from the term are railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

Paragraph (3) defines the term "public accommodations". Under the definition, the following entities are considered public accommodations if they are privately operated and their operations affect commerce:

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park of zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are intended to be exhaustive.

Paragraph (4) defines the term "public transportation" to mean transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, but does not include commuter rail transportation or intercity rail transportation as such terms are defined in section 221 (2) and (3).

Paragraph (5) defines the terms "rail" and "railroad" to have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970.

Paragraph (6) defines the term "readily achievable" to mean easily accomplishable and able to be carried out without such difficulty or expense. In determining whether an action (such as removal of a barrier) is readily achievable, factors specified for consideration under the definition include (A) the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, the overall financial resources of the entity and the financial resources of its facility or facilities involved in the removal of the barrier; (B) the type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship to the extent that such factors contribute to a reasonable determination of whether the action is readily achievable; and (C) the nature and cost of the action needed.

It is important to note that "readily achievable" is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I. Actions that are not easily accomplishable or able to be carried out without much difficulty or expense are not required under the "readily achievable" standard, even if they do not impose an undue burden or hardship. The term focuses on achievability from the perspective of the business operator and addresses the degree of ease or difficulty that the business operator would experience in removing a barrier or making goods, services, facilities, and so forth available through alternative methods; if these actions cannot be accomplished easily and without much difficulty or expense, then they are not required. What the standard will mean in practice will depend on the particular circumstances of each public accommodation, considering the factors listed previously, but insofar as it addresses the removal of barriers, the standard only requires physical access that can be achieved without extensive restructuring or burdensome expense. It allows for minimal investment with a potential return of profit from use by disable patrons, often more than justfying the small expense.

SECTION 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS

Subsection (a) provides a general rule prohibiting discrimination against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. The phrase "full and equal enjoyment" does not require that individuals with disabilities must attain the identical result of level of achievement as nondisabled persons, but does mean that individuals with disabilities must be afforded an equal opportunity to attain substantially the same result.

Subsection (b) provides principles of construction for the general rule, divided between general prohibitions against discrimination set forth in paragraph (1) and specific prohibitions set forth in paragraph (2). Under the general prohibitions of paragraph (1), the bill provides that it shall be discriminatory for any person, directly or through contractual, licensing, or other arrangements to:

—subject an individual or class of individuals on the basis of a disability or disabilities to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity;

—afford an individual or class of individuals on the basis of a disability or disabilities with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded other individuals; or

—provide an individual or class of individuals on the basis of a disability or disabilities with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class with a good, service, facility, privilege, advantage, or accommodation or other opportunity that is an effective as that provided to others.

The term "individual or class of individuals" in the preceding discussion refers to the clients or customers of the covered public accommodation that enters into the described contractual, licensing, or other arrangement.

The general prohibitions of paragraph (1) also include the following requirements:

—Goods, services, facilities, privileges, advantages, and accommodation shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

—An individual with a disability shall not be denied the opportunity to participate in programs or activities that are not separate from or different than those provided to others, even if those separate or different programs or activities are provided in accordance with this section.

—An individual or entity shall not, directly or through contractual or other arrangement, utilize standards, criteria, or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.

—No individual or entity shall be excluded or otherwise denied equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities because of the known disability of another individual with whom the first individual or entity is known to have a relationship or association.

Subsection (b)(2) goes on to set forth the bill's specific prohibitions against discrimination in public accommodations. Subsection (b)(2)(A) provides that the term "discrimination", as used in subsection (a), shall include the impositon or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individual with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

The statutory requirement that a person with a disability must be able to meet the "necessary eligibility criteria" of a public accommodation reflects the longstanding principle under section 504 of the Rehabilitation Act that, to the extent the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of a public accommodation—for example, by causing substantial interference with the operation of the public accommodation—that manifestation of the person's disability may be taken into account by the operator of the public accommodation in denying services to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a public accommodation. Consistent with current law, the assessment as to whether an individual with a disability meets the necessary eligibility criteria of a public accommodation must take into account whether a reasonable modification to rules, policies, and procedures, or the provision of auxiliary aids or services, would enable the person to meet the necessary eligibility criteria.

Under the specific prohibitions of paragraph (2), the following omissions would constitute discrimination for purposes of subsection (a):

—a failure to make reasonable modifications in policies, practices, and procedures when such modifications are necessary to afford to individuals with disabilities the goods, services, facilities, privileges, advantages, or accommodations being offered, unless the entity can demonstrate that making such modification would fundamentally alter nature of such goods, services, facilities, privileges, advantages, or accommodations;

—a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in undue burden;

—a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable;

—where an entity can demonstrate that the removal of a barrier under the preceding requirement is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

Finally, paragraph (2) provides that with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, the term "discrimination" under subsection (a) includes a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and unsable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations. Where the entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). Under the bill, this provision is not to be construed to require the installation of an elevator for facilities that are less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SECTION 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES

Subsection (a) sets forth a general rule with respect to the design and construction of new public accommodations and commercial facilities. Except as provided in subsection (b), it shall be considered discrimination under this provision to fail to design and construct such accommodations and facilities for first occupancy later than

30 months after the date of enactment that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the standards set forth or incorporated by reference in regulations issued under this title.

Subsection (b) provides that the installation of an elevator is not required under subsection (a) for public accommodations and commercial facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The inclusion in this title of provisions applicable to commercial facilities is not intended to subject such facilities to the requirements of section 302 applicable to public accommodations if those facilities would not otherwise qualify as public accommodations under section 301(3).

SECTION 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

Subsection (a) sets forth a general rule providing that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

Subsection (b) provides principles of construction for subsection (a) by setting forth several specific acts and omissions constituting discrimination. These acts include the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered.

The statutory requirement that a person with a disability must be able to meet the "necessary eligibility criteria" of an entity providing public transportation services reflects the longstanding principle under section 504 of the Rehabilitation Act that, to the extent the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of a public transportation service—for example, by causing substantial interference with the operation of the public transportation service—that manifestation of the person's disability may be taken into account by the public transportation operator in denying service to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a public transportation service. Consistent with current law, the assessment as to whether an individual with a disability meets the necessary eligibility criteria of a public transportation service must take into account whether a reasonable modification to rules, policies, and procedures, or the provision of auxiliary aids or services, would enable the person to meet the necessary eligibility criteria.

Other acts and omissions described in subsection (b) that would constitute discrimination under subsection (a) are:

—the failure of an entity to make reasonable modifications, provide auxiliary aids and services, or remove barriers consistent with the requirements of section 302(b)(2) (B), (C), (D), and (E);

—the purchase or lease of a new rail passenger car that is used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

—the remanufacture of a rail passenger car that is used to provide public transportation so as to extend its usable life for 10 years or more, or the purchase or lease of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

For purposes of this section, the concepts of accessibility and usability in the context of the phrase "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs" has the same meaning as described under section 222. Similarly, as with comparable provisions and requirements applicable to Amtrak and commuter railroads under section 222, this section does not *require* the provision of lifts, ramps, or other equipment in any *particular* circumstance with respect to public transportation by rail when provided by private entities. Moreover, where the provision of such a device would not be readily achievable, the private entity to provide it.

Subsection (c) provides an exception to the requirements of subsection (b) for historical or antiquated rail passenger cars with respect to remanufacture and the removal of barriers. Under subsection (c), to the extent that compliance with those requirements of subsection (b) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required. As used in this subsection, the term "historical or antiquated rail passenger cars" is defined to mean rail passenger cars:

—which are not less than 30 years old at the time of their use for transporting individuals;

—the manufacturer of which is no longer is the business of manufacturing rail passenger cars; and

—which either (i) has a consequential association with events or persons significant to the past, or (ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

The Committee recognizes that historical or antiquated rail passenger cars used in public transportation service present a unique situation with respect to accessibility. Such cars, which embody the distinctive characteristics of a type of rail car used in the past or which represent a particular historical era, play an important role in preserving the heritage of the United States. The cars represent "living history," a look back at the building and expansion of our country. Unfortunately, some of the alterations that would be necessary to make these rail passenger cars accessible to disabled individuals, particularly those who use wheelchairs, would undermine the historical or antiquated nature of such cars. Additionally, structural modifications necessary to accommodate individuals with certain disabilities may result in changes to the car that prevent it from meeting Federal Railroad Administration (FRA) safety and mechanical standards.

In analyzing these problems, the Committee struck an equitable balance between, on the one hand, the requirements of the legislation to ensure that public transportation in general be readily accessible to disabled individuals and, on the other hand, the need and desire to preserve the heritage embodied in these cars. This balance was achieved by providing an exception to the requirements of the legislation for historical and antiquated rail passenger cars to the extent that compliance with the legislation would significantly alter the historical or antiquated characteristics of such cars. Additionally, an exception is provided if alterations to the car could be made in such a way as not to significantly alter the historical or antiquated characteristics but would result in a violation of any rules, regulations, standards, or orders issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970. However, whenever possible without significantly altering the historical or antiquated characteristics, such cars should be made accessible to individuals with disabilities, and operators of such cars should attempt to accommodate such individuals.

The Committee has included a definition for "historical or antiquated rail passenger cars". The Committee believes that the cars meeting the requirements of this definition are generally used for educational purposes, as tourist attractions, for excursions, or on a charter basis. Under the definition, a car does not suddenly become "historical or antiquated" merely because, for example, one furnishes it with a piece of antique furniture or hangs an antique fixture in an otherwise unremarkable setting. The passengers riding on these cars are generally attracted to such transportation, as opposed to other modes of transportation, for the ambience and experience provided by the historical or antiquated characteristics of the cars. These are the type of rail passenger cars that are intended to fall within the exception to the legislation. The Committee notes, however, that a car does not lose its protected status under this provision merely as a result of the presence of amenities that make the car attractive to or comfortable for these very riders. Thus, for example, the installation of kitchens meeting FRA and OSHA safety standards, or the presence of air conditioning and modern plumbing, would not prevent a car from qualifying for the exception if these amenities do not detract from the overall historical or antiquated character of the car.

SECTION 305. REGULATIONS

Subsection (a) provides that not later than one year after the date of enactment, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out section 304 that shall include standards applicable to rail facilities and rail passenger cars covered under such section.

Subsection (b) provides that not later than one year after the date of enactment, the Attorney General shall issue regulations, in an accessible format, to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

Subsection (c) provides that standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines issued by the ATBCB in accordance with section 504(a) of the ADA.

Subsection (d) provides that, if final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the UFAS in effect at the time the building permit is issued shall suffice to satisfy the requirement that buildings and facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(F) and 303. However, if such final regulations have not been issued one year after the ATBCB has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that buildings, facilities, vehicles, and rail passenger cars be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

The reference to vehicles and rail passenger cars is excluded from the first portion of the subsection, covering the period prior to ATBCB's issuance of supplemental minimum guidelines, because the UFAS does not and is not contemplated to contain standards applicable to vehicles and rail passenger cars. Accordingly, reference to vehicles and rail passenger cars in that portion would be inappropriate.

SECTION 306. ENFORCEMENT

Subsection (a) sets forth, in general, the availability of remedies and procedures to redress violations of this title. The subsection provides in paragraph (1) that the remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) shall be available to any individual who has reasonable grounds for believing that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

The subsection further provides in paragraph (2) that in the case of violations of section 302(b)(2) (D) and (F) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title. While the issuance of an order to make a facility readily accessible to and usable by individuals with disabilities is mandatory under the first sentence of paragraph (2), the Committee does not intend by this provision to deprive the court of all equitable discretion in such matters. Thus, in framing the terms of a mandatory injunction, such as the period for compliance, the court may take into account the particular facts and circumstances of each case.

Subsection (b) sets forth the authorities and responsibilities of the Attorney General in enforcing the provisions of this title. Under subsection (b)(1)(A), the Attorney General is required to investigate alleged violations of this title and to undertake periodic reviews of the compliance of covered entities under this title. If the Attorney General has reasonable cause to believe that (i) any person or group of persons is engaged in a pattern or practice of discrimination under this title, or (ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance, then the Attorney General may commence a civil action under subsection (b)(1)(B) in any appropriate Federal district court.

Under subsection (b)(1)(A), the Attorney General is further authorized, on the application of a State or local government and in consultation with the ATBCB, and after prior notice and a public hearing, to certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

Subsection (b)(2) provides that in a civil action brought by the Attorney General, the court may grant any one or more of several remedies specified in the legislation—equitable relief, monetary damages, and civil penalties. However, the court is not authorized under this provision to award punitive damages. Furthermore, the purpose of civil penalties is stated to be the vindication of the public interest, and those penalties are limited to a maximum of $50,000 for a first violation and $100,000 for any subsequent violation.

For purposes of determining whether a first or subsequent violation has occurred under the civil penalty provision, subsection (b)(3) provides that a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

Finally, subsection (b)(4) provides that in a civil action brought by the Attorney General under subsection (b)(1)(B), the court, when considering what amount of civil penalty, if any, is appropriate to assess, shall give consideration to any good faith effort or attempt to comply with this Act by the defendant. In evaluating good faith, the court shall consider, among other factors, whether the defendent could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SECTION 307. EFFECTIVE DATE

This section provides that this title, with the exception of sections 304(b)(3) and 305, shall become effective 18 months after the date of enactment. Sections 304(b)(3) and 305, however, shall become effective on the date of enactment.

TITLE IV—TELECOMMUNICATIONS

SECTION 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS

This section amends Title II of the Communications Act of 1934 by adding a new section 225. The new section is described in detail below:

Definitions

Section 225(a) defines: (1) "common carrier" or "carrier" to include both interestate common carriers and intrastate common carriers for purposes of this section only; (2) "TDD" to mean a machine that employs graphic communications in the transmission of coded signals through a telephone wire or radio communication system; and (3) "telecommunications relay services" to mean telephone transmission services that allow a hearing-impaired or speech-impaired individual to communicate in a manner that is functionally equivalent to voice communications services offered to hearing individuals. The term includes, but is not limited to, TDD relay services.

Availability to telecommunications relay services

Section 225(b)(1) states that to promote the availability and use of communications services to all Americans, the Commission must ensure that interstate and intrastate telecommunications relay services are provided to the greatest extent possible and in the most efficient manner.

Section 225(b)(2) extends to the Federal Communications Commission the same authority, power, and functions (including remedies, procedures, rights, penalties, and obligations) with respect to intrastate carriers as it has with respect to interstate carriers under the Communications Act of 1934, as amended, for the limited purposes of implementing and enforcing the requirements of this section.

Provision of services

Section 225(c) requires that carriers providing telephone voice transmission services provide telecommunications relay services within three years after the date of enactment of this section in the area in which it offers service. Carriers are to offer to hearing-impaired and speech-impaired individuals services which are functionally equivalent to voice telephone services provided to non-impaired individuals. Carriers are granted the flexibility to provide such services individually, through designees, through a competitively selected vendor, or in concert with other carriers. In exercising this flexibility, it is the carriers' responsibility to ensure compliance with all the requirements of the section. A carrier will be in compliance with the regulations of this section with regard to the provision of intrastate relay service if the carrier complies with the requirements of a state certified program under subsection (f) or, in those states that do not have a certified program, complies with the Commission's regulations under subsection (d).

If an entity other than a carrier is providing the service, it remains the carrier's responsibility to ensure that all applicable regulations are being complied with.

There are some services, such as audiotext services, that connect callers to recorded information services. It is not the function of this legislation to facilitate access to these kinds of services. Rather, the legislation is intended to extend the benefits of voice telephone service to hearing- and speech-impaired individuals.

In carrying out their responsibilities under this Act, common carriers are encouraged to accommodate individuals who speak a language other than English. This is particularly important in areas in which there is a substantial population of individuals for whom English is not the primary language. However, carriers are not required to provide relay services in languages other than those which predominate among large sections of the population.

Regulations

Section 225(d)(1) requires the Commission to prescribe the necessary rules and regulations to carry out the requirements of this section within one year of enactment. The Commission's regulations must establish functional requirements, guidelines, operational procedures, and minimum standards for the provision of telecommunications relay services. The regulations must ensure that the telecommunications relay services are available every day for 24 hours on a non-discriminatory basis. The users of the telecommunications relay services are to be charged rates no greater than the rates charged for functionally equivalent voice communications services.

Consistent with their common carrier obligations, the common carriers' relay operators must not refuse calls, nor limit the length of calls to users of the telecommunications relay services. The legislation also prohibits the relay operators from disclosing the content of any relayed conversation. Any record of a conversation shall not be kept any longer than the duration of the call; however, records of the transaction may be kept for billing purposes.

Section 225(d)(2) requires that the Commission ensure that regulations prescribed to implement this section are consistent with section 7 of the Communications Act, while allowing for the use of existing technology. Such regulations should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

There are two formats currently being utilized by TDD users—ASCII and Baudot. In a Notice of Proposed Rulemaking (Docket 87-124, adopted Juy 21, 1989), the Commission last year stated "that requiring all TDDs to use the ASCII format would impose unnecessary burden on owners of the Baudot devices." In implementing this section, the Commission should continue its policy of accommodating both existing formats, so that TDD users will not be required to purchase new equipment to continue to receive service.

Section 225(d)(3)(A) requires that the Commission prescribe regulations, consistent with section 410 of the Communications Act, governing the jurisdictional separation of costs for telecommunications relay services provided under this section.

Section 225(d)(3)(B) states that the Commission shall issue regulations to ensure that carriers are permitted to recover the costs incurred in meeting the requirements of this Act from subscribers of the respective interstate and intrastate jurisdictions. The Commission's regulations shall ensure that all subscribers to every interstate service, including private line, public switched network services, and other common carrier services, contribute to recover the costs incurred in the provision of interstate relay services.

The Commission also is granted broad discretion to structure a cost-recovery mechanism to determine the most appropriate method of recovery of interstate costs. While "Lifeline" services are not exempted specifically from this section, requiring "Lifeline" subscribers to pay for relay services would tend to undermine the rationale for such services. Exempting "Lifeline" services would not be inconsistent with this provision.

The Committee amendment struck the prohibition on end-user charges that was contained in the introduced legislation. It is the Committee's intent that the Commission have broad discretion in promulgating rules under this Act to determine the most appropriate method to ensure the recovery of interstate and intrastate costs.

The Act requires that state commissions permit common carriers to recover the costs incurred in providing intrastate telecommunications relay services, if the common carrier meets the requirements of the state's certified program. In states without a certified program, the Act requires state commissions to permit the recovery of costs as long as the carrier complies with the federal regulatory requirements established by the commission.

Enforcement

Section 225(e)(1) requires that the commission enforce the requirements of this section subject to subsections (f) and (g). The Committee intends that the commission have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of the services. The Commission's enforcement authority over the provision of intrastate telecommunications relay services is limited in states with certified programs by certification procedures required to be established under subsection (f).

Section 225(e)(2) requires that the Commission resolve any complaint by final order within 180 days after that complaint has been filed.

Certification

Section 225(f)(1) and (f)(2) describe the state certification procedure whereby states may apply to assert jurisdiction over the provision of intrastate telecommunications relay services. The Commission may grant certification upon a showing that such services are being made available in the state and that they comply with the federal guidelines and standards promulgated pursuant to subsection (d). A state plan may make service available through the state government itself, through designees, through a competitively selected vendor, or through regulation of intrastate carriers.

Any state wishing to obtain certification must include in its submission to the Commission documentation on the procedures and remedies for enforcing compliance with the state's requirements. This is necessary because states with certified plans will have the primary role in enforcing the provisions of the Title IV in those states.

Section 225(f)(3) states that, except for reasons affecting rules promulgated pursuant to subsection (d), the Commission may not deny certification to a state based solely on its chosen method of founding the provision of intrastate telecommunications relay services. Subsection (d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of telecommunications relay services to pay effectively higher rates than those paid for functionally equivalent voice communications services.

In addition, the Committee recognizes that the relay services are of benefit to all society and therefore would expect that any funding mechanism not be labled so as to prejudice or offend the public, especially the hearing-impaired and speech-impaired community. For example, California's relay service is funded by a surcharge that appears on telephone bills as "Deaf Trust Fund." This unfortunate choice of words is offensive and should be precluded.

Section 225(f)(4) allows for the Commission to revoke such certification if, after notice and opportunity for a hearing, the Commission determines that certification is no longer warranted. In a state whose program has been suspended, the Commission shall provide a reasonable transition period to ensure both continuity of relay service for users and to provide a reasonable opportunity for common carriers to meet the requirements of the Commission's regulations after the suspension or revocations of the certified program.

Complaint

Section 225(g)(1) states that when a complaint is filed with the Commission that alleges a violation of this section with respect to the provision of intrastate to telecommunications relay services, the Commission shall refer such complaint to the appropriate state commission is that state has been duly certified by the Commission pursuant to subsection (f). If the appropriate state has not been duly certified, then the Commission will handle the complaint pursuant to subsection (e)(1) and (e)(2)

Once a complaint has been properly referred to a state commission, subsection (g)(2) permits the Commission to exercise its jurisdiction over such a complaint only if final action has not been taken within 180 days after the complaint is filed with the state, or within a shorter period as prescribed by the regulations of such state, or if the Commission determines that a state program no longer qualifies for certification under subsection (f).

SECTION 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS

This section amends section 711 of the communications Act of 1934 to require that any public service announcement, either partially or wholly funded by the Federal government, shall include closed captioning of the verbal content of the announcement.

The section further states that a television broadcast licensee shall not be required to supply closed captioning for any such announcement that does not include closed captioning. Unless the licensee intentionally fails to transmit the closed caption that was included in the announcement, the licensee shall not be held liable for broadcasting any such announcement without transmitting a closed caption.

TITLE V—MISCELLANEOUS PROVISIONS

SECTION 501. CONSTRUCTION

Subsection (a) states that, except as otherwise provided in this Act, nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to such title. The phrase "except as otherwise provided in this Act" has been included because the legislation, as reported, makes several changes in existing law, particularly with respect to requirements imposed on Amtrak and commuter railroads. The Committee intends that the provisions of the ADA in these areas shall supersede any provisions of title V of the Rehabilitation Act providing a broader scope of coverage or higher standards.

Subsection (b) provides that nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protecton for the rights of individuals with disabilities than are afforded by this Act. The Committee notes that while nothing in *this Act* shall be construed to have this effect, the Act is not intended to override traditional constitutional prohibitions against the burdening of or interference with the free flow of interstate commerce, particularly with respect to the interstate operation of railroads. Amtrak, for example, operates in 44 States and the District of Columbia. The Committee does not expect Amtrak to have to comply with the multiple requirements and standards that might be imposed by various jurisdictions with respect to the accessibility of its cars, stations, and other facilities and services. The same is true with respect to commuter railroads operating in more than one State. In this respect, the ADA defines the scope of these railroads' obligations.

Subsection (b) further provides that nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation, in places of employment, in public transportation as defined in section 211(a)(1) and 301(4), in commuter rail transportation as defined in section 221(2), or in intercity rail transportation as defined in section 221(3).

Subsection (c) provides that titles I through IV and this Act shall not be construed to prohibit or restrict:

—an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

—a person or organization covered by this Act from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

—a person or organization covered by this Act from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

The subsection further provides, however, that the activities described above with respect to risks and benefit plans are not to be used as a subterfuge to evade the purposes of titles I and III.

SECTION 502. PROHIBITION AGAINST RETALIATION AND COERCION

Subsection (a) prohibits discrimination against any individual because that individual has lawfully opposed any act or practice made unlawful by this Act or because that individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Subsection (b) provides that it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

Subsection (c) provides that the remedies and procedures available under sections 105, 204, 213, 226, and 306 of this Act shall be available to persons aggrieved by violations of subsections (a) and (b) with respect to title I, subtitle A of title II, parts I and II of subtitle B of title II, and title III, respectively.

SECTION 503. STATE IMMUNITY

Consistent with the requirements set forth in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985), this section specifies that a State shall not be immune under the 11th Amendment from an action in Federal court for a violation of this Act. The section further provides that in any such action, remedies are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SECTION 504. REGULATIONS ISSUED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Subsection (a) provides that not later than 9 months after the date of enactment, the ATBCB shall issue minimum guidelines supplementing the existing MGRAD for purposes of titles II and III of this Act.

Subsection (b) requires that the supplemental guidelines issued under subsection (a) establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

Subsection (c) sets forth special provisions for qualified historic properties. Under these provisions, the supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the UFAS. With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines shall, at a minimum, maintain the procedures and requirements established in 4.1.7 (1) and (2) of the UFAS. With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the UFAS, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SECTION 505. ATTORNEYS' FEES

This section provides that in any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses and costs. Under this provision, the United States shall be liable for the foregoing the same as a private individual.

SECTION 506. TECHNICAL ASSISTANCE

Subsection (a) requires the Attorney General, within 180 days after the date of enactment and in consultation with the Chairman of the EEOC, the Secretary of Transporation, the Chairperson of the ATBCB, and the Chairman of the FCC, to develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under the Act. The plan is to be published for public comment in accordance with the Administrative Procedure Act.

Subsection (b) authorizes the Attorney General, in carrying out subsection (a), to obtain the assistance of other Federal agencies, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

Subsection (c) authorizes each Federal agency that has responsibility for implementing this Act to render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility. The subsection divides the responsibility for implementation of the plan for assistance under subsection (a) as follows:

—For title I, the EEOC and the Attorney General;
—For subtitle A of title II, the Attorney General;
—For subtitle B of title II, the Secretary of Transportation;
—For title III (except for section 304), the Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the ATBCB;
—For section 304, the Secretary of Transportation; and
—For title IV, the Chairman of the FCC.

Each Federal agency that has responsibility for implementing this Act is further required by subsection (c) to ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with 'rights and duties under the Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

Subsection (d) authorizes each Federal agency referred to above to make grants and enter into contracts to effectuate the purposes of this Act. Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by the Act and to provide information and technical assistance about techniques for effective compliance with the Act.

Subsection (e) provides that an employer, public accommodation, or other entity covered under the Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SECTION 507. ILLEGAL USE OF DRUGS

Subsection (a) specifies that, for purposes of this Act, except as provided in subsection (c), the current illegal use of a drug does not constitute a disability.

Subsection (b) provides that, for purposes of this section, an individual shall not be considered a current illegal user of a drug if such individual:

—has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs;
—is participating in a supervised drug rehabilitation program and is no longer illegally using drugs; or
—is erroneously regarded as being an illegal user of drugs but is not illegally using drugs.

Subsection (b) further provides that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures designed to ensure that an individual who has successfully completed or is participating in a supervised drug rehabilitation program, as described above, is no longer illegally using drugs. The Committee notes that the term "supervised drug rehabilitation program" is not defined in the Act and that there are no standards currently in place to determine whether a given program qualifies under this section. The Committee intends that the term be interpreted to include both in-patient and outpatient programs, as well as employee assistance programs that provide professional (not necessarily medical) assistance and counseling.

Subsection (c) provides that notwithstanding subsection (a) and section 508(b)(3) of the Act, an individual shall not be denied health or social services on the basis of the current illegal use of drugs if such individual is otherwise entitled to such services.

Subsection (d) provides that nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of drug testing.

Under subsection (e) the term "drug" is defined to mean a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812). The subsection also provides that the term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

SECTION 508. DEFINITIONS

Subsection (a) provides that for purposes of the definition of the term "disability" in section 3(2), homosexuality and bisexuality shall not be considered impairments.

Subsection (b) provides that under this Act, the term "disability" shall not include:

—transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

—compulsive gambling, kleptomania, or pyromania; or

—psychoactive substance use disorders resulting from current use of illegal drugs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 2273 as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

* * * * * * *

APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in [section 223 or 224] *sections 223, 224, and 225* and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

* * * * * * *

TITLE II—COMMON CARRIERS

* * * * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) Subject to the provisions of [section 301] *sections 225 and 301,* nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

* * * * * * *

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TTD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an indi-

vidual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of Telecommunications Relay Services.—

(1) In general.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

(c) Provision of Services.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, within the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

(d) Regulations.—

(1) In general.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs.—

(A) In general.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) Enforcement.—

(1) In general.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) Complaint.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such compliant is filed.

(f) Certification.—

(1) State documentation.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunications relay services.

(4) Suspension or revocation of certification.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint.—

(1) Referral of complaint.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such compliant to such State.

(2) Jurisdiction of commission.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

* * * * * * *

TITLE VII—MISCELLANEOUS PROVISIONS

* * * * * * *

TELECOMMUNICATIONS POLICY STUDY COMMISSION

[Sec. 711. (a) There is hereby established the Telecommunications Policy Study Commission (hereinafter in this section referred to as the "Commission") which shall—

[(1) compare various domestic telecommunications policies of the United States and other nations, including the impact of all such policies on the regulation of interstate and foreign commerce and

[(2) prepare and transmit a written report thereon to the Congress, the President, and the Federal Communications Commission.

[(b)(1) Such Commission shall be composed of the chairman and ranking minority members of the Committee on Commerce, Science, and Transportation and the Communications Subcommittee of the Senate and the Committee on Energy and Commerce and the Telecommunications, Consumer Protection and Finance Subcommittee of the House of Representatives (or delegates of such chairmen or members appointed by them from among members of such committees).

[(2) The chairmen of such committees (or their delegates) shall be co-chairmen of the Commission.

[(c)(1) The report under subsection (a)(2) shall be submitted not later than December 1, 1987. Such report shall contain the results of all Commission studies and investigations under this section.

[(2) The Commission shall cease to exist—

[(A) on December 1, 1987, if the report is not submitted in accordance with paragraph (1) on the date specified therein; or

[(B) on such date (but not later than May 1, 1988) as may be determined by the Commission, by order, if the report is submitted in accordance with paragraph (1) on the date specified in such paragraph.

[(d)(1) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the chairmen, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including traveltime, and while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

[(2) The Commission may appoint and fix the pay of such staff as it deems necessary.

[(e)(1) In conducting its activities, the Commission may enter into contracts to the extent it deems necessary to carry out its responsibilities, including contracts with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's responsibilities.

[(2) The Commission is authorized to hold public hearings, forums, and other meetings to enable full public participation.

[(f) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out this section and shall furnish to the Commission such information as the Commission deems necessary to carry out this section, in accordance with otherwise applicable law.

[(g) There are authorized to be appropriated such sums as may be appropriated to carry out this section for a period of three fiscal years.

[(h) Activities authorized by this section may be carried out only with funds and to the extent approved in appropriation Acts.

[(i) Nothing in this section shall be construed to affect any proceedings by, or activities of, the Federal Communications Commission, except that the Federal Communications Commission shall consider submissions by the Commission submitted pursuant to subsection (a)(2).]

SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

* * * * * * *

DISSENTING VIEWS ON THE AMERICANS WITH DISABILITIES ACT

In voting to report H.R. 2273, the Americans with Disabilities Act (ADA), the full Energy and Commerce Committee has endorsed a sweeping and, in many ways, unprecedented attempt to extend civil rights protection to the disabled and to those who resemble the disabled. We wholeheartedly support the goals of the legislation, *i.e.*, to incorporate the disabled into the mainstream of American life and empower them to realize the fruits of our society. But, in attempting to translate these goals into legislative language, we believe the ADA goes well beyond the parameters of what we consider to be reasonable legislation.

Unlike other committees with partial jurisdiction over the bill, the Energy and Commerce Committee quite properly opted to address only those provisions within its jurisdiction. Thus, the Committee approved provsions dealing with rail transportation and telecommunications that are considerable improvements over the original version of H.R. 2273. In fact, the Committee recognized that the ADA would potentially bankrupt multibillion dollar economic entities within its jurisdiction, including Amtrak and commuter rail lines around the country. We do not doubt this assessment, and only wonder where the same reasoning and concern would lead if it were applied to the hundreds of thousands of small businesses that will eventually have to comply with the ADA.

In addition, the Committee amended some of the sections which also fall within the jurisdiction of the other committees considering this bill. For example, the Committee added Section 508(a), which is very similar to the language adopted in the Senate version of the ADA. Section 508(a) specifically excludes "homosexuality and bisexuality" from the list of impairments. It is clear that the Committee does not want the ADA to become a homosexual rights bill. We share that concern, and applaud the Committee for its inclusion of section 508(a). Unfortunately, as we will discuss later, the bill as approved by the Committee includes other sections which transform the ADA into a de facto homosexual rights bill.

Section 508(b) reflects the Committee's concern that the ADA not trivialize the notion of disability. We endorse this section as far as it goes. Section 508(b) specifically excludes

> (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders;
>
> (2) compulsive gambling, kleptomania or pyromania; or
>
> (3) psychoactive substance use disorders resulting from current use of illegal drugs.

Subparagraph (1) lists six sexual behavioral disorders and ends with a generic reference to "other sexual behavior disorders." Similarly, subparagraph (3) refers generically to "psychoactive substance use disorders." Subparagraph (2), however, mentions only three behavioral disorders—compulsive gambling, kleptomania, and pyromania—and stops there. During full Committee markup, Mr. Dannemeyer offered an amendment which sought to make the scope of subparagraph (2) more consistent with the scope of subparagraphs (1) and (3), by adding a generic reference to "other behavioral disorders." His amendment would also have created a new subparagraph (4) with an exclusion for currently contagious diseases and sexually transmissible diseases or infections. The Committee rejected the amendment.

Even a cursory review of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R) illustrates the need for this amendment. Dozens, and perhaps hundreds, of behavioral disorders qualify for special protection under the bill approved by the Committee. For example, obsessive compulsive disorders receive full protection as "disabilities" under the Committee bill. According to DSM-III-R:

> Obsessions are persistent ideas, thoughts, impulses, or images that are experienced, at least initially, as intrusive and senseless—for example, a parent having repeated impulses to to kill a loved child. . . . The person attempts to ignore or suppress such thoughts or impulses or to neutralize them with some other thought or action.
>
> When the person attempts to resist a compulsion, there is a sense of mounting tension that can be immediately relieved by yielding to the compulsion. *In the course of the illness, after repeated failure at resisting the compulsions, the person may give in to them and on longer experience a desire to resist them.*

Under the ADA, would an employer be able to take prudent, prophylactic steps to control an employee whose psychological profile suggests that he wants to murder his fellow workers? A tragic incident that occurred last September in Louisville, Kentucky may provide an unnerving answer to that question. In that situation, an employee who had been admitted to hospitals for mental problems and had attempted suicide three times settled a discrimination suit against his employer and returned to work. The complaint was brought under Kentucky law and coerced the employer into returning the employee to his old position, an action which satisfied the Kentucky law's requirement that employers make "reasonable accommodations" for employees with disabilities. Soon thereafter, the employee used an assault rifle to kill seven of his coworkers.

It is our sincere hope that the ADA does not become a shield for mentally unstable individuals such as the Louisville mass murderer. We should not deprive employers of the right to screen employees for character traits that may endanger others.

Two other amendments were offered in the full committee to rein in the scope of the bill. Unfortunately, these amendments were also rejected.

THE PERCEPTUALLY DISABLED AND ANTICIPATORY DISCRIMINATION

The ADA allows a person who is *not* disabled to initiate a lawsuit seeking redress for discrimination *that has not occurred.* It accomplishes this Orwellian feat in two ways. Section 3(2)(C) defines the term "disability" to include an individual "being regarded as having" a physical or mental impairment that substantially limits one or more of the individual's major life activities. Sections 105 and 306, moreover, make the remedies in the Civil Rights Act available to anyone who "believes that he or she . . . *is about to be* subjected to discrimination on the basis of disability."

The unprecedented scope of this legislation makes it impossible for employers and other entities covered under the ADA to understand the obligations and potential liability they face. How can an employer attempt to eradicate discrimination that has not occurred? How can the owner of a store "reasonably accommodate" a person who is not disabled, but may be regarded as such by some future court? The terminology is too vague and uncertain for a statute that will reach into so many corners of our society.

There may be an alternative explanation for the inclusion of "perceptual discrimination" in the ADA. The Supreme Court's decision in *School Board of Nassau County v. Arline,* found that a person with the contagious disease of tuberculosis is a handicapped individual within the meaning of Section 504 of the Rehabilitation Act of 1973. Since the *Arline* decision, the Department of Justice has extended the reasoning in *Arline* to include persons with asymptomatic HIV infection.

Sixty percent of the 119,950 adults who have been diagnosed with full blown AIDS as of February 1990 contracted the fatal virus through homosexual activity. An additional 7 percent list homosexual activity as one of their risk factors. It does not require a particularly shrewd attorney to argue that the protections available in the ADA are available to *all* male homosexuals by virtue of the perception that homosexual males "are regarded as" being infected with HIV. Indeed, a New Jersey court has interpreted a similar state law in exactly this fashion.

Such a result was clearly not intended by my colleagues, in light of the unambiguous exclusion in Section 508(a) for "homosexuality and bisexuality." Extending special rights to individuals on the basis of their sexual conduct strikes us as ill-advised. Will a future court require insurers to provide health insurance to persons who are at risk of acquiring HIV at the same rates charged to others? Will employers be precluded from testing prospective employees for HIV on the theory that such a policy would have "the effect of" discriminating against homosexuals, and risk exposing others to tuberculosis, cytomegalovirus, and other AIDS-associated illnesses? Will the politics of sexual orientation one day require similar protection for persons claiming other sexual preferences?

To reiterate, we believe that the ADA seeks to address a legitimate problem by making it easier for the disabled to participate in and reap the fruits of our prosperous and productive society. Unfortunately, the Committee has adopted a bill which is unnecessarily broad and vague. In particular, we believe that the ADA is a homosexual rights bill in disguise. These shortcomings, in our opinion, threaten to trivialize the entire notion of disability rights. Finally, this legislation may prove enormously expensive to small businesses across America. The Committee has recognized this in addressing the legitimate financial concerns of the rail industry. We suggest that similar concerns exist with respect to small businesses.

We respectfully dissent from the majority report.

Bill Dannemeyer.
Joe Barton.
Don Ritter.

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SELECTED COLLOQUIES: Floor Debate on ADA

May 17, 1990, House, H2428, Bartlett/Hoyer; H2433, Bateman/Hoyer; H2434, Hoyer/Thomas A. Luken; H2439, Upton/Rostenkowski; H2442, Bartlett/Hoyer; H2464, Campbell/LaFalce; and H2470, Eckart/Hoyer. July 12, 1990, House, H4625-26, Waxman/Hoyer. July 13, 1990, Senate, S9692, Simon/Harkin; and S9692, Kennedy/Harkin.

informing those with rights and responsibilities under this legislation as to what its provisions mean.

This bill has received exhaustive consideration and scrutiny in four house committees, and has received overwhelming bipartisan support. The reason for that is very simple—it is a sound bill which fully merits the overwhelming support of the members of this body.

For people with disabilities, this bill offers opportunity to enter the mainstream of society, to compete for jobs on the basis of their ability rather than be arbitrarily kept out of the workforce by their disability, to avail themselves of the kinds of pleasures which most of us take for granted, to communicate with a friend via a telephone if they are hearing impaired, to be free from the demeaning treatment which makes it so difficult for so many of our fellow citizens to live their lives with basic dignity.

For the taxpayers of this country, this bill represents a net savings in that qualified people with disabilities who want to work, but cannot find jobs irrespective of their actual abilities, will not be able to enter the work force and become taxpayers.

And for the business community, learning how to employ and retain people with disabilities, as many businesses have already done with outstanding results, effectively opens up a source of qualified employees who have long been underemployed.

The degree of poverty and unemployment experienced by people with disabilities is staggering. According to a recent Louis Harris poll, "not working" is perhaps the truest definition of what it means to be disabled in America. Two-thirds of all disabled Americans between the age of 16 of 64 are not working at all; yet, a large majority of those not working say they want to work. In 1984, 50 percent of all adults with disabilities had household incomes of $15,000 or less. Among nondisabled persons, only 25 percent had household incomes in this wage bracket. The Harris poll also found that large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads or line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people.

Our Nation's most precious resource is our people. To the extent that the changes in practice and attitudes brought about by implementation of the act ultimately assists people with disabilities in becoming more productive and independent members of society, both they and our entire society will benefit. Discrimination negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities. This bill is the best antidote that I know of to age-old societal attitudes which cause some to see disabled people, especially those with severe or visible disabilities, as natural dependents. The Americans with Disabilities Act will serve to reduce the external barriers that rob people with disabilities of the opportunity to pursue their dreams and rob our society of the contributions to our economy and to our public life which people with disabilities know they can make and want to make.

The Greeks defined happiness as the full use of one's powers along the lines of excellence. For over 200 years, we in America have taken the ringing words of the declaration of independence as defining the inalienable rights of man; life, liberty, and the pursuit of happiness. Thousands of people with disabilities and able-bodied advocates for people with disabilities all across the land, many of whom are present in this chamber today, remind us that even as they see no more, they demand no less. Today, we, in the House, have an opportunity to uphold our Nation's highest ideals and finest traditions of protecting the freedom of all individuals from arbitrary or unjust treatment, and of extending the opportunity to participate fully in American society to the previously dispossessed. In these special times, we in the United States are witnessing a remarkable and unprecedented outpouring of sentiment for, and commitment to, freedom and democracy all over the world. A "yes" vote on the Americans With Disabilities Act of 1990 constitutes both an affirmation of our Nation's once and future commitment to full inclusion in the mainstream of our society for all of our citizens, and a testament to the vitality, vigor and capacity for renewal of our democracy.

Four House committees have done excellent work perfecting this legislation. And yet today, and next week, we will be presented with a number of weakening amendments which threaten to undo much of the good work that has been done. I urge my colleagues to firmly reject weakening amendments and pass this bill with an overwhelming "yes" vote. This legislation richly deserves your support.

□ 1320

Mr. GOODLING. Mr. Speaker, I yield 6 minutes to the gentleman from Texas [Mr. BARTLETT], who had a great deal to do with getting this bill in the order it is in. He and the staff are to be commended for their efforts.

(Mr. BARTLETT asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT. Mr. Chairman, I would inquire, is the gentleman from Maryland prepared for a colloquy at this time on "direct threat"?

Mr. HOYER. Mr. Chairman, if the gentleman will yield, yes.

Mr. BARTLETT. Mr. Chairman, I would like to ask the gentleman from Maryland [Mr. HOYER] for some clarification concerning the meaning of the term qualification standards as it appears in section 103(b) of the bill. That standard, as modified by the Judiciary Committee, permits a requirement that an individual with a disability not pose a direct threat to the health or safety of other individuals in the workplace if reasonable accommodation will not eliminate the direct threat. Direct threat is defined in section 101 of the bill to mean significant risk. As I understand it, this qualification standard is intended to spell out clearly the right of an employer to take action to protect the right of its employees and other individuals in the workplace, including not assigning an individual to a job if such assignment would pose a direct threat to those individuals. Is my understanding correct?

Mr. HOYER. Mr. Chairman, if the gentleman will yield, the gentleman's understanding is correct, assuming the employer cannot eliminate the direct threat by making reasonable accommodation.

Mr. BARTLETT. If I may further inquire of the gentleman, it is also my understanding that in determining what constitutes a significant risk, the employer may take into consideration factors such as the magnitude, severity, or likelihood of the risk to other individuals in the workplace, again assuming that such factors could not be eliminated by reasonable accommodation. I yield to the gentleman.

Mr. HOYER. The gentleman's understanding is correct. Of course, the burden will be on the employer to show the relevance of such factors in relying on the qualification standard.

Mr. BARTLETT. I thank the gentleman.

Mr. Chairman, I rise in support of H.R. 2273, the Americans with Disabilities Act of 1990 [ADA]. This is an historic occasion. When the ADA is enacted, full civil rights will be extended and available to those with disabilities in every community in this country, in employment, public services and transportation, public accommodations, and telecommunications. The ADA provides many of the same rights to individuals with disabilities that have been available to others because of their race, national origin, sex, and age through earlier civil rights laws.

The ADA is based on sections 503 and 504 of the Rehabilitation Act of 1973, which require that Federal grantees or contractors not discriminate against an individual because of his or her disability. This prohibition applies in services, opportunities, and employment. Thus, there are many people out there—in State and local government, educational institutions, big and small businesses with government contracts—that have experience with designing programs and opportunities so that individuals with disabilities can participate.

tion now holds the promise of truly bringing disabled Americans into the mainstream of American life. This is a worthy objective, which the House should support.

Mr. WHITTAKER. Mr. Chairman, I yield one half minute to the gentleman from Virginia (Mr. Bateman).

Mr. BATEMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I wonder if the gentleman from Maryland (Mr. Hoyer) will take the floor for the purpose of a colloquy.

QUESTION CONCERNING THE AMERICANS WITH DISABILITIES ACT

Mr. Chairman, I have read with interest the report of the Committee on Education and Labor. I was most pleased to see that the committee specifically recognized the unique issues involved in applying the requirements of this legislation to historic buildings and facilities. The addition of section 504(c) will provide reasonable flexibility in making historic buildings accessible to persons with disabilities when alterations are made to those buildings. The committee was obviously concerned that such alterations should not threaten or destroy the historic significance of qualified historic buildings.

My question is how the provisions in section 504(c) will affect the requirements set out in section 302(b)(2)(a)(iv) of the legislation. Section 302(b)(2)(a)(iv) requires that architectural barriers should be removed from buildings when such removal is readily achievable. Readily achievable is defined as "easily accomplishable and able to be carried out without much difficulty or expense." It is my understanding that the same historic preservation concerns the committee had with respect to alterations of qualified historic buildings and facilities also apply to the removal of architectural barriers from historic buildings and facilities. Is that correct?

Mr. HOYER. Mr. Chairman, if the gentleman will yield, he is correct.

Mr. BATEMAN. I thank the gentleman from Maryland.

Mr. THOMAS A. LUKEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Americans With Disabilities Act is perhaps the most important civil rights bill for the disabled that has ever been considered by the Congress. The bill seeks to end discrimination against the 43 million Americans who suffer from some disability, in such critical areas as employment, transportation, public and private accommodations, and communications.

The premise of the bill is unassailable. The results of discrimination against disabled Americans—whether they suffer from mobility or sensory impairments, mental retardation, disease, or other physican and mental impairments—are insidious and potentially devastating. Discrimination, whether produced by overt actions or thoughtless attitudes, produces segregation, exclusion, impoverishment, and denial of equal and meaningful opportunities. By denying the benefits of equal treatment and participation to millions of disabled Americans, our country suffers.

The bill before us will help to ensure equal rights and opportunities for disabled Americans. This bill will allow greater productivity and responsibility for disabled individuals. This bill will help to remove the barriers which have impeded disabled persons from being more productive members of American society. In short, this bill will help our country use an immense amount of talent, intelligence, and other human resources which heretofore have been underestimated, underdeveloped, and underutilized.

Our subcommittee's jurisdiction of this bill focused on transportation provisions primarily relating to Amtrak and commuter railroads. All of us recognize the crucial role transportation plays in our lives. It is the veritable lifeline which enables all persons to enjoy the full economic and social benefits which our country offers. To be denied effective transportation is to be denied the full benefits of employment, public and private services, and other basic opportunities.

The amendment which our committee adopted requires Amtrak and commuter railroads to be accessible to disabled persons. Under this bill, all of Amtrak's 500 stations will be fully accessible within the next 20 years. Within the next 3 years, key commuter rail stations will be made accessible. Under the bill, Amtrak and commuter railroads will be required to purchase accessible new passenger cars, to make good faith efforts to lease or purchase accessible used cars, and to ensure accessibility on rail passenger cars which are remanufactured. Under the bill, equivalent dining services will be provided to disabled riders on Amtrak. In short, the bill offers a realistic and defined set of rules for assuring disabled persons access to rail transportation services.

Testimony at our subcommittee's hearing last fall indicated that Amtrak and many commuter railroads already do a fairly good job of serving disabled persons. This is not to say that there are not some problems. But the discussions and negotiations on this bill, at a minimum, have raised the level of awareness for the legitimate concerns that exist on all sides of the fence, and have improved communication between the parties. I believe that opening up and continuing that dialog may be as important as the changes made in this bill.

I wish to commend my friend and colleague, Mr. Dingell, the distinguished chairman of the full committee; Mr. Lent, the ranking minority member of the full committee; and Mr. Whittaker, the ranking minority member of our subcommittee; for their leadership and untiring efforts on these important issues. We spent a good deal of time over the past few months negotiating with representatives of the disabled community, Amtrak, commuter railroads, and other affected parties. The bill before us represents the combined and cooperative efforts of all affected interests.

I strongly urge my colleagues to support the bill and I reserve the balance of my time.

□ 1350

Mr. WHITTAKER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this important legislation we are considering today is a key element in President Bush's efforts to assure that disabled Americans are brought into the mainstream of American economic and social life. Two parts of the Americans With Disabilities Act are within the specialized jurisdiction of the Energy and Commerce Committee: telecommunications and railroad transportation. These elements of the ADA are absolutely vital to assuring that disabled Americans have the means to utilize the sinews of communication and transport that bind our society together.

With respect to the rail transportation title, I want to especially commend our committee chairman, Mr. Dingell, for his efforts to fashion a more readily understandable version of this bill, one that gives more usable guidance to the individuals and organizations governed by the requirements of the ADA. The chairman of the Subcommittee on Transportation and Hazardous Materials, Mr. Luken, should also be commended for the hard work he did in developing this title.

The revised Amtrak provisions are a classic example of mutual gain through compromise. Under the bill, disabled passengers will be assured of a firm timetable for Amtrak to reach specified targets of accessible seating capacity. At the same time, Amtrak will be given greater flexibility in how it achieves these targets, by being able to cluster some accessible seating and thus reduce the cost of acquiring or modifying rail cars to meet the target level of seating capacity. In a similar fashion, we have been able to give more specific, and more flexible, guidance to commuter rail operations than was offerd by the original version of the bill as referred to our committee.

Negotiating revisions to the telecommunications title of the ADA was even more smooth and harmonious than revising the transportation provisions.

For that, thanks go again to the chairman of the full committee (Mr. Dingell), as well as the chairman and ranking Republican member of the Telecommunications Subcommittee, Mr. Markey and Mr. Rinaldo. Their work in the subcommittee resolved most of the contentious issues, and made it possible for Chairman Din-

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gell and the ranking member of the full committee, Mr. Lent, to resolve the few telephone issues. We did so with the full cooperation of the deaf community and the telephone industry. I thank them for their hard work.

Our joint efforts are contained in the bill before the House today. They provide the framework for a nationwide relay network for the deaf and hearing-impaired which is essential for their full participation in society.

The FCC is directed to fill in the details and implement that relay service as quickly as possible.

With the improvements we made on the other body's work, the telecommunications title of the Disabilities Act will achieve the goal shared by every Member of the House: to make telephone services equally available to all, including our deaf and hearing-impaired citizens.

While I believe that we have made important strides toward a more workable and understandable bill in the areas of rail transportation and communications, I do not want to leave my colleagues with the impression that I am approaching the consideration of this bill on the premise that it is already perfectly drafted.

On the contrary, precisely because of the immense complexity of this legislation—and the need to merge into a single bill the product of four different committees' deliberations—I have urged that considerable latitude be given Members who feel obligated to offer clarifying and improving amendments on the floor. None of us can claim to know it all, and there are bound to be areas where the unassailable intent of this bill—to bring disabled Americans into the mainstream of American life as full and equal participants—can be carried out in a more efficient or more clearly defined way. For that reason, I look forward to hearing the proposals of my colleagues for possible improvements to the Americans With Disabilities Act.

Mr. Chairman, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Washington [Mrs. Unsoeld].

(Mrs. UNSOELD asked and was given permission to revise and extend her remarks.)

Mrs. UNSOELD. Mr. Chairman, enactment of the Americans With Disabilities Act is long overdue. For far too long, some 43 million Americans with physical or mental disabilities have been denied the protections of the civil rights that the rest of us take for granted.

Discrimination against the handicapped, be it unintentional or deliberate, has the same impact. It is cruel and serves to segregate, exclude, and deny the opportunity to fully participate in programs and activities. We should also remember that it is not just the handicapped who suffer because of such discrimination, but all of us, for those denied employment or access to marketplace are a waste of human resources—a waste of those who have something to contribute.

A number of those who have spoken in opposition to this legislation have expressed the concern that enactment of the ADA is going to create an unreasonable burden on small business, drive up the cost of operation, and ultimately threaten the very survivability of some businesses. My own State of Washington has proven the fallacy of this fear. For over 10 years Washington State has had similar statutes on the books, yet I have found no evidence of even one business being forced out of operation by having to accommodate or hire the handicapped.

Discrimination in employment was outlawed in Washington State in 1973. In 1976, legislation was enacted requiring that all new building construction or major remodeling projects make structures accessible or barrier-free for the handicapped. Then in 1979, Washington State law was amended to prohibit discrimination against the handicapped in housing and public accommodation.

While the Washington State statutes have not ended discrimination in the State, they have provided an opportunity to seek redress to those handicapped persons denied their rights. It is time for the House to follow the lead of Washington State and of our colleagues in the Senate in passing this important legislation to protect the disabled all across America.

☐ 1400

Mr. THOMAS A. LUKEN. Mr. Chairman, for the purpose of colloquy, I yield to the gentleman from Maryland [Mr. Hoyer], chairman of the subcommittee.

Mr. HOYER. Mr. Chairman, I am concerned about a provision contained in the report filed by the Committee on Energy and Commerce which states: "it is not the function of this legislation to facilitiate access to audiotext services." Is it the gentleman's understanding that this bill precludes such access?

Mr. THOMAS A. LUKEN. The gentleman raises a good question. While the legislation does not require access to audiotext services at this time, if future technology can make these services available utilizing a relay service, it is our intent to ensure such access.

Mr. HOYER. Mr. Chairman, if the gentleman will continue to yield, does the gentleman anticipate that the FCC's regulation will require common carriers to facilitate access to the telephone numbers for relay services?

Mr. THOMAS A. LUKEN. The gentleman is correct.

Mr. HOYER. Mr. Chairman, if the gentleman will continue to yield, the bill calls for relay services to be functionally equivalent to ordinary voice telephone services. How, exactly, is functionally equivalent service to be achieved?

Mr. THOMAS A. LUKEN. Title IV requires the FCC to establish certain minimum standards and criteria, which will define functional equivalence for all relay providers.

Mr. HOYER. If the gentleman will continue to yield, where can the FCC turn for guidance in developing these standards?

Mr. THOMAS A. LUKEN. The FCC already issued serveral notices during the development of several interstate relay systems. Consumers and individuals have urged the FCC to create a Federal advisory committee to assist the Commission in setting up such a system. It is our intent that the FCC turn to such a committee, which could be made up of relay consumers, telephone companies, and other interested parties, to develop standards for functionally equivalents for both an intrastate and interstate relay system.

Mr. HOYER. If the gentleman will continue to yield, the success or failure of relay services will depend to a great extent on the competence of the operators who will act as translators for those using the system. Does the gentleman anticipate that the FCC's regulations will require that the operators employed by the common carriers be trained to respond effectively to the special communication needs of hearing and speech-impaired users?

Mr. THOMAS A. LUKEN. The gentleman is correct. The committee expects the regulation will require the appropriate training for relay operators, including typing, grammar, spelling, and other training necessary to ensure that operators contribute to the success of the service.

Mr. HOYER. Chairman, I thank the gentleman for yielding, and clarifying these questions.

Mr. THOMAS A. LUKEN. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. Markey].

Mr. MARKEY. Mr. Chairman, I congratulate the gentleman from Ohio [Mr. Thomas A. Luken] for his leadership on this issue. I would like, at this time, to publicly compliment the work of the gentleman from Maryland [Mr. Hoyer], who has personally shepherded this piece of legislation through the Congress. I very rarely have seen a commitment and dedication to a piece of legislation that I have witnessed in terms of the commitment which the gentleman has made to this bill. The contribution here is going to be enormous, and historic.

I would also like to compliment the chairman of the full committee, the gentleman from Michigan [Mr. Dingell], the gentleman from New York [Mr. Lent], the gentleman from New Jersey [Mr. Rinaldo], and all the members of the Subcommittee on Telecommunications and Finance in terms of the telecommunications piece which we are inserting here.

An employer is required to provide a reasonable accommodation to allow an employee to do the job, unless it will result in an undue hardship to the employer, that is, an action requiring significant difficulty or expense. These are the same standards used and understood since 1973 under the Rehabilitation Act.

The employment protections use the same enforcement procedures and provide the same remedies as title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, and national origin. Under the ADA, persons with disabilities will have the same rights and remedies as minorities and women, no more and no less.

Persons with disabilities can and will be able to do the job. Let's give them a real chance with the ADA.

PUBLIC SERVICES

The ADA extends the protections of section 504 of the Rehabilitation Act, prohibiting discrimination in federally funded programs, to all programs, activities and services of State or local governments, regardless of the receipt of Federal financial assistance.

Section 504 served as the first step toward breaking down the barriers that, for too long, kept persons with disabilities out of the American mainstream. By extending section 504 to all public entities, we benefit from the successful history and lessons of the Rehabilitation Act. By enacting title II, we cover those remaining government entities who were not covered in the past.

PUBLIC ACCOMMODATIONS

The ADA prohibits discrimination by privately operated public accommodations. Public accommodations are businesses open to the public, places persons without disabilities take for granted.

Public accommodations include hotels, restaurants, theaters, stores, service providers, and privately operated public transportation. Under the ADA, a public accommodation cannot deny participation or provide an unequal or separate benefit to a person with a disability. The service must be provided in the most integrated setting, and a person cannot be denied the opportunity to participate in a regular program.

Existing businesses must remove architectural barriers if it is readily achievable, that is, without much difficulty or expense. If it is difficult or expensive, it does not have to be done. Alterations and newly built commercial facilities must be readily accessible to and usable by persons with disabilities.

The public accommodations title uses the same enforcement and remedies scheme available to private persons under the public accommodations section of the 1964 Civil Rights Act. Remedies in a private suit are limited to equitable relief.

As with many other civil rights laws, the Attorney General may bring "pattern or practice" cases. As in the Fair Housing Act, the Attorney General may seek monetary damages for the victim and civil penalties of up to $100,000 against the violator.

Mr. Chairman, there are few of us who have not been personally touched by family or friends with a disability. We all know how persons with disabilities are rarely judged by their abilities, but instead on their disabilities.

We now have an extraordinary opportunity to bring Americans with disabilities into the mainstream of American life.

For Americans with disabilities this bill represents their best chance to join in the American dream. We should pass this bill today. Forty-three million Americans, their families and friends, deserve no less.

Mr. Chairman, I particularly want to thank the many people in the disabled community, the different organizations, Pat Wright and all of the others, for the noble assistance they have given us in the past many months, and our former colleague, Tony Coelho, that we miss so much and who was the inspriration behind this bill in the first place. The gentleman from Maryland [Mr. Hoyer] picked up the cudgel left by Mr. Coelho and has carried on magnificently.

Mr. Chairman, I want to thank the gentleman from Texas [Mr. Brooks], my chairman, and his general counsel, Bill Jones, on my staff Catherine Leroy, and Stewart Ishimaru, without whom we could not have moved ahead. As a matter of fact, all of the members on the subcommittee, the minority led by the gentleman from Wisconsin [Mr. Sensenbrenner], all deserve a great deal of credit.

□ 1450

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. Upton].

Mr. UPTON. Mr. Chairman, I would like to take a moment to engage in a brief colloquy with the distinguished chairman of the Committee on Ways and Means, Mr. Rostenkowski.

For the past several months, I've headed up a bipartisan effort with Mr. Mfume to provide a tax credit mechanism to help small businesses comply with the nondiscriminatory access mandates of Americans with Disabilities Act. We now have 200 cosponsors for the proposal, H.R. 3500.

Although the rule does not provide for its consideration as part of the ADA bill itself, it is my hope that the Committee on Ways and Means will include such a provision, drafted on a revenue neutral, pay-as-you-go basis, in an appropriate legislative vehicle later this year.

I include a copy of a letter to me from the White House indicating support as well.

Mr. ROSTENKOWSKI. Mr. Chairman, if the gentleman will yield, I share the concerns of the gentleman from Michigan about the financial ability of our Nation's small employers to comply with the ADA bill's provisions, and I commend him and Mr. Mfume for his outstanding efforts to encourage strong bipartisan support for his proposal.

His revenue natural tax credit concept has a great deal of merit, and I will be glad to work with Mr. Upton, Mr. Mfume, and members of our committee to consider such a credit as we develop legislation this year.

Mr. UPTON. Mr. Chairman, I thank the gentleman from Illinois.

Mr. HOYER. Mr. Chairman, will the gentleman yield?

Mr. UPTON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Chairman, I want to congratulate the gentleman from Michigan and my colleague, the gentleman from Maryland [Mr. Mfume], for their work on this issue, and congratulate the chairman of the Committee on Ways and Means for his response.

We believe, of course, as we have said throughout the course of this debate, and will do so in the future, that this bill requires minimal costs, readily achievable costs, a cost that does not create either an undue burden or an undue hardship on the private sector. But nevertheless, to the extent that there are costs, and to the extent that we can accommodate them, we certainly want to work with the gentleman from Michigan and the gentleman from Maryland in seeing if we can do that.

Mr. UPTON. I appreciate the gentleman's support, and I thank him for his fairness in allowing us to proceed as we have.

THE WHITE HOUSE,
Washington, DC, May 14, 1990.

Hon. FREDERICK UPTON,
House Office Building, Washington, DC.

DEAR CONGRESSMAN UPTON: Thank you very much for your inquiry regarding the Administration's position on changes in the tax treatment of business expenses incurred to provide access to the handicapped. At present, Section 190 of the Internal Revenue Code allows firms to deduct up to $35,000 of the costs of removing architectural barriers to the handicapped. Additional costs are depreciable in the same manner as other construction expenses.

Concern has been expressed that the construction costs required for businesses to comply with the Act for Disabled Americans now under consideration by the Congress will not be limited to expenses covered by Section 190. The Administration fully appreciates the argument that other business capital expenditures necessary to comply with the Act are as deserving of some form of favorable treatment as expenses which are currently covered.

Therefore, the Administration does not oppose changes in the tax treatment of business construction activities which are necessary to comply with the Act, as long as such changes are revenue neutral. There are a number of ways to achieve such revenue neutrality. For example, a plan could be structured in the following manner:

Allow deductibility of qualified expenses up to $22,500.

those in the Civil Rights Act of 1964 will unnecessarily open the door for the diversion of funds into the courtroom by padding the pockets of the lawyers rather than providing access to the disabled. This amendment is supported by the Bush administration and at the appropriate time, I will ask for the support of my colleagues as well.

Mr. HOYER. Mr. Chairman, I yield myself 2 minutes for the purpose of a colloquy with the gentleman from Texas, Mr. BARTLETT.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding. Mr. Chairman, this bill requires that the rights and protections of the ADA will be applied to the legislative branch of the Federal Government. I would like to clarify that the public accommodation requirements of the bill for the Congress will be enforced with remedies of equal force and impact to those applicable to the private sector. Does the gentleman agree with my assessment?

Mr. HOYER. I agree. This bill requires the development of procedures and remedies that will result in the ability of persons to get prompt correction of any ADA violation. Although I do not expect that a problem of recalcitrant behavior regarding public accommodations in the Congress would occur, I want to assure the gentleman that any such violation will be addressed with severity.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. MCCOLLUM].

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, I am very pleased to be here today with this bill. It is a very important piece of legislation to provide for civil rights for the handicapped and disabled. It is something I have had a lot to do with in debating through our Committee on the Judiciary.

Based on the amendments we have had today and the couple that I know will be adopted today because of the general will and the agreements that have been made, I am going to be able to support this legislation very proudly. However, I do think there are some important considerations all of us should remember. The big debate over this bill has never been over the issue of providing civil rights and antidiscrimination laws to protect our disabled community in the workplace. The big issue is how do we minimize the costs to the employers while still doing that?

A lot of us had thought that many of the provisions, as initially written, were simply not tight enough, simply not in the strength they should be in order to reduce those costs and keep them to a minimum.

There are still a couple that really ought to be done. One of them I will describe when I get up here later on the essential functions, we have made a lot of improvements on in the definitional area. But one that I consider exceedingly important is that we later on down the road get that tax credit that I know has been discussed here on the floor a little earlier and that I believe the administration is now prepared to support. That will not be a part of this bill, but we must not forget it because the small businessman really needs that tax credit in order to make the accommodations and not have to close shop in some cases.

□ 1510

Going along with that, though, is the Olin amendment amendment to be offered later today. I know that is tougher for some of our Members, but it is, I think, essential for the small businessman, in particular, to have some kind of a cap, some kind of a ceiling on the amendment of the cost that might be incurred in order to make these accommodations. That amendment is going to propose that it be no greater than 10 percent of the cost—that is, of the annual salary of whoever the employee is who is being hired. It seems to me that is reasonable, and once that cost threshold is exceeded, they will get to the point where they have a presumption of undue hardship, providing a measure of protection to the employer.

It is that kind of modification that still remains and still needs to be done on this bill, and I encourage my colleagues as they listen to the amendments that are out there, the very few that were offered, that Members do make judicious consideration, they make these kinds of minor changes, that yet can be made to keep those costs down in this bill.

I do want to close by saying that there are a number of other amendments out here today that permit the same kinds of consideration. What we need is improvement in this bill. When we are all done with this process, we are going to have a very fine bill, I think, that all Members can be proud of. However, we must have those protections, and I remind Members when it is all over with, we still need to keep the pressure on to get the tax credit that should have been a part of this bill, but unfortunately is not. We still have a chance to get it.

Mr. EDWARDS of California. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. WEISS].

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Chairman, I rise today in support of the Americans With Disabilities Act and I urge my colleagues to support its passage with no weakening amendments. The ADA, supported by the President, and overwhelmingly approved by four House committees, is long overdue legislation remedying the separatism which now excludes 43 million disabled citizens from equal participation in American society. For far too long, physical and attitudinal barriers have prohibited individuals with disabilities from demonstrating their worth in the workplace, enjoying access to public accommodations and transportation, and utilizing telecommunications systems.

This legislation will provide this Nation's handicapped citizens with the same protections presently afforded to other minority groups. Under the ADA, an employer may not refuse to hire or promote a person with a disability merely because of that disability, when the individual is qualified to perform the job.

The measure also requires an employer to make reasonable accommodations for persons with disabilities, if those accommodations will allow the person to perform the essential functions of the job.

Under the bill's public accommodations provisions, it would be illegal to exclude or refuse to serve a person with a disability. The ADA also requires that new public transit vehicles are accessible to the disabled without requiring any retrofitting.

Title IV of the ADA will require, within 3 years, all common carriers to provide intrastate and interstate telecommunications relay services for telephone calls between uses of such devices for the deaf and users of telephones. These relay services will allow people with telecommunications devices for the deaf to communicate with persons who do not use such devices.

The Americans With Disabilities Act is patterned after section 504 of the Rehabilitation Act of 1973 which has been in effect and operating successfully for over a decade. It is a reasonable and prudent bill which strikes the proper balance between the civil rights of persons with disabilities and the legitimate concerns of both large and small businesses.

It is of exceptional significance that this bill will offer protection to the thousands of Americans with HIV disease—from those who are asymptomatic to those with fully developed AIDS. Persons living with HIV disease suffer from all the forms of discrimination found in our society.

Once the ADA becomes law, all persons with HIV disease will finally be protected in private employment. No longer will employers be able to lawfully discriminate against them as they hire, fire, promote, and set terms and conditions of employment. The range of protection is of critical importance for people with HIV disease. The ADA mandates that employers undertake "reasonable accommodations" in the hiring of disabled persons who are otherwise qualifed to work. This will ensure that persons with HIV have the right to flexible hours and time off that are crucial to help accommodate the disease.

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ing but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps'' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 312. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 313. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

The **CHAIRMAN**. No amendment to said substitute shall be in order except those amendments printed in part 2 of House Report 101-488. Said amendments shall be considered in the order and manner specified in said report, shall be considered as having been read, and shall not be subject to amendment. Debate time specified for each amendment shall be equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

AMENDMENT OFFERED BY MR. LAFALCE

Mr. **LAFALCE**. Mr. Chairman, I offer an amendment.

The **CHAIRMAN**. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. LAFALCE: In section 310 (relating to effective dates), redesignate subsection (b) as subsection (c) and insert after subsection (a) the following new subsection:

(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303, no civil action shall be brought—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

In subsection (a) of section 310, strike "subsection (b)" and insert "subsections (b) and (c)".

The **CHAIRMAN**. The gentleman from New York [Mr. LAFALCE] is recognized for 10 minutes.

Mr. **LAFALCE**. Mr. Chairman, I yield myself such time as I may consume.

(Mr. **LAFALCE** asked and was given permission to revise and extend his remarks.)

Mr. **LAFALCE**. Mr. Chairman, the amendment which I am sponsoring jointly with Representative TOM CAMPBELL addresses provisions of the public accommodations title of the Americans With Disabilities Act, H.R. 2273.

Our goal in offering this amendment is to ensure that the ADA is equitable and workable for all who are affected by it. As chairman of the Committee on Small Business, I held a hearing on the ADA in February during which concerns were voiced by small business owners about the potential costs and unfamiliar requirements that compliance with the ADA will entail. I do not suggest that fears of the unknown should freeze us into inaction.

Rather, we should take the time now to address legitimate concerns. Clearly, it is everyone's desire to have the rights of the disabled and the concerns of business hammered out through legislation, not litigation. It is absolutely time to integrate into the economic and social mainstream of America those among us who have felt the stigmas and discrimination a disability can mean.

On the other hand, no one wants a small business to fail because complying with or defending oneself under the ADA requires costly and time-consuming lawsuits or because regulations have not been issued informing businesses about the ADA's requirements.

Our amendment responds to these concerns without altering the scope or the substance of the ADA. Although we recognize that final regulations are often issued long after laws are in effect, we do not seek to delay the effective date of the public accommodations title or tie the effective date to the issuance of final regulations.

This means therefore that there is a strong likelihood that an element of guesswork will be involved when businesses start making the necessary accommodations and alterations in their facilities and practices.

In light of this, our amendment provides a period of protection from civil action for the smallest businesses after the title goes into effect. Small businesses deserve a period of protection—a period without fear of penalty—as they seek to come into compliance with the ADA's requirements—an entirely new aspect of doing business for many of them.

For businesses with 25 or fewer employees and gross receipts of $1 million or less, that period of protection is 6 months; for businesses with 10 or fewer employees and gross receipts of $500,000 or less, the period is 1 year. This is a moderate and fair response to legitimate concerns.

Mr. Chairman, this amendment has the support of Congressman HOYER, the principal cosponsor of the Americans With Disabilities Act; it has bipartisan support in the House; and it has the support of the business community; which wants to comply with the bill. They deserve our support in helping them comply.

I urge adoption of this amendment.

☐ 1520

Mr. **CAMPBELL** of California. Mr. Chairman, will the gentleman yield for the purpose of a very brief colloquy?

Mr. **LAFALCE**. I yield to the gentleman from California.

Mr. **CAMPBELL** of California. Mr. Chairman, as coauthor of the amendment, I wish to clarify the following: Whereas the amendment states that during the first 6 months after the effective date no civil action shall be brought against businesses that fit these specifications, and similarly during the first year, I think the question should be made very clear that for actions or failures to take action during that period a lawsuit could not be brought once the 6 months is over.

Mr. **LAFALCE**. Mr. Chairman, that is absolutely correct. No action could be brought for any action or inaction during either the 6 months or the 1 year period respectively.

Mr. **CAMPBELL** of California. Mr. Chairman, that is my understanding, and I thank the gentleman for yielding.

Mr. **LAFALCE**. Mr. Chairman, I reserve the balance of my time.

The **CHAIRMAN**. Is there any Member seeking recognition in opposition to the amendment?

Does the gentleman from New York [Mr. LAFALCE] wish to use the balance of his time?

Mr. **LAFALCE**. Yes, Mr. Chairman. There are a number of Members who as what the amendment does, and we certainly will not object to it.

Mr. McCOLLUM. Mr. Chairman, I yield to the gentleman from Ohio [Mr. Eckart] for the purpose of a colloquy with the gentleman from Maryland [Mr. Hoyer].

Mr. ECKART. Mr. Chairman, I would like to ask the distinguished gentleman from Maryland if he would comment on a particular aspect of the bill. Sections 104 and 510 of the bill specifically refer to illegal drug use and to individuals who formerly used illegal drugs. I have a few questions about these sections. It is my understanding that each of the professional sports leagues has a policy governing drug use by players. I believe that we in Congress should support and encourage efforts by professional sports leagues to deter drug use by players and others. I would like to know how this bill would affect the drug programs of professional sports leagues.

Mr. HOYER. I agree with the gentleman that the drug programs established by the NFL, NBA, NHL, and major league baseball are an important part of our national effort to combat drug use. I would like to emphasize for the gentleman that these policies have been reviewed and that they are consistent with this act.

Mr. ECKART. Mr. Chairman, it seems to me that our knowledge about drug use and how to deter and treat it is constantly changing. In endorsing the current policies of the professional leagues, does this bill intend to freeze those policies in place?

Mr. HOYER. No. As the gentleman knows, the policies of the sports leagues differ in a number of significant ways and the bill does not specifically approve those and only those programs currently in place. The bill does not prohibit leagues from modifying their programs in response to changed circumstances or developments in medicine, technology, or drug or alcohol treatment.

Mr. ECKART. I thank the gentleman from Maryland [Mr. Hoyer], my colleague, and the gentleman from Florida [Mr. McCollum].

Mr. HOYER. Mr. Chairman, will the gentleman continue to yield?

Mr. McCOLLUM. I yield to the gentleman from Maryland [Mr. Hoyer].

Mr. HOYER. I thank the gentleman for yielding further.

Mr. Chairman, I commend the gentleman on his amendment and join him in its support.

Mr. McCOLLUM. Reclaiming the balance of my time, Mr. Chairman, I just want to comment that the very essence of what we are doing here is clarifying the language so we put the responsibility clearly on the record in the statute with regard to the determination of what essential functions are.

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We do not change, as the gentleman has stated on the other side, the basic thrust or waste of evidence, but we do clarify that the opinion as is in the bill coming before Members today of the employers giving consideration, and where there is a job description with this amendment, it is very clear that job description is admissible in evidence, in addition to the opinion of the employer being allowed into evidence.

I thank the gentleman, and with that kind of consent we should get a favorable vote. I urge the Members to vote yes to the amendment.

The CHAIRMAN. Is there a Member seeking recognition who is opposed to the amendment?

If not, the question is on the amendment offered by the gentleman from Florida [Mr. McCollum].

The amendment was agreed to.

The CHAIRMAN. Pursuant to the rule, it is now in order to consider amendment No. 3 printed in House Report 101-488.

AMENDMENT OFFERED BY MR. OLIN

Mr. OLIN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Olin: In section 101, at the end of paragraph (10) (relating to undue hardship), insert the following: "(C) Excessive cost hardship.—For the purpose of this title, it is presumed an undue hardship if an employer incurs costs in making an accommodation which exceeds 10 percent of the salary or the annualized hourly wage of the job in question."

The CHAIRMAN. The gentleman from Virginia [Mr. Olin] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

MODIFICATION OFFERED BY MR. OLIN TO THE AMENDMENT OFFERED BY MR. OLIN

Mr. OLIN. Mr. Chairman, I ask unanimous consent to make a technical change in the amendment on line 4 to add the word "annual" before the word salary. It was a typographical error.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The CHAIRMAN. The amendment is modified.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. Olin: In section 101, at the end of paragraph (10) (relating to undue hardship), insert the following: "(C) Excessive cost hardship.—For the purpose of this title, it is presumed an undue hardship if an employer incurs costs in making an accommodation which exceeds 10 percent of the annual salary or the annualized hourly wage of the job in question."

Mr. HOYER. Mr. Chairman, will the gentleman yield?

Mr. OLIN. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Chairman, if the gentleman has no objection, we would like to rise momentarily for the purpose of the majority leader making some announcements, and go right back into Committee.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Mfume, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, had come to no resolution thereon.

PROVIDING FOR CONSIDERATION OF H.R. 3030, CLEAN AIR ACT AMENDMENTS OF 1989

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that on Monday, May 21, 1990, the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3030.

I further ask unanimous consent, Mr. Speaker, that general debate shall be confined to the bill and shall not exceed 8 hours, with 6 hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, and with 1 hour to be equally divided and controlled by the chairman and ranking minority member of any committee receiving sequential referral of the bill.

Further, Mr. Speaker, I ask unanimous consent that at the conclusion of general debate, the Committee of the Whole shall rise without motion and any further consideration of the bill shall be determined by a subsequent order of the House.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

HOUR OF MEETING ON TUESDAY NEXT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that on Tuesday, May 22, 1990, that the hour of meeting of the House be 10 a.m.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

REQUEST FOR WAIVER OF POINTS OF ORDER AGAINST H.R. 3030, CLEAN AIR ACT AMENDMENTS OF 1989

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that there be a waiver of points of order against consideration of H.R. 3030.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

Mr. WAXMAN. I yield to the gentleman from Maryland.

Mr. HOYER. In response to the gentleman's question, clearly the conferees intend the language to address the real concerns of health, not the speculative, theoretical, or fearful ones. We do not expect the Secretary to prove that a disease is not transmitted by food, but, rather, to find that there is medical evidence that a disease is transmitted and put that disease on the list.

Mr. WAXMAN. If I may continue, the language also specifies that if an individual has a disease on this list that an employer may refuse assignment of that individual to a job of food handling if the disease cannot be accommodated. By that, does the gentleman mean that the disease must be actually cured or that reasonable accommodation must eliminate the risk of the disease to the public?

Mr. HOYER. If the gentleman will yield further, the accommodation, in response to the gentleman's question, should eliminate the risk of disease to the public. That is its objective. The statement of the managers is clearly on this point. Clearly we cannot insist that disabled people become undisabled, just that the risk to the public be eliminated through reasonable accommodation.

Mr. WAXMAN. Finally, let me ask about the preemption provisions of the language. This provision is crafted to allow State and local law to stand if it is about the same issues as the food-handler language. Does this mean that a local or State government can assert that any food-handling regulation is protected, or does this protection only cover those provisions that are legitimately in conformity with the Secretary's findings and list?

Mr. HOYER. If the gentleman will yield further, clearly the State and local standards, I would say to the gentleman from California, must meet the same sort of standards as the Secretary's list. It should reflect sound medical and scientific judgment, reasonable public health methods, and should protect the public from health risks. Simply asserting that a law is for public health will not be enough to protect it from preemption.

Mr. WAXMAN. I thank the gentleman, and I congratulate the conferees on sorting out this issue to make good public health policy while making good antidiscrimination policy as well. I thank the gentleman for his efforts.

Mr. Speaker, I rise in support of the conference report on the Americans With Disabilities Act. This is a historic piece of civil rights legislation for people with disabilities who have waited much too long for this type of important protection.

This legislation also comes at a critical point for people with HIV disease. I am, therefore, particularly pleased that the Chapman amendment has been deleted from the bill and that a provision which reinforces the existing requirements of the ADA—that individuals who pose a significant risk to the health or safety of others which cannot be eliminated by reasonable accommodation are not protected by the act—has been substituted in its stead. I am confident that the Secretary, through the Centers of Disease Control, will carry out well the mandated job of developing a list of diseases that are, in fact, transmitted through the food handling process.

People with HIV disease are those who have the spectrum of the disease—from asymptomatic HIV infection, to symptomatic HIV infection, to full-blown AIDS. As medical knowledge has increased, specialists in the field increasingly recognize that there exists a continuum of disease among those who are HIV infected. All such individuals are covered under the first prong of the definition of disability in the ADA.

Others have noted how important it is that the ADA maintains the same broad, flexible definition of disability that is used to define "handicap" in section 504 of the Rehabilitation Act of 1973. It was particularly important for people with HIV disease that section 504 did not list a series of diseases and conditions that were covered—because HIV disease was not even discovered in 1973. Because section 504 incorporates a description of "handicap," and not a list of diseases, people with HIV disease were covered under section 504 from the first that they have needed the protection of that act.

But section 504 does not have a sufficient reach to protect people with HIV disease in the various settings in which such individuals encounter discrimination. Now, with final passage of the ADA, such individuals will receive needed protection in private employment and in the whole range of public accommodations in which they often face discrimination.

The ADA's employment provisions offer important protection for people with HIV disease. It will protect them in the range of employment decisions—hiring, firing, promotions, and all terms and conditions of employment. The reasonable accommodation provisions of the bill will be particularly important in ensuring that people with HIV disease have the right to flexible work schedules and to time off to accommodate their treatment needs or their various disease-related conditions. In addition, the ADA precludes an employer from denying an employment opportunity to an individual with HIV disease based on paternalistic concerns that the employee might be exposed to additional health risks. That is an issue to be discussed and decided between the individual employee and his or her physician.

I am also pleased that the ADA has incorporated strong provisions with regard to preemployment and on-the-job testing. While medical examinations may be given to job applicants, they may be given only after a conditional job offer has been made, they must be given to all applicants—thus, an employer cannot require just certain applicants to take a medical test—the results of the test must be kept strictly confidential, and—of greatest importance to people with HIV disease—the results of the exam may not be used to withdraw a conditional job offer unless the results indicate that the person is not qualified for the job. Under current medical and scientific judgment, including guidelines issued by the Centers for Disease Control [CDC], people with HIV disease are qualified to remain in virtually all jobs in the work force.

In addition, the ADA clearly sets forth the requirements with regard to medical testing of current employees: such exams must be job related and consistent with business necessity. The purpose of this provision is to ensure that employees are not unnecessarily subjected to tests that would expose their disabilities. Again, under current medical and scientific judgment, including the CDC guidelines, HIV testing is not justified in virtually any job in the work force.

While the ADA explicitly does not affect the underwriting and classification of insurance, the employment title of the ADA still offers significant protection with regard to the nondiscriminatory provision of health benefits. The reports of the House Education and Labor Committee and the House Judiciary Committee spell out this protection. Essentially, the ADA does not interfere with underwriting and classification of insurance. However, employers may not refuse to hire an applicant because of a feared increase in insurance costs. In addition, an employee with a disability must receive health insurance from the employer, if the employer is offering health insurance to other employees. While limitations are allowed on procedures and treatments, a person with a disability must still be able to receive basic coverage for the person's disability. Thus, the limitation may legitimately apply to particular treatments or procedures, but may not preclude coverage for a disability completely.

Finally, the bill explicitly notes that the exception for insurance underwriting may not be used as a subterfuge to evade the purposes of the ADA. I have been informed by those Members who are closely involved in the legislation to overturn the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989) that the term "subterfuge" in the ADA should not be read as the Supreme Court read that term in Betts. Thus, there is no requirement of an intent standard under the ADA or a blanket exception for insurance plans that were adopted prior to the enactment of the ADA.

The public accommodations title of the ADA will also offer necessary pro-all people with disabilities, including people with HIV disease. Another group of people with disabilities who will benefit are those who have been identified as carriers of a disease-associated gene. The advent of new genetic testing makes it critical that such individuals be protected against unjustified discrimination. Under the ADA, such individuals may not be discriminated against because of fears of increased health care costs that they or their children might incur. Moreover, such individuals may not be discriminated against based on the assumption that they will become sick in the future and will not be qualified to do their jobs. Determinations regarding whether a person is a "qualified person with a disability" must be made at the time of the employment decision, and not be based on speculations regarding the future.

Title III of the ADA will also offer important protection for people with HIV disease. This title prohibits the range of service providers and businesses from discriminating against people with HIV disease. The title also prohibits public accommodations from having eligibility criteria that screen out, or tend to screen out, people with disabilities, unless such criteria are demonstrated by the accommodation to be necessary for the provision of the goods or services. Thus, for example, a hotel or a lawyer's office or any other public accommodation could not require that a person be HIV-negative—or could not test that person for HIV—unless the accommodation showed that being HIV-negative was necessary for the provision of the goods or services. Based on the current guidelines issued by the Centers for Disease Control, I cannot think of any such circumstance.

This is a proud day for the Congress. We do not often have an opportunity to take truly historic actions, to benefit millions of Americans. By voting to adopt the conference report, the House takes its final step to send to the President an extraordinary law to bring 43 million Americans with disabilities into the mainstream of American life.

Mr. Speaker, there are few of us who have not been personally touched by family or friends with a disability. We all know how persons with disabilities are rarely judged by their abilities, but instead on their disabilities. The ADA will go a long way toward changing this situation.

For Americans with disabilities the ADA represents a pivotal opportunity to join in the American dream. We should send the ADA to the President today. Forty-three million Americans, their families and friends, deserve no less.

Mr. HOYER. Mr. Speaker, I understand the time of the gentleman on the other side has expired, and as a result I yield 1 minute to the gentleman from Texas [Mr. CHAPMAN].

(Mr. CHAPMAN asked and was given permission to revise and extend his remarks.)

Mr. CHAPMAN. Mr. Speaker, I sincerely appreciate the gentleman yielding me this time.

I want to take just this 1 minute to explain why I will be voting for the motion to recommit. Normally I would not do that, but in this case in addition to the difference being the Chapman amendment on this legislation, I think it is important that the House understand that the conference committee ignored the will of the House in the vote of the conferees from the House on the Chapman amendment, and the conferees from the Senate ignored the instruction of the Senate on the Chapman amendment.

Simply put, my colleagues, the conference committee thwarted the will of the majority of the U.S. Congress. I think for that reason it is altogether fitting and proper and appropriate that those who supported the Chapman amendment in the House can vote and should vote for the motion to recommit.

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. HOYER. Mr. Speaker, I yield 15 additional seconds to the gentleman.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. CHAPMAN. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I would concur with the gentleman on the narrow issue of the motion to recommit on food handling. The gentleman from Texas [Mr. CHAPMAN] is correct. I plan to vote for the motion to recommit also. If that fails, I do plan, regardless of that, I do plan to vote for final passage.

Mr. CHAPMAN. Mr. Speaker, I appreciate the gentleman's statement.

Mr. HOYER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MINETA], the chairman of the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation. The gentleman has been one of the major leaders on this legislation.

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, first of all, I wish to really commend my colleague, the gentleman from Maryland, among others who have been working on this bill, but especially to the gentleman from Maryland [Mr. HOYER] for his untiring efforts, and to Melissa Schulman, Roger Slagle, from our staff, Phyllis Guss, and Suzanne Sullivan, from my staff.

Mr. Speaker, disabled Americans are ready, willing, and able, to use their talents, skills, and energy in our communities; but full access to our society, including our transportation systems, is essential if disabled Americans are to realize their potential of becoming self-reliant, productive members of our society.

Make no mistake. The Americans With Disabilities Act is a matter of civil rights.

Our Nation has a tradition of responding to the needs of those among us who have been denied equal opportunity.

This is a great principle, and I believe we must work together to ensure that this legislation retains this commitment to civil rights, and that is why I am particularly troubled by the motion to recommit with instructions by our colleague, the gentleman from California [Mr. DANNEMEYER].

Let us not allow this procedural vote which is based on fear and ignorance and which is opposed by every major public organization including the National Restaurant Association and every major public health organization keep us from granting independence to all Americans in this great country of ours including those with disabilities.

Mr. Speaker, I strongly urge a no vote on the motion to recommit and a yes vote on final passage.

Mr. HOYER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would ask the gentleman from California; a question has been raised regarding the effect of section 102(b)(2) of this conference agreement on the collective-bargaining rights of members of labor organizations.

Is it the understanding of the gentleman that this legislation would not restrict or affect these rights?

Mr. MINETA. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from California.

Mr. MINETA. Mr. Speaker, the gentleman from Maryland is correct. Let me assure the gentleman that nothing in the ADA is intended to restrict or prohibit labor organizations and employers from entering into collective-bargaining agreements or labor-protective arrangements including those required under section 13(c) of the Urban Mass Transportation Act.

Mr. HOYER. Mr. Speaker, I thank the gentleman for his comments.

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. WAXMAN], chairman of the Subcommittee on Health of the Committee on Energy and Commerce, one of the Members who is a giant in health care for all Americans and who has himself been a leader on this legislation.

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this historic civil rights legislation.

I would like to engage the gentleman from Maryland in a colloquy.

The conferees adopted the Hatch amendment regarding the food handlers, and it would provide a list to be published by the Secretary of diseases which are transmitted through handling the food supply. By that language, does the gentleman mean that the list should contain every disease which, in theory, might possibly be transmitted, or does it mean the list to contain the best scientific and medical judgment of what is a real risk to the public?

Mr. HOYER. Mr. Speaker, will the gentleman yield?

guarantee individuals with disabilities the right to be integrated into the economic and social mainstream of American society. These are the things TOM HARKIN stands for. These are the messages of the Americans With Disabilities Act.

Our colleague, Senator TOM HARKIN, has earned over 30 national awards for his service to people with disabilities since 1986. While these awards demonstrate the respect, affection and appreciation of the disability community for Senator HARKIN, the awards also represent TOM HARKIN's collaboration with a disability community that has become stronger and more united because of these collaborations.

Senator HARKIN has frequently pointed out that the Americans With Disabilities Act is also the product of political collaboration.

Throughout this legislative process, leaders on both sides of the aisle and President Bush have worked diligently together in the interests of people with disabilities. In this sense, the ADA represents one of our proudest moments in the U.S. Senate.

So, Mr. President, I know that all of my colleagues will join with me in congratulating Senator TOM HARKIN for his leadership in making the Americans With Disabilities Act the law of the land.

SECTION 506

Mr. SIMON. I would like to clarify with my colleagues a matter concerning the role of the National Council on Disability Policy in providing technical assistance under the ADA. In section 506(a)(1) of S. 933 the Attorney General of the United States is instructed to "develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commission under this Act."

The Senate bill states that his plan shall be developed "in consultation with * * * the national Council on Disability" (among others). Section 506(b)(2) of the House bill states that the "Attorney General may obtain the assistance of * * * the National Council on Disability * * *", but his consultation is not required.

If the chairman of the Subcommittee on Disability Policy would respond on this, I believe we agree that it is of the utmost importance that the Attorney General consult the National Council on Disability in developing the technical assistance plan.

Mr. HARKIN. The Senator is correct. The National Council on Disability played a major role in crafting the original Americans With Disabilities Act. Throughout the process they have gained additional expertise that should be shared with the Attorney General and other agencies. It is critical that the newly covered entities are assisted in understanding their roles and responsibilities under this law. The National Council on Disability will work with these agencies to ensure that the civil rights envisioned in the ADA are fully protected and realized.

Mr. INOUYE. If I may join my colleagues in emphasizing this matter, the National Council on Disability has insight that will vitally enhance discussion and development of this technical assistance plan. The 15 council members are appointed by the President. The majority of them are disabled or are parents of children with disabilities. They have a unique perspective to bring to the debate, and we want to make clear that we fully intend that the Attorney General consult them in this capacity. It is clearly the sense of the Senate that this consultation occur, and the conference report confirms the intent of conferees that such consultation is necessary and important.

Mr. HATCH. Mr. President, if the Senator from Iowa will yield for a question, I inquire about the effect of the pending legislation on drug testing and deterrence programs conducted by professional sports leagues. As the principal Senate sponsor of this bill, and chairman of the subcommittee of jurisdiction, will the Senator clarify the effect of the pending legislation on those programs?

Mr. HARKIN. Mr. President, the conferees recognize that professional sports organizations have promulgated policies to deter and treat substance abuse among athletes. We believe these policies serve to maintain the integrity of sports competition and are in the public interest. The policies generally provide that, in certain circumstances, an athlete may be dismissed from competition for violating the organization's substance abuse policy following an opportunity to obtain treatment. The question of how the bill relates to those policies was initially raised during House consideration of this measure. The House Committee on Education and Labor reviewed the policies in light of this legislation and found that the policies are entirely consistent with the nondiscrimination provisions of the bill. The statement of managers which accompanies this conference report makes clear that the conferees embrace this view and this is also my own view.

Mr. HATCH. If the Senator will yield further, during House floor debate the House floor manager was asked whether the bill was intended to freeze current policies in place. He replied that this measure does not prohibit leagues from modifying their programs in response to changed circumstances or developments in medicine, technology, or drug or alcohol treatment. What is the Senator's understanding in this regard?

Mr. HARKIN. I am familiar with the colloquy to which the Senator refers and I concur with the position expressed by the House floor manager.

Mr. HATCH. I concur with the understanding expressed by the Senator on all these points, and I thank the Senator.

Mr. KENNEDY. A question has been raised as to whether section 102(b)(3) of the act limits the right of affected parties to negotiate collective bargaining agreements or labor protection agreements which address the terms and conditions under which para transit services required by the act are to be provided.

Mr. HARKIN. Let me assure the Senator that nothing in the act, including section 102(b)(3), or the regulations issued thereunder, shall interfere with the right to negotiate or otherwise prohibit labor organizations and employers from entering into collective-bargaining agreements or labor protective arrangements, including those required under section 13(c) of the Urban Mass Transportation Act, which set forth the terms and conditions under which the para and other specified transit services required by the act are to be provided and/or operated.

Mr. CHAFEE. Mr. President, I would like to express my strong support for the conference report on the American With Disabilities Act [ADA].

For too long, our Nation's citizens with disabilities have been subject to discriminatory practices in many aspects of their lives. This discrimination has led to the segregation and isolation of countless persons with mental and/or physical impairments in our country.

Many of us in the Senate have devoted considerable time or effort to reform the Medicaid Program in order to foster increased community-based services for people with mental retardation and developmental disabilities. During the course of my work on Medicaid reform, I have heard from numerous families and individuals who have recounted instances of blatant discrimination.

It is incredible to me that families with a member who is mentally retarded have been refused service in a restaurant because the owner fears that other customers might be offended or uncomfortable eating near that family. Yet, such a practice is not only common, it is perfectly legal. I have heard of similar situations in movie theaters, libraries, bowling alleys, and shopping centers. Think of how those families and individuals with disabilities must feel when they are faced with this type of discrimination. Surely, their vision of a free and just society is shattered.

In addition to the problems I have heard of regarding public accommodations, there are countless other stories of discrimination in employment and transportation. There are thousands of qualified persons with disabilities who are ready and able to work. Yet, as hard as they try to find a job, they are often unsuccessful because employers won't hire them simply because they are disabled. Of those that

REGULATIONS CITED IN THE HOUSE AND SENATE REPORTS

Regulations from reports: 28 C.F.R. Part 39 (3) and Part 41 (4); 28 C.F.R. 32.14 (2), 39.150 (3), 42.512; 29 C.F.R. 1613.704 (3), 1613.705 (2); 34 C.F.R. Part 104; 45 C.F.R. 84.13 (3), 84.4 (3), 84.11 (3), 84.13 (2); 45 C.F.R. Part 84, Appendix A (3); and 49 C.F.R. 27.73 (4).

34.105 Peer review methods.

(a) Peer review will normally consist written comments provided in response to the general selection criteria stablished under Subpart A of this art and any program specific selection criteria identified in the program announcement, together with the assignment of numerical values. Peer review may be conducted at meetings of peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. Where appropriate, site visits may also be employed. The primary method of peer review anticipated for each announced competitive program, including all evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) For peer review conducted through meetings, peer review panelists will be gathered together for instruction by the OJJDP program manager, including review of the OJJDP *Peer Review Manual*, who will then oversee the conduct of individual and group review sessions, as appropriate. Where time or other factors such as cost preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity. Mail reviews will be the standard procedure used for review of noncompetitive assistance applications being considered for Part B, Subpart II, or Part C fund support. In such case, the application would have to be determined, through the peer review process, to qualify as "Outstanding".

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officers or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Administrator, OJJDP, will make the final selection of both peer reviewers and internal reviewers. The selection process for peer reviewers will be detailed in the OJJDP *Peer Review Manual*.

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used by the Adminstrator in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice or related fields.

(b) Specialized knowledge in areas or fields addressed by the applications to be reviewed under a particular program.

Additional details will be provided in the OJJDP *Peer Review Manual*.

§ 34.110 Management of peer reviews.

A technical support contractor may assist the OJJDP program manager in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid an appropriate consulting fee. Detailed information will be provided in the OJJDP *Peer Review Manual*.

Subpart C—Emergency Expedited Review—[Reserved]

PART 39—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

Sec.
39.101 Purpose.
39.102 Application.
39.103 Definitions.

Sec.
39.104—39.109 [Reserved]
39.110 Self-evaluation.
39.111 Notice.
39.112—39.129 [Reserved]
39.130 General prohibitions against discrimination.
39.131—39.139 [Reserved]
39.140 Employment.
39.141—39.148 [Reserved]
39.149 Program accessibility: Discrimination prohibited.
39.150 Program accessibility: Existing facilities.
39.151 Program accessibility: New construction and alterations.
39.152—39.159 [Reserved]
39.160 Communications.
39.161—39.169 [Reserved]
39.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: Order No. 1065-84, 49 FR 35734, Sept. 11, 1984, unless otherwise noted.

§ 39.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 39.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 39.103 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Justice.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complaint Adjudication Officer" means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitorurinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self,

performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Official" or "Responsible Official" means the Director of Equal Employment Opportunity for the Department of Justice or his or her designee.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Respondent" means the organizational unit in which a complainant alleges that discrimination occurred.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 39.104—39.109 [Reserved]

§ 39.110 Self-evaluation.

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 39.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Attorney General finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 39.112—39.129 [Reserved]

§ 39.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activites in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 39.131—39.139 [Reserved]

§ 39.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of ection 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 39.141—39.148 [Reserved]

§ 39.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 39.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the tansition plan shall be made available for public in-

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spection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 39.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 39.152—39.159 [Reserved]

§ 39.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 39.161—39.169 [Reserved]

§ 39.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint*—(1) *Who may file.* (i) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR Part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of the Bureau of Prisons under 28 CFR Part 542. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, N.W., Room 1232, Washington, D.C. 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(3) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeal to the Complaint Adjudication Officer, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (i)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (i)(1) of this section, the Responsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C.

554-557 (sections 5-8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(l) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to

§ 39.170(l)(3) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

Editorial Note: For the convenience of the user, the "Supplementary Information" portion of the document published at 49 FR 35724, Sept. 11, 1984, is set forth below:

SUPPLEMENTARY INFORMATION: On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. 48 FR 55996. Shortly after the NPRM was published, the Department received a number of preliminary comments from handicapped individuals and from organizations representing handicapped individuals. The tone and nature of these comments indicated to the Department that some of the regulatory provisions of the NPRM were being misunderstood. As a result, the Department, on March 1, 1984, published a Supplementary Notice further explaining the NPRM and requesting comments on possible revisions to the original NPRM. 49 FR 7792.

By April 16, 1984, close of the comment period, the Department received 1,194 comments. Two hundred and six of these comments also addressed the supplemental notice. Over 90% of the comments that the Department received came from individuals (908), most frequently handicapped persons, and from organizations representing the interests of handicapped persons (180). The Department received comments from all fifty states, the District of Columbia, Puerto Rico, Canada, and Denmark. Most of the comments that the Department received were general in nature. The Department received 721 comments based on a form letter. This form letter, written before issuance of the Supplemental Notice, expressed dismay at the inclusion of the regulation's "undue financial and administrative burdens" language, asserted that the Department was imposing a lesser requirement on the Federal government than on recipients of Federal assistance, and requested that the regulation be withdrawn. This form letter did not contain any substantive or detailed analysis. In fact, only 55 of the 1,194 comments contained specific, detailed analysis of the Department's proposal.

The Department read and analyzed each comment. Each comment was then subdivided according to one or more of over 90 issue categories. Because comments often addressed, even in general terms, more than one issue, the 1,194 comments were translated into 4,256 issue-specific comments. The decisions that the Department made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, N.W., Washington, D.C. from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays, until November 13, 1984.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies shall be submitted to the appropriate authorizing committees of

Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on October 11, 1984.

This rule applies to all programs and activities conducted by the Department of Justice. Thus, this rule regulates the activities of over 30 separate subunits in the Department, including, for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, Federal Prison Industries, and the United States Attorneys.

BACKGROUND

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Justice (DOJ). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1984) *id.*, 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Nine hundred and two comments that the Department received agreed that the obligations of section 504 for federally conducted programs should be identical to those developed by the Federal agencies over the past seven years for federally assisted programs. These commenters, however, objected to any language differences between the Department's proposed rule for federally conducted programs and the Department's section 504 coordination regulation for federally assisted programs (28 CFR Part 41). The commenters asserted that a number of language differences that the Department had proposed created less stringent standards for the Federal government than those applied to recipients of Federal assistance under section 504. They wrote that such a result could not be justified by Executive Order 12250, by the wording of the statute itself, nor by the legislative history of the 1978 amendments.

The commenters appear to have misunderstood the basis for inclusion of the new language in the DOJ regulation. The changes in this regulation are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that the Department had not included these changes when, subsequent to the *Davis* decision, it issued a regulation implementing section 504 in programs receiving Federal financial assistance from this Department. The Department's section 504 federally assisted regulation, however, was issued prior to the D.C. circuit's decision in *APTA*. In *APTA*, the Department had argued a position similar to that advocated by the commenters. Judge Abner Mikva's decision in *APTA* clearly rejected the Department's position in that case. Other circuit court decisions followed the *APTA* interpretation of *Davis*. Since these decisions, the Department has interpreted its section 504 regulation for federally assisted programs in a manner consistent with the language of this final rule. The Department believes that judicial interpretation of section 504 compels it to incorporate the new language in the federally conducted regulation.

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations. Because many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis* and its progeny, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

SECTION-BY-SECTION ANALYSIS AND RESPONSE TO COMMENTS

Section 39.101 Purpose

Section 39.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

The Department received no comments on this section and it remains unchanged from the Department's proposed rule.

Section 39.102 Application

The regulation applies to all programs or activities conducted by the Department of Justice. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system). No comments were received on this section.

Section 39.103 Definitions

The Department received 469 comments on the definitions section. Most of the comment, however, concentrated on the definition of "qualified handicapped person."

"Agency" is defined as the Department of Justice.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 39.160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 39.170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

Twenty commenters on the NPRM objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice.

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In its NPRM, the Department omitted the list of physical or mental impairments included in the definition of "handicapped persons." The Department received 19 negative comments on this omission, and, in the Supplemental Notice, requested comments on whether it should be re-inserted. On the basis of the comments received, we have included the list in the final rule.

"Qualified handicapped person" The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The Department incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two hundred and forty-four commenters objected to this revised definition for a variety of reasons. Several commenters stated that the Department incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp.* v. *Darrone*, 104 S. Ct. 1248 (1984). This view misunderstands the Court's actions in *Darrone*. In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person" or whether section 504 included limitations based on "undue financial and administrative burdens."

Many commenters stated that the proposal would change the definition of qualified handicapped person for employment. "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 39.140. Nothing in this part changes existing regulations applicable to employment.

Many commenters assumed that the definition would have the effect of placing on the handicapped person the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§39.150(a)(2) and 39.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified handicapped person" places handicapped persons in a "Catch-22" situation: because only qualified handicapped persons are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Department determined that a handicapped person was not "qualified," the person could use the procedures established by § 39.170 to challenge that determination, just as he or she could challenge any other decision by the agency that he or she believed to be discriminatory.

Many commenters argued that the definition of "qualified handicapped person" confused what should be two separate inquiries: whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accommodations rather than on a handicapped person's abilities. As another commenter noted, however, the Supreme Court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified handicapped person. The Department continues to believe that the concept of "qualified handicapped person" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified handicapped person," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect it in the Department's regulation.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 39.110 Self-evaluation

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed rule had no specific criteria for conducting a self-evaluation, we requested comment on a proposed alternative in our Supplemental Notice (49 FR 7792). We received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. We agree.

With respect to the applicability of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) (FACA), several comments were received. They argued that the FACA is not intended to apply to meetings with a self-evaluation group comprised of private individuals because they are rather unstructured, ad hoc meetings.

Authority for interpreting FACA was delegated to the General Services Administration (GSA) by Executive Order 12024 in 1977. Regulations issued by GSA place specific limitations on the scope of the Act by delineating examples of meetings or groups *not* covered. 41 CFR Part 101-6. GSA identified a major issue in the promulgation of the regulations to be the extent of applicability of the Act

Some commenters believe, as a matter of general policy, that advisory groups which are not formally structured, which do not have a continuing existence, which meet to deal with specific issues, and whose meetings do not constitute an established pattern of conduct should not be covered under the Act. * * * This rule reflects our judgment that the exclusion of certain non-recurring meetings from the Act's coverage is fully consistent with the statute, its legislative history, and judicial interpretation. * * * The interim rule provides guidance for those meetings between Federal officials and non-Federal individuals which do not fall within the scope of the Act, and for which a charter and consultation with GSA is not required.

48 FR 19324 (Preamble to interim rules).

The regulations define "advisory committee" in pertinent part as:

> Any committee, board, commission, council, conference, panel, task force or other similar group * * * established by * * * or *utilized by* * * * any agency official *for the purpose of obtaining advice or recommendations on issues or policy* which are within the scope of his or her responsibilities.

41 CFR 101-6. 1003 (emphasis added).

In turn, "utilized" is defined in pertinent part as a

> group * * * which * * * agency official(s) *adopts*, such as through institutional arrangements, *as a preferred source from which to obtain advice or recommendations on a specific issue* or policy within the scope of his or her responsibilities *in the same manner* as that *individual would obtain advice or recommendations from an established advisory committee.*

41 CFR 101-6.1003 (emphasis added).

The GSA regulation further provides that the Act does not apply to

> (g) Any meeting initiated by the President or one or more Federal official [sic] for the purpose of obtaining advice or recommendations from one individual;
>
> (h) Except with respect to established advisory committees:
>
> (1) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information; or
>
> (2) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;
>
> * * * * *
>
> (j) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.

41 CFR 101-6.1004 (g), (h), and (j).

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section 39.111 Notice

The Department received negative comments on its omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their rights under section 504. In the Department's Supplemental Notice, we requested comments on inclusion of specific regulatory language. Fifty-four positive comments were received. As a result, the Department has incorporated that new provision on notice into the final rule. It appears as § 39.111.

Section 39.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 of this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 39.111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 39.160(d)) that the agency provide handicapped persons with information concerning their rights. Because § 39.111 encompasses the requirements of proposed § 39.160(d), that latter paragraph has been deleted as duplicative.

Section 39.130 General prohibitions against discrimination

Section 39.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 39.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 39.130. When

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there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 39.149-39.151) and communications (§ 39.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 39.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Subparagraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 39.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate in an impermissible manner against the employment of qualified handicapped persons.

Subparagraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of its operations.

Twenty-three commenters argued that the regulation should extend to the activities of licensees or certified entities, citing *Community Television of Southern California* v. *Gottfried*, 103 S. Ct. 885 (1983). In that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies underlying the Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People* v. *Federal Power Commission*, 425 U.S. 662, 669 (1976). In our view, section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities. Where an agency has existing regulatory authority that is broad enough to enable it to establish a nondiscrimination requirement for its licensees or certified entities, section 504 may support the exercise of that authority. Because the Department of Justice has no such underlying authority, it cannot prohibit discrimination by licensees.

Twenty-two commenters objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Section 39.140 Employment

Section 39.140 prohibits discrimination on the basis of handicap in employment by the agency. Comments on proposed § 39.140 identified two types of problems. First, several commenters felt that the rule's treatment of employment was not sufficiently comprehensive. They pointed out that the rule does not enumerate the employment practices covered (*e.g.*, hiring, promotion, assignment); it does not say what must be done to avoid or correct possible discrimination (*e.g.*, reasonable accommodation, review of preemployment tests, limitations on preemployment inquiries and the use of medical examinations); nor does it define a "qualified handicapped person" with respect to employment.

Second, one commenter objected to the rule's adoption of "the definitions, requirements and procedures of section 501 of the Rehabilitation Act" as established in rules of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. This commenter argued that EEOC's rules on physical examinations were too restrictive and claimed that the proposed rule did not limit employment coverage to the program conducted by the Federal government in a manner similar to the "program or activity" limitation on coverage of programs receiving Federal financial assistance. Finally, the commenter asserted that reliance on section 501 was misplaced because that section of the Rehabilitation Act requires affirmative action whereas section 504, which the rule implements, contains only a nondiscrimination requirement.

The original notice of proposed rulemaking explained that the regulation is in accord with *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981), which held that Congress intended section 504 to cover the employment practices of Executive agencies. In *Prewitt*, the court also held that, in order to give effect to sections 501 and 504, both of which cover Federal employment, the administrative procedures of section 501 must be followed. Accordingly, the proposed rule adopted the definitions, requirements and procedures of section 501 as established in EEOC's rules.

The final rule has not been changed. The Department intends to avoid duplicative, competing or conflicting standards under the Rehabilitation Act with respect to Federal employment. While the rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, reference to the Government-wide rules of the Equal Employment Opportunity Commission is sufficient and avoids duplication. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 39.149 Program accessibility: Discrimination prohibited

The proposed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56). The decision not to include this language in the proposed regulation created the misperception that a change in substance was intended. In order to remedy this misunderstanding, the Supplemental Notice requested comments on explicitly including it. Sixty-two commenters favored inclusion of the specific regulatory language that was published in the Supplemental Notice. Consequently, the final rule has been revised to include the language of the Supplemental Notice. The language appears at § 39.149.

Section 39.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 39.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 39.150(a)(1)). However, § 39.150, unlike 28 CFR 41.56-41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 39.150(a)(2)). This provision provoked 959 comments, the largest number received on any single issue. Most commenters sought the deletion of the "undue financial and administrative burdens" language from the regulation. On the basis of preliminary comments on this paragraph, the Department published clarifying language in its Supplemental Notice. The final version includes that clarification.

The "undue financial and administrative burdens" language (found at §§ 39.150(a)(2) and 39.160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis, supra (APTA)*. In *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Many commenters argued that the Supreme Court's decision in *Davis* did not require inclusion of an undue burdens defense in this regulation. These commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. These commenters overlook the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982).

Many commenters argued that inclusion of the undue burdens defense was inconsistent with the position taken by Vice President Bush in his letter of March 21, 1983, in which he announced the Administration's decision not to revise the coordination regulation for federally assisted programs. The decision to include the undue burdens defense represents no contradiction with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the *Davis* decision by the lower Federal courts.

The Department has carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative burdens. The Department intends to be guided by six principles in its application of the "fundamental alteration" and "undue financial and administrative burdens" language.

First, because of the extensive resources and capabilities that could properly be drawn upon for section 504 purposes by a large Federal agency like the Department of Justice, the Department explicitly acknowledges that, in most cases, making a Department program accessible will likely not result in undue burdens. Second, the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens has been placed squarely on the Department of Justice, not on the handicapped person. Third, in determining whether financial and administrative burdens are undue, the Department is to consider all Department resources available for use in the funding and operation of the conducted program. Fourth, the "fundamental alteration"/"undue burdens" decision is to be made by the Attorney General or his designee and must be accompanied by a written statement of reasons for reaching such a conclusion. Fifth, if a disabled person disagrees with the Attorney General's finding, he or she can file a complaint under the complaint procedures established by the final regulation. A significant feature of this complaint adjudication procedure is the availability of a hearing before an independent administrative law judge under the due process protections of the Administrative Procedure Act. Sixth and finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Department must still take action, short of that outer limit, that will open participation in the Department's program to disabled persons to the fullest extent possible.

One hundred and eighty-one commenters on the Supplemental Notice objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and operation of the conducted program," arguing that it should be based on the resources of the agency as a whole. Some argued that this formulation was required because all agency resources come from taxpayer monies and should not be used to support discrimination.

The Department's entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Many parts of the Department's budget are earmarked for specific purposes and are simply not available for use in making the Department's programs accessible to disabled persons. For example, funds for the operation of the Bureau of Prisons are unavailable for defraying the cost of a sign language interpreter at a deportation hearing conducted by the Immigration and Naturalization Service. There are extensive resources available to the Department and it is expected that the Department will, only on very rare occasions, be faced with "undue burdens" in meeting the program accessibility or communications sections of the regulation.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

Some commenters argued that section 504 creates an absolute right to access, and that cost cannot limit this right, although it may be a factor in determining timeframes for compliance. Section 504 does not create an absolute right to access. The Supreme Court stated in *Davis* that recipients need not undertake modifications to their programs to meet the requirements of section 504 that would result in "undue financial and administrative burdens." This understanding of section 504 and its implementing regulations for federally assisted programs is shared by the lower Federal courts, which have routinely applied the "undue burdens" limitation to accessibility issues. Congress suggested no different interpretation of section 504 when applying it to federally conducted programs. Spreading the cost of compliance over a period of time is, however, one way of avoiding undue financial and administrative burdens, and the Department will consider that as an option whenever it considers asserting that defense.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 39.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 39.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 39.150.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 39.151, rather than the program accessibility standard for existing facilities in § 39.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Department believes the same program accessibility standard should apply to both owned and leased existing buildings.

Section 39.160 Communications

Section 39.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § 39.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 39.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 39.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 39.150(a)(2)). Unless not required by § 39.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency, *e.g.*, INS deportation proceedings. Auxiliary aids in these proceedings must be afforded where they are necessary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 39.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Some commenters suggested that the Department's language in § 39.160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of the federal programs and those that are not and which parallels the requirements of the Federal government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Several comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings. Other comments recommended that in some cases attendant services may be an appropriate auxiliary aid to achieve program accessibility.

The Department has not adopted the approach recommended by these comments.To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a workshop as available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of information in a form that can be understood by hearing persons. However, the Department views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant, including per diem and transportation expenses, may be paid by the Department. See 5 U.S.C. 3102(d) (1982).

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 39.170 Compliance procedures

Section 39.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in the Department of Justice's programs and activities. The 1978 amendments to section 504 failed to provide a specific statutory remedy for violations of section 504 in federally conducted programs. The amendment's legislative history suggesting parallelism between section 504 for federally conducted and federally assisted programs is unhelpful in this area because the fund termination mechanism used in section 504 federally assisted regulations depends on the legal relationship between a Federal funding agency and the recipients to which the Federal funding is extended. The Department has decided that the most effective and appropriate manner in which to enforce section 504 in the federally conducted area is through an equitable complaint resolution process. Section 39.170 establishes this process.

The complaint process in the final rule is substantially the same as the one that the Department proposed. The Department received 57 comments on this section. These comments did not question the use of a complaint-responsive enforcement scheme as appropriate for section 504 for federally conducted programs. The Department continues to view its specific proposal as satisfactory.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests in the Responsible Official the responsibility for the overall management of the 504 compliance program. "Responsible Official" or "Official," as defined in § 39.103, refers to the Director of Equal Employment Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 39.170. The definition of "Official" includes other Department Officials to whom authority has been delegated by the Official. The Assistant Attorney General for Administration has been designated as the Director of Equal Employment Opportunity for the Department. *See* 28 CFR 42.2(a).

Although one person has responsibility both for administering the Equal Employment Opportunity Program for the Department and for coordinating implementation of the compliance procedures under this part, the procedures for carrying out these two responsibilities are different. The Official would follow the procedures for enforcing equal employment opportunity, as set forth in 29 CFR Part 1613, only for complaints alleging employment discrimination (see § 39.170(b)). Other complaints would be processed under the procedures in § 39.170. Authority for processing complaints of employment discrimination has been delegated to Equal Employment Opportunity Officers in some Department components, and it is expected that authority for enforcing this part will be similarly delegated.

Subparagraphs (d) (1) and (3) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Several commenters argued that the proposed rule unnecessarily restricted the right to file a complaint by not allowing an individual victim of discrimination to authorize a representative to file on his or her behalf. The final rule permits filing by the authorized representative of an individual victim, or, in the case of class discrimination, of a member of the class, as well as by an individual victim or class member. The final rule has been revised to make it clear that complaints alleging that a specific class of persons has been discriminated against may only be filed by a member of that specific class or by a representative authorized to file the complaint by a member of that class (§ 39.170(d)(1)).

The Federal Bureau of Prisons has established an Administrative Remedy Procedure for handling grievances of inmates of Federal penal institutions (28 CFR Part 542). This procedure allows an inmate to file a formal written complaint with the Warden of the Institution or with the Regional Director. While these remedies are not a substitute for the right to an independent investigation by a civil rights office and appeal to the Complaint Adjudication Officer, the final rule requires inmates to exhaust these procedural remedies before filing a complaint with the Official. The time period for filing a complaint with the Official would be extended by the time spent exhausting these remedies. This requirement applies only to inmates and does not extend to visitors and employees.

The Department received several comments on how prisoners' complaints should be handled. Some of them suggested that both the discrimination procedure and the prison grievance procedures should be invoked simultaneously. The Department believes that this proposal would require the unnecessary duplication of efforts without materially enhancing results. The Bureau of Prisons reported that thousands of inmate complaints were filed in 1983 alone and that several court decisions have held that the inmate administrative remedy procedure must be exhausted before suit can be filed. Although the volume of complaints by prison inmates might be burdensome, it is not possible now to forecast the number that will be filed. The Department believes, however, that handicapped prisoners must be afforded the right to have their complaints investigated by an office that specializes in discrimination complaints, including section 504 complaints, as well as the right to appeal to the Complaint Adjudication Officer. It is expected that the requirement that inmates first exhaust prison administrative remedies will be effective in resolving most meritorious complaints. It may be necessary, of course, for the Department to provide additional resources to handle complaints filed under the new regulation.

Subparagraph (d)(2) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Attorney General, the Responsible Official, or other agency officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (subparagraph (d)(4)).

Paragraph (e) requires the agency to send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

The Official is required to accept all complete complaints over which the agency has jurisdiction (§ 39.170(f)(1)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 39.170(f)(3)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of subparagraph (d)(3), but the timeframes governing the Official's other obligations to process the complaint (*see, e.g.,* § 39.170(g)(1), § 39.170(h)) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 39.170(h)). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

In response to a suggestion from a commenter, the Department no longer refers to the letter of findings as "preliminary." The word "preliminary" has been deleted because, if there is no appeal, the determination made in the letter of findings will constitute the final agency decision.

Paragraph (h) requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal. The regulation provides that a party may appeal the Official's letter or findings to the Complaint Adjudication Officer (CAO). If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 39.170(i)(4)).

The Department's final rule provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the CAO, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an administrative law judge can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

The opportunity for a hearing before an ALJ assures more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. The Department expects that agency decisions based on a hearing record would more likely survive later judicial review.

Under the regulation, another person or organization would be allowed to participate as a third party or amicus curiae if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not duly delay the outcome, and that petitioner's participation may contribute materially to the disposition of the proceedings.

The Department received comments on the proposed opportunity for a hearing before an administrative law judge. Some commenters were primarily concerned that by invoking a hearing before the ALJ with the procedural safeguards adopted from the Administrative Procedure Act (APA) (5 U.S.C. 554-557), the complainant would lose the right to a *de novo* review of the agency's final decision, because the APA allows a Federal court only to determine if the agency's final decisions are "arbitrary and capricious" (5 U.S.C. 706(2)(A)). It is beyond our jurisdiction to specify that a *de novo* review is available to complaints seeking judicial review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of the availability of a private right of action, either without invoking our compliance procedures or after the issuance of letters of findings.

Given the inherent conflicts of interest in situations where complaints allege discrimination on the part of the Department, it is critically important to ensure that a complaint be reviewed in a fair, independent process. The availability of a hearing before an independent ALJ would provide the appearance as well as the actuality of an impartial compliance mechanism. The Department has therefore included the provision for a hearing in the final regulation.

One comment requested the addition of a provision whereby the Department would award attorneys fees to complainants. Another comment suggested that the Equal Access to Justice Act (5 U.S.C. 504) might provide for the award of fees. Nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the EAJA and the Department's implementing regulations at 28 CFR Part 24 provide for such awards in hearings conducted under § 39.170(k). We have therefore included no attorneys fee provision in the current regulations.

Under paragraph (l), the CAO renders a final agency decision after appeal without a hearing or after a hearing. The CAO directs appropriate remedial action if discrimination is found. The CAO's decision will involve reviewing the entire file, including the investigation report, letter of findings, and,

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if a hearing was held, the hearing record and recommended decision of the administrative law judge. The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter objected to the requirement in subparagraph (l)(1) that the CAO explain specifically a decision to reject or modify the ALJ's proposed findings, arguing that it would inappropriately limit the CAO's consideration of the issues. We have adopted the suggestion and eliminated the requirement.

In response to recommendations from the Department's CAO and the Drug Enforcement Administration's ALJ, some changes have been made in the compliance procedures. Among the changes are a new requirement that the ALJ provide findings to all parties, not just the CAO, an added provision for filing exceptions to an ALJ's recommended decision, a delineation of the authorities of the ALJ, and a clarification of the responsibility for supervising compliance with the final agency decision between the Responsible Official and the CAO.

The Department also received some comments on the appropriateness of providing for an appeal by either the complainant or respondent. Some commenters objected to allowing a respondent to obtain an administrative appeal because it could delay remedying discrimination. On the other hand, an impartial adjudicatory mechanism would require that opportunity is provided for both sides to appeal. For this reason, the Department finds it necessary and appropriate for both complainant and respondent to have the right to an administrative appeal.

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

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Authority: Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997).

Source: Order No. 957-81, 46 FR 48186, Oct. 1, 1981, unless otherwise noted.

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For the purposes of this part—

(a) "Act" means the Civil Rights of Institutionalized Persons Act, Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997).

(b) "Applicant" means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) "Attorney General" means the Attorney General of the United States or the Attorney General's designees.

(d) "Grievance" means a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term "grievance" does not include a complaint relating to a parole decision.

(e) "Inmate" means an individual confined in an institution for adults, who has been convicted of a crime.

(f) "Institution" means a jail, prison, or other correctional facility, or pretrial detention facility that houses adult inmates and is owned, operated, or managed by or provides services on behalf of a State or political subdivision of a State.

(g) "State" means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

§ 40.20 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change if such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.21 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the U.S. Court of Appeals and of the U.S. District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant's grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure at the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 40.22 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

PART 41—IMPLEMENTATION OF EXECUTIVE ORDER 12250, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Subpart A—Federal Agency Responsibilities

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APPENDIX A—LEADERSHIP AND COORDINATION OF NONDISCRIMINATION LAWS

AUTHORITY: Executive Order 12250, 45 FR 72995; sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706).

SOURCE: 43 FR 2132, Jan. 13, 1978, unless otherwise noted. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981.

EDITORIAL NOTE: At 46 FR 40687, Aug. 11, 1981, the application of Part 41 with respect to mass transportation was suspended until further notice.

Subpart A—Federal Agency Responsibilities

§ 41.1 Purpose.

The purpose of this part is to implement Executive Order 12250, which requires the Department of Justice to coordinate the implementation of section 504 of the Rehabilitation Act of 1973.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.2 Application.

This part applies to each Federal department and agency that is empowered to extend Federal financial assistance.

§ 41.3 Definitions.

As used in this regulation, the term:

(a) "Executive Order" means Executive Order 12250, titled "Leadership and Coordination of Nondiscrimination Laws," issued November 2, 1980.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Agency" means a Federal department or agency that is empowered to extend financial assistance.

(d) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(f) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.4 Issuance of agency regulations.

(a) Each agency shall issue, after notice and opportunity for comment, a regulation to implement section 504 with respect to the programs and activities to which it provides assistance. The regulation shall be consistent with this part.

(b) Each agency shall issue a notice of proposed rulemaking no later than 90 days after the effective date of this part. Each agency shall issue a final regulation no later than 135 days after the end of the period for comment on its proposed regulation: *Provided*, That the agency shall submit its proposed final regulation to the Assistant Attorney General, Civil Rights Division, Department of Justice, for review at least 45 days before it is to be issued.

(c) Each such agency regulation shall: (1) Define appropriate terms, consistent with the definitions set forth in § 41.3 and with the standards for determining who are handicapped persons set forth in Subpart B of this part; and (2) prohibit discriminatory practices against qualified handicapped persons in employment and in the provision of aid, benefits, or services, consistent with the guidelines set forth in Subpart C of this part. The regulation shall include, where appropriate, specific provisions adapted to the particular programs and activities receiving financial assistance from the agency.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.5 Enforcement.

(a) Each agency shall establish a system for the enforcement of section 504 and its implementing regulation with respect to the programs and activities to which it provides assistance. The system shall include:

(1) The enforcement and hearing procedures that the agency has adopted for the enforcement of title VI of the Civil Rights Act of 1964, and

(2) A requirement that recipients sign assurances of compliance with section 504.

(b) Each agency regulation shall also include requirements that recipients:

(1) Notify employees and beneficiaries of their rights under section 504,

(2) Conduct a self-evaluation of their compliance with section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and

(3) Otherwise consult with interested persons, including handicapped persons or organizations representing handicapped persons, in achieving compliance with section 504.

§ 41.6 Interagency cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall: (1) Coordinate compliance with section 504, and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a compliant of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§ 41.7 Coordination with sections 502 and 503.

(a) Agencies shall consult with the Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 41.58, and shall coordinate with the Board in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as to section 504.

(b) Agencies shall coordinate with the Department of Labor in enforcing requirements concerning employment discriminination with respect to recipients that are also federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

Subpart B—Standards for Determining Who Are Handicapped Persons

§ 41.31 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means: (i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of

others toward such impairment; or (iii) has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 41.32 Qualified handicapped person.

"Qualified handicapped person" means: (a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and (b) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

Subpart C—Guidelines for Determining Discriminatory Practices

GENERAL

§ 41.51 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

EMPLOYMENT

§ 41.52 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 41.53 Reasonable accommodation.

A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

§ 41.54 Employment criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 41.55 Preemployment inquiries.

A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 28 CFR 42.513

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

PROGRAM ACCESSIBILITY

§ 41.56 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 41.57 Existing facilities.

(a) A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the agency regulation: *Provided*, That, if the program is a particular mode of transportation (e.g., a subway system) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the federal agency responsible for enforcing section 504 with respect to that program may extend this period of time, but only for a reasonable and definite period, such period to be set forth in the agency's regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within a definite period to be established in each agency's regulation, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

[43 FR 2132, Jan. 13, 1978, and Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

EFFECTIVE DATE NOTE: At Order No. 1301-88, 53 FR 37754, Sept. 28, 1988, the application of § 41.57(b) to public housing timeframes was suspended.

§ 41.58 New construction.

(a) Except as provided in paragraph (b) of this section, new facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) The Department of Transportation may defer the effective date for requiring all new buses to be accessible if it concludes on the basis of its section 504 rulemaking process that it is not feasible to require compliance on the effective date of its regulation: *Provided*, That comparable, accessible services are available to handicapped persons in the interim and that the date is not deferred later than October 1, 1979.

APPENDIX A—LEADERSHIP AND COORDINATION OF NONDISCRIMINATION LAWS

EXECUTIVE ORDER 12250, Nov. 2, 1980

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1-1. *Delegation of Function.*

1-101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-2. *Coordination of Nondiscrimination Provisions.*

1-201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1-202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1-203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1-204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1-205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1-206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1-207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1-3. *Implementation by the Attorney General.*

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1-4. *Agency Implementation.*

1-401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1-402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1-403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1-5. *General Provisions.*

1-501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1-502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1-503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1-504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER

The White House,
November 2, 1980.

[47 FR 32421, July 27, 1982]

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

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edge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with; or

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death, and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive Parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1)(i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parents, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent or a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activites in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 39.131—39.139 [Reserved]

§ 39.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of ction 501 of the Rehabilitation Act 1973 (29 U.S.C. 791), as established the Equal Employment Opportuni- Commission in 29 CFR Part 1613, ll apply to employment in federally nducted programs or activities.

39.141—39.148 [Reserved]

39.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in 39.150, no qualified handicapped erson shall, because the agency's falities are inaccessible to or unusable y handicapped persons, be denied the enefits of, be excluded from particiation in, or otherwise be subjected to iscrimination under any program or ctivity conducted by the agency.

39.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operte each program or activity so that he program or activity, when viewed n its entirety, is readily accessible to nd usable by handicapped persons. This paragraph does not–

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the tansition plan shall be made available for public in-

(1) Recruitment, advertising, and application processing;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Pay and any other form of compensation and changes in compensation, including fringe benefits available by virtue of employment, whether or not administered by the recipient;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and selection for leaves of absence to pursue training;

(7) Employer-sponsored activities, including social or recreational programs; and

(8) Any other term, condition, or privilege of employment.

(c) In offering employment or promotions to handicapped individuals, recipients may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(d) A recipient's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 42.511 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

A reasonable accommodation may require a recipient to bear more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential duties of the job.

§ 42.512 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that tends to screen out handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that tend to screen out fewer handicapped persons are not shown by the appropriate Department officials to be available.

(b) A recipient shall administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified sign language interpreters for hearing-impaired persons) that accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test. When a test is administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 42.513 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 42.505(a) of this subpart, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 42.505(b) of this subpart, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary efforts;

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of handicapped persons and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

PROGRAM ACCESSIBILITY

§ 42.520 Discrimination prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

§ 42.521 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program to which this subpart applies so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Compliance procedures.* A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program accessible to its program accessible to handicapped persons. A recipient is not required to make strucsubstantially limits major life activities only as a result of the attitude of an employer toward such impairment; (3) or has none of the impairments defined in (b) of this section but is treated by an employer as having such an impairment.

(f) "Qualified handicapped person" means with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used: (1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question, or (2) meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

§ 1613.703 General policy.

Agencies shall give full consideration to the hiring, placement, and advancement of qualified mentally and physically handicapped persons. The Federal Government shall become a model employer of handicapped individuals. An agency shall not discriminate against a qualified physically or mentally handicapped person.

§ 1613.704 Reasonable accommodation.

(a) An agency shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include, but shall not be limited to: (1) Making facilities readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of the agency in question, factors to be considered include: (1) The overall size of the agency's program with respect to the number of employees, number and type of facilities and size of budget; (2) the type of agency operation, including the composition and structure of the agency's work force; and (3) the nature and the cost of the accommodation.

§ 1613.705 Employment criteria.

(a) An agency may not make use of any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the agency, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Civil Service Commission's Director of Personnel Research and Development Center to be available.

(b) An agency shall select and administer tests concerning employment so as to insure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the position or type of positions in question rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1613.706 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, an agency may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. An agency may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question, i.e., the minimum such respondent's voluntary compliance with any requirement of Part 100 of this title are not prohibited.

§ 101.116 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

Subpart L—Posttermination Proceedings

§ 101.121 Posttermination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 101.131 Definitions.

The definitions contained in § 100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term "reviewing authority" as used herein includes the Secretary of Education, with respect to action by that official under § 101.106.

Transition provisions: (a) The amendments herein shall become effective upon publication in the FEDERAL REGISTER.

(b) These rules shall apply to any proceeding or part thereof to which Part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 34 CFR, Part 100 (Title VI regulations of the Department of Education) as that part existed prior to the amendments published in the FEDERAL REGISTER on Oct. 19, 1967 (effective on that date), the rules in this Part 101 shall apply as i those amendments were not in effect.

PART 104—NONDISCRIMINATIO ON THE BASIS OF HANDICAP I PROGRAMS AND ACTIVITIES RE-CEIVING OR BENEFITING FRO FEDERAL FINANCIAL ASSISTANCE

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APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION
APPENDIX B TO PART 104—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat. 795.

SOURCE: 45 FR 30936, May 9, 1980, unless otherwise noted.

EFFECTIVE DATE NOTE: For an interpretation document affecting Part 104, see 46 FR 4912, Jan. 19, 1981. The effective date of the interpretation was deferred to March 30, 1981, at 46 FR 12495, Feb. 17, 1981. The effective date was again deferred to May 10, 1981, at 46 FR 18975, Mar. 27, 1981, and deferred until further notice at 46 FR 25614, May 8, 1981.

Subpart A—General Provisions

§ 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

§ 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, handicapped person who meets th academic and technical standards requisite to admission or participation i the recipient's education program o activity;

(4) With respect to other services, handicapped person who meets the e sential eligibility requirements for th receipt of such services.

(l) "Handicap" means any conditio or characteristic that renders a perso a handicapped person as defined paragraph (j) of this section.

§ 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activitiy which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such

discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 104.11 Discrimination prohibited.

(a) *General.* (1) No oualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absense, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 104.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usuable by handicapped persons.

§ 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)), which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided. Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1975. Incorporated documents are on file at the Office of the Federal Register. Copies of the standards are obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980]

Subpart D—Preschool, Elementary, and Secondary Education

§ 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is belived to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

§ 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 104.43 Treatment of students; general.

(a) No qualified handicapped stu dent shall, on the basis of handicap, b excluded from participation in, b denied the benefits of, or otherwise b subjected to discrimination under an academic, research, occupational train ing, housing, health insurance, coun seling, financial aid, physical educa tion, athletics, recreation, transporta tion, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 104.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 104.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 104.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 104.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, and Social Services

§ 104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in § 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

Subpart G—Procedures

§ 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 100.6-100.10 and Part 101 of this title.

APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

Definitions—1. *"Recipient"*. Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of § 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *"Federal financial assistance"*. In § 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

3. *"Handicapped person"*. Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. *Drug addicts and alcoholics.* As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *"Qualified handicapped person."* Paragraph (k) of § 104.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of § 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of § 104.6(a)(3), however, persons beyond the age limits prescribed in § 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to § 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§ 104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret § 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of § 104.23.

7. *Assurances of compliance.* Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick*, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols*, *supra*.

9. *Remedial action.* Where there has been a finding of discrimination, § 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In § 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from tne Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of § 104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 104.8 (formerly § 84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In § 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of § 104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, § 104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Section 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new § 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs than do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (34 CFR, Part 106) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requries certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of § 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of § 104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in § 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. *Tests and selection criteria.* Revised § 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, § 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries.* Section 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of § 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under § 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with § 104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with § 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised § 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new § 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words "if construction has commenced" will be considered to mean "if groundbreaking has taken place." Thus, a

recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 104.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of §§104.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility. Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 104.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 104.32 and 104.33 apply only to public programs and § 104.39 applies only to private programs; §§ 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Under § 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new § 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of § 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in § 104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under § 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by § 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§ 104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being *for* handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, § 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§ 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of § 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, § 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under § 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of § 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under § 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of § 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

Subpart E—Postsecondary Education

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in § 104.42(a), the regulation delineates, in § 104.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 104.42(b) provides that postsecondary educational institutions may not use

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any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that § 104.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessibile so long as a sufficient number of facilities are available to handicapped persons.

Revised § 104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of § 104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed § 104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of § 104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It shoud be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (§ 104.42(b)) and will be similarly interpreted.

Under § 104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§ 106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with § 104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of § 104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on § 104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under § 104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as § 104.43(b) to include the "as a whole" concept and will be interpreted in the same manner as § 104.43(b).

35. *Nonacademic services.* Section 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does § 104.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

SUBPART F—HEALTH, WELFARE, AND SOCIAL SERVICES

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, § 104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of section 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 104.4(b)(ii) and 104.43(b). New paragaph (a)(3) requires the provision of effective benefits or services, as defined in § 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tacticle devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. *Treatment of Drug Addicts and Alcoholics.* Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

SUBPART G—PROCEDURES

In § 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedureal regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX B TO PART 104—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

EDITORIAL NOTE: For the text of these guidelines, see 34 CFR Part 100, Appendix B.

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
106.1 Purpose and effective date.
106.2 Definitions.
106.3 Remedial and affirmative action and self-evaluation.
106.4 Assurance required.
106.5 Transfers of property.
106.6 Effect of other requirements.
106.7 Effect of employment opportunities.
106.8 Designation of responsible employee and adoption of grievance procedures.
106.9 Dissemination of policy.

Subpart B—Coverage

106.11 Application.
106.12 Educational institutions controlled by religious organizations.
106.13 Military and merchant marine educational institutions.
106.14 Membership practices of certain organizations.

S. Ct. 2101 (1986), the Supreme Court upheld the action of a United States District Court, 585 F. Supp. 541 (S.D.N.Y. 1984), declaring invalid and enjoining enforcement of provisions under this section, promulgated January 12, 1984.

(Information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0990–0114)

[49 FR 1651, Jan. 12, 1984, as amended at 52 FR 3012, Jan. 30, 1987]

§§ 84.56—84.60 [Reserved]

Subpart G—Procedures

§ 84.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 80.6 through 80.10 and Part 81 of this Title.

[42 FR 22377, May 4, 1977; 42 FR 22888, May 5, 1977]

APPENDIX A—ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

Definitions—1. *"Recipient"*. Section 84.23 contains definitions used throughout the regulation. Most of the comments concerning § 84.3(f), which contains the definition of "recipient," commended the inclusion of recipient whose sole source of Federal financial assistance is Medicaid. The Secretary believes that such Medicaid providers should be regarded as recipients under the statute and the regulation and should be held individually responsible for administering services in a nondiscriminatory fashion. Accordingly, § 84.3(f) has not been changed. Small Medicaid providers, however, are exempt from some of the regulation's administrative provisions (those that apply to recipients with fifteen or more employees). And such recipients will be permitted to refer patients to accessible facilities in certain limited circumstances under revised § 84.22(b). The Secretary recognizes the difficulties involved in Federal enforcement of this regulation with respect to thousands of individual Medicaid providers. As in the case of title VI of the Civil Rights Act of 1964, the Office for Civil Rights will concentrate its compliance efforts on the state Medicaid agencies and will look primarily to them to ensure compliance by individual providers.

One other comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and Title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of § 84.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiairies of the recipients' programs.

2. *"Federal financial assistance"*. In § 84.3(h), defining Federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of Federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

In its May 1976 Notice of Intent, the Department suggested that the arrangement under which individual practitioners, hospitals, and other facilities receive reimbursement for providing services to beneficiaries under Part B of title XVIII of the Social Security Act (Medicare) constitutes a contract of insurance or guaranty and thus falls within the exemption from the regulation. This explanation oversimplified the Department's view of whether Medicare Part B constitutes Federal financial assistance. The Department's position has consistently been that, whether or not Medicare Part B arrangements involve a contract of insurance or guaranty, no Federal financial assistance flows from the Department to the doctor or other practitioner under the program, since Medicare Part B—like other social security capped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 84.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of § 84.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 84.3(k)(2) (formerly § 84.3(k)(3)) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of § 84.6(a)(3), however, persons beyond the age limits prescribed in § 84.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 84.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which state law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Section 84.3(k)(3) formerly § 84.3(k)(2)) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 84.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. For example, a welfare office that uses the telephone for communicating with its clients must provide alternative modes of communicating with its deaf clients. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriate to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to § 84.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§ 84.38 and 84.47 in connection with physical education and athletics programs.

Section 84.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret § 84.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of § 84.23.

7. *Assurances of compliance.* Section 84.5(a) requires a recipient to submit to the Director an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. To facilitate the submission of assurances by thousands of Medicaid providers, the Department will follow the title VI procedures of accepting, in lieu of assurances, certification on Medicaid vouchers. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority,* 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick,* Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo,* 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols, supra.*

9. *Remedial action.* Where there has been a finding of discrimination, § 84.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In § 84.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters

urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (1)(ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 84.7 (formerly § 84.8) requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of § 84.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 84.8 (formerly § 84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In § 84.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 84.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of § 84.8(a) has been revised to list possible, rather than required, means of notification. Section 84.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, § 84.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Former § 84.9(b)(2), which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recuitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new § 84.9 the Director may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 84.10(a) states that compliance with the regulation is not excused by state or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs that do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (45 CFR Part 86) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requries certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 84.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of § 84.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of § 84.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 84.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 84.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care

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center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a state welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services. The reasonable accommodation standard in § 84.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, hospitals, colleges and universities, nursing homes, day-care centers, and welfare offices. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of HHS funds.

17. *Tests and selection criteria.* Revised § 84.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, § 84.13(a) has been revised to place the burden on the Director, rather than the recipient, to identify alternate tests.

Section 84.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries.* Section 84.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

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Section 84.14(B) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 84.15 (recruitment), 84.16 (compensation), 84.17 (job classification and structure) and 84.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of § 84.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

Proposed § 84.18, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 84.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 84.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under § 84.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with § 84.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that proivde health, welfare, or other social services may also comply with § 84.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised § 84.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilties is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service. The Secretary believes this "last resort" referral provision is appropriate to avoid imposition of additional costs in the health care area, to encourage providers to remain in the Medicaid program, and to avoid imposing significant costs on small, low-budget providers such as day-care centers or foster homes.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. Many physicians and dentists, among others, may be eligible for this tax deduction. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 84.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 84.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 84.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 84.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new § 84.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 84.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapp persons. Section 84.23(a) has been amend so that it applies to each newly construct facility if the construction was commenc after the effective date of the regulati The words "if construction has commenc will be considered to mean "if groundbre ing has takenplace." Thus, a recipient w

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not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 84.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of § 84.23 (a) and (b). The regerence to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility. Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 84.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 84.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 84.32 and 84.33 apply only to public programs and § 84.39 applies only to private programs; §§ 84.35 and 84.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 84.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Former §§ 84.34 ("Free education") and 84.36(a) ("Suitable education") have been consolidated and revised in new § 84.33. Under § 84.34(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 84.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 84.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new § 84.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of § 84.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in § 84.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 84.33. Section 84.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 84.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 84.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under § 84.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by § 84.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 84.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§ 84.34 and 84.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 84.34(c) (formerly § 84.38) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, § 84.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§ 84.35 and 84.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 84.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of § 84.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HHS Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Subparagraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, § 84.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under § 84.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 84.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of § 84.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in former § 84.37(a)(3) was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 84.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 84.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under § 84.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of § 84.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

SUBPART E—POSTSECONDARY EDUCATION

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in § 84.42(a), the regulation delineates, in § 84.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection

iteria, and preadmission inquiry. Several hanges have been made in this provision.

Section 84.42(b) provides that postsecond-y educational institutions may not use ay test or criterion for admission that has disproportionate, adverse effect on handi-apped persons unless it has been validated a predictor of academic success and alter-ate tests or criteria with a less dispropor-ionate, adverse effect are shown by the De-artment to be available. There are two sig-ificant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed con-cern that § 84.42(b)(2)(ii) could be interpret-ed to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. this was not the intent of the provision and, therefore, it has been amended to place the burden on the Director of the Office for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program. would be sufficient check on the reliability of first-year grades.

Section 84.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 84.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessibile so long as a sufficient number of facilities are available to handicapped persons.

Revised § 84.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of § 84.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed § 84.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 84.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation

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of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of § 84.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It shoud be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (§ 84.42(b)) and will be similarly interpreted.

Under § 84.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 84.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§ 86.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with § 84.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* Section 84.46 of the proposed regulation, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of § 84.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such

as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 84.46(a) (formerly § 84.47), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on § 84.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under § 84.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as § 84.43(b) to include the "as a whole" concept and will be interpreted in the same manner as § 84.43(b).

35. *Nonacademic services.* Section 84.47 (formerly § 84.48) establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does § 84.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

SUBPART F—HEALTH, WELFARE, AND SOCIAL SERVICES

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services (proposed § 84.52) has been consolidated with the section regulating providers of welfare and social services (proposed § 84.53). Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, § 84.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state health, welfare, and social service agencies to take an active role in the enforcement of section 504 with regard to local health and social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration. Moreover, the Department will rely largely on state Medicaid agencies, as it has under title VI, for monitoring compliance by individual Medicaid providers.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* As already noted, § 84.53 has been combined with proposed § 84.53 into a single section covering health, welfare, and other social services. Section 84.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 84.4(b)(ii) and 84.43(b). New paragaph (a)(3) requires the provision of effective benefits or services, as defined in § 84.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 84.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. (These provisions were previously included in the welfare recipient section (§ 84.53(a)).) One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 84.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 84.52(a)(2) of the proposed regulation has been omitted as duplicative of revised § 84.22 (b) and (c) in Subpart C. As discussed above, these sections permit health care providers to arrange to meet patients in accessible facilities and to make referrals in carefully limited circumstances.

Section 84.52(a)(3) of the proposed regulation has been redesignated § 84.52(b) and has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tacticle devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Sections 84.52(a)(4), 84.52(a)(5), and 84.52(b) have been omitted from the regulation as unnecessary. They are clearly comprehended by the more general sections banning discrimination.

Section 84.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 84.52(d), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Director may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service. Thus although a small nonprofit neighborhood clinic might not be obligated to have available an interpreter for deaf persons, the Director may require provision of such aids as may be reasonably available to ensure that qualified handicapped persons are not denied appropriate benefits or services because of their handicaps.

37. *Treatment of Drug Addicts and Alcoholics.* Section 84.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. This section is included pursuant to section 407, Pub. L. 92—255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1174), as amended, and section 321, Pub. L. 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4581), as amended, and section 321, Pub. L. 93-282. Section 504 itself also prohibits such discriminatory treatment and, in addition, prohibits similar discriminatory treatment by other types of health providers. Section 84.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 84.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

SUBPART G—PROCEDURES

In § 84.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedureal regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

EDITORIAL NOTE: For the text of these guidelines, see 45 CFR Part 80, Appendix B.

[44 FR 17168, Mar. 21, 1979]

APPENDIX C—GUIDELINES RELATING TO HEALTH CARE FOR HANDICAPPED INFANTS

(a) *Interpretative guidelines relating to the applicability of this part to health care for handicapped infants.* The following are interpretative guidelines of the Department set forth here to assist recipients and the public in understanding the Department's interpretation of section 504 and the regulations contained in this part as applied to matters concerning health care for handicapped infants. These interpretative guidelines are illustrative; they do not independently establish rules of conduct.

(1) With respect to programs and activities receiving Federal financial assistance, health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant who, in spite of such impairments, will medically benefit from the treatment or nourishment.

(2) Futile treatment or treatment that will do no more than temporarily prolong the act of dying of a terminally ill infant is not considered treatment that will medically benefit the infant.

(3) In determining whether certain possible treatments will be medically beneficial to an infant, reasonable medical judgments in selecting among alternative courses of treatment will be respected.

(4) Section 504 and the provisions of this part are not applicable to parents (who are not recipients of Federal financial assistance). However, each recipient health care provider must in all aspects of its health care programs receiving Federal financial assistance provide health care and related services in a manner consistent with the requirements of section 504 and this part. Such aspects includes decisions on whether to report, as required by State law or otherwise, to the appropriate child protective services agency a suspected instance of medical neglect of a child, or to take other action to seek review or parental decisions to withhold consent for medically indicated treatment. Whenever parents make a decision to withhold consent for medically beneficial treatment or nourishment, such recipient providers may not, solely on the basis of the infant's present or anticipated future mental or physical impairments, fail to follow applicable procedures on reporting such incidents to the child protective services agency or to seek judicial review.

(5) The following are examples of applying these interpretative guidelines. These examples are stated in the context of decisions made by recipient health care providers. Were these decisions made by parents, the guideline stated in section (a)(4) would apply. These examples assume no facts or complications other than those stated. Because every case must be examined on its individual facts, these are merely illustrative examples to assist in understanding the framework for applying the nondiscrimination requirements of section 504 and this part.

(i) Withholding of medically beneficial surgery to correct an intestinal obstruction in an infant with Down's Syndrome when the withholding is based upon the anticipated future mental retardation of the infant and there are no medical contraindications to the surgery that would otherwise justify withholding the surgery would constitute a discriminatory act, violative of section 504.

(ii) Withholding of treatment for medically correctable physical anomalies in children born with spina bifida when such denial is based on anticipated mental impairment paralysis or incontinence of the infant, rather than on reasonable medical judgments that treatment would be futile, too unlikely of success given complications in the particular case, or otherwise not of medical benefit to the infant, would constitute a discriminatory act, violative of section 504.

(iii) Withholding of medical treatment for an infant born with anencephaly, who will inevitably die within a short period of time, would not constitute a discriminatory act because the treatment would be futile and do no more than temporarily prolong the act of dying.

(iv) Withholding of certain potential treatments from a severely premature and low birth weight infant on the grounds of reasonable medical judgments concerning the improbability of success or risks of potential harm to the infant would not violate section 504.

(b) *Guidelines for HHS investigations relating to health care for handicapped infants.* The following are guidelines of the Department in conducting investigations relating to health care for handicapped infants. They are set forth here to assist recipients and the public in understanding applicable investigative procedures. These guidelines do not establish rules of conduct,

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U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat. 795; sec. 321, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 84 Stat. 182 (42 U.S.C. 4581), as amended; sec. 407, Drug Abuse Office and Treatment Act of 1972, 86 Stat. 78 (21 U.S.C. 1174), as amended.

Source: 42 FR 22677, May 4, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 84.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Health and Human Services and to each program or activity that receives or benefits from such assistance.

§ 84.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Health and Human Services.

(e) "Director" means the Director of the Office for Civil Rights of the Department.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 84.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally ef-

ective, are not required to produce he identical result or level of achieveent for handicapped and nonhandiapped persons, but must afford ndicapped persons equal opportuniy to obtain the same result, to gain he same benefit, or to reach the same evel of achievement, in the most interated setting appropriate to the peron's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 84.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for an-

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at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 84.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applications, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 84.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 84.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 84.7 and 84.8, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 84.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 84.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may

not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absense, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 84.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs senry, manual, or speaking skills, the t results accurately reflect the ap- licant's or employee's job skills, apti- de, or whatever other factor the test rports to measure, rather than re- cting the applicant's or employee's paired sensory, manual, or speaking ills (except where those skills are he factors that the test purports to measure).

84.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 84.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 84.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 84.15—84.20 [Reserved]

Subpart C—Program Accessibility

§ 84.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 84.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to ac-

(ix) *Parking.* In addition to the requirements in the accessibility standards referenced in § 27.67(d) of this part the following requirements shall be met:

(A) Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between park areas and the terminal;

(B) Where multi-level parking is provided, ample and clearly marked space shall be reserved for ambulatory and semi-ambulatory handicapped persons on the level nearest the ticketing and boarding portion of the terminal facilities, and

(C) In multi-level parking areas, elevators, ramps, or other devices that can accommodate wheelchair users shall be easily available.

(x) *Waiting area/public space.* As the major public area of the airport terminal facility, the environment in the waiting area/public space should give the handicapped person confidence and security in using the facility. The space shall be designed to accommodate the handicapped providing clear direction about how to use all passenger facilities.

(xi) *Airport terminal information.* Airport terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters, or symbols, using lighting and color coding. Airport terminals shall also have facilities providing information orally.

(xii) *Public services.* Public service facilities such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities shall be designed in accordance with accessibility standards referenced in § 27.67(d) of this part.

(b) *Fixed facilities; existing terminals*—(1) *Structural changes.* Where structural changes are necessary to make existing air carrier terminals which are owned and operated by recipients of Federal financial assistance accessible to and usable by handicapped persons, such changes shall be made in accordance with the ANSI standards as soon as practicable, but in no event later than three years after the effective date of this part.

(2) *Ongoing renovation.* In terminals that are undergoing structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, curbs, and parking areas, recipients shall begin immediately to incorporate accessibility features.

(3) *Transition.* Where extensive structural changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it to the Federal Aviation Administration (FAA). Transition plans are reviewed and approved or disapproved by the FAA as expeditiously as possible after they are received.

(4) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided incident to enplaning and deplaning handicapped persons. Within three years from the effective date of this part, recipients operating terminals at air carrier airports that are not equipped with jetways or passenger lounges for boarding and unboarding shall assure that there are lifts, ramps, or other suitable devices, not normally used for movement of freight, are available for enplaning and deplaning wheelchair users.

(5) *Passenger services.* Recipients operating terminals at air carrier airports shall assure that there are provisions for assisting handicapped passengers upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(6) *Guide dogs.* Seeing eye and hearing guide dogs shall be permitted to accompany their owners and shall be accorded all the privileges of the passengers whom they accompany in regard to access to terminals and facilities.

[44 FR 31468, May 31, 1979, as amended by Amdt. 27-3, 51 FR 19017, May 23, 1986]

§ 27.73 Federal Railroad Administration-railroads.

(a) *Fixed facilities*—(1) *New facilities.* (i) Every fixed facility or part of a facility—including every station, terminal, building, or other facility—designed or constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed and constructed in accordance with the accessibility standards referenced in § 27.67(d) of this part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(1)(ii) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section. If this cannot be done, the standards in paragraph (a)(1)(ii) of this section will prevail.

(ii) In addition to the accessibility standards referenced in § 27.67(d) of this part the following standards also apply to rail facilities;

(A) *Station circulation and flow.* The basic station design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of elevators, escalators, and similar devices, shall minimize any extra distance that wheelchair users must travel, compared to nonhandicapped persons, to such ticket counters, baggage handling areas and boarding locations.

(B) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet ANSI standards.

(C) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(D) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(E) *Boarding platforms.* All boarding platforms that are located more than two feet above ground or present any other dangerous condition, shall be marked with a warning device consisting of a string of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms shall be coordinated with the vehicle design where possible in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Where level entry boarding is not provided, lifts, ramps or other suitable devices shall be available to permit boarding by wheelchair users.

(F) *Telephones.* At least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(G) *Teletypewriter.* Recipients shall make available a toll-free reservation and information number with teletypewriter (TTY) capabilities, to permit hearing-impaired persons using TTY equipment to readily obtain information or make reservations for any services provided by a recipient.

(H) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal entrance separated from the main flow of traffic and clearly marked shall be made available for the boarding and exiting of handicapped persons. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of vehicles onto a level surface suitable for wheeling or walking.

(I) *Parking.* Where parking facilities are provided, at least two spaces shall be set aside and identified for the exclusive use of handicapped persons. Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between parking areas and the terminal. Where multilevel parking is provided, ample space which is clearly marked shall be reserved for handicapped persons with limited mobility on the level which is most accessible to the ticketing and boarding portion of the terminal facilities; such level change shall be by elevator, ramp, or by other devices which can accommodate wheelchair users.

(J) *Waiting area/public space.* As the major public area of the rail facility, the environment in the waiting area/public space should give the handicapped persons confidence and security in using the facility. The space shall be designed to accommodate the handicapped by providing clear directions about how to use all passenger facilities.

(K) *Station information.* Station information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters or symbols using lighting and color coding. Stations shall also have facilities for giving information orally. Scheduling information shall be available in a tactile format or through the use of a toll-free telephone number.

(L) *Public services.* Public service facilities, such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities, shall be designed in accordance with accessibility standards referenced in § 27.67(d) of this part.

(2) *Existing facilities—Ongoing renovation.* (i) All recipients shall begin immediately to incorporate accessibility features in stations and terminals that are already undergoing structural changes involving entrances and exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, boarding platforms, curbs, and parking garages.

(ii) *Structural changes.* Existing stations shall be modified to ensure that the facilities, when viewed in their entirety, are readily accessible to and usable by handicapped persons.

(iii) *Scheduling of structural changes.* (A) Within five years from the effective date of this section, recipients shall make accessible no less than one station in each Standard Metropolitan Statistical Area (SMSA) served by the recipient. Where there is more than one station in an SMSA, recipients shall select the station with the greatest annual passenger volume for modification within five years.

(B) Within ten years of the effective date of this section, recipients shall make accessible all other stations in each SMSA.

(C) Within five years of the effective date of this section, recipients shall make accessible stations located outside of an SMSA and not located within 50 highway miles of an accessible station. Where there are two or more stations within 50 highway miles of one another, a recipient shall select the station with the greatest annual passenger volume for modification within five years.

(D) Within ten years of the effective date of this section, recipients shall make accessible all other stations located outside of an SMSA.

(iv) *Waiver procedure.* (A) Recipients may petition the Federal Railroad Administrator for a waiver from the requirement to make a particular station accessible under paragraph (a)(2)(iii) (B) and (D) of this section. Such petitions shall be submitted no later than six years after the effective date of this section.

(B) A request for a waiver shall be supported by a written justification to the Federal Railroad Administrator. The justification shall include a record of a community consultative process in the area served by the station for which a waiver is sought. This request shall include a transcript of a public hearing. Handicapped persons and organizations in the area concerned shall be involved in the consultative process.

(C) Factors that are applicable to the determination on a petition for waiver and the conditions that would apply to the waiver include, but are not limited to: (*1*) The utilization of the station; (*2*) the cost of making modifications to the station; (*3*) and the availability of alternative, accessible means of transportation for handicapped persons that meet the needs of those persons for efficient and timely service at a fare comparable to rail fare from the area served by the station to the nearest accessible station in each direction of travel.

(D) Within 30 days of the date the waiver request is filed with the FRA, representatives of the FRA will meet with representatives of the Interstate

Commerce Commission (ICC) to determine if the justification is adequate. The representatives will coordinate their efforts so that any changes requested by either FRA or ICC are consistent.

(E) If no agreement can be reached by the FRA and ICC on the adequacy of the justification within 60 days from the date the representatives first meet, the waiver request shall be denied.

(v) *Transition plan.* Where extensive changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it, in duplicate, to the Federal Railroad Administration (FRA).

(vi) *Approval of transition plan.* (A) Transition plans are reviewed and approved or disapproved as expeditiously as possible after they are received. Within 30 days from the date the plan is filed with the FRA, representatives of the FRA meet with representatives of the ICC to determine if the plan is adequate. The representatives coordinate their efforts so that any changes requested by either the FRA or the ICC are consistent.

(B) If no agreement can be reached by the FRA and the ICC within 60 days from the date the representatives first meet, the transition plan shall be disapproved.

(vii) *Existing danger.* Every existing facility and piece of equipment shall be free of conditions which pose a danger to the life or safety of handicapped persons. Upon discovery of such conditions, the danger shall be immediately eliminated and all necessary steps taken to protect the handicapped, or a particular category of handicapped persons, from harm during the period that the facility or equipment is being made safe.

(b) *Rail vehicles.* (1) Within five years from the effective date of this part, on each passenger train:

(i) At least one coach car shall be accessible;

(ii) Where sleeping cars are provided, at least one sleeping car shall be accessible; and

(iii) At least one car in which food service is available shall be accessible to handicapped persons, or they shall be provided food service where they are seated.

In cases where the only accessible car is first class, first class seating for handicapped persons shall be provided at coach fare.

(2) In order for a passenger car to be accessible to handicapped persons, the following shall be available:

(i) Space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or more wheelchairs to accommodate individuals who wish to sit in coach seats.

(ii) Accessible restrooms with wide doorways, bars to assist the individual in moving from wheelchair to toilet, low sinks, and other appropriate modifications. These restrooms should be large enough to accommodate wheelchairs.

(3) All new rail passenger vehicles for which solicitations are issued after the effective date of this part by recipients of Federal financial assistance shall be designed so as to be accessible to handicapped persons and shall display the international accessibility symbol at each entrance.

(c) *Rail passenger service.* (1) No recipient shall deny transportation to any person who meets the requirements of this regulation because that person cannot board a train without assistance, or use on-train facilities without assistance, except as provided in this regulation.

(2) Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required under this part to be transported by the recipient. Handicapped persons requiring the assistance of an attendant shall include those who cannot take care of any one of their fundamental personal needs.

(3) All recipients at stations, except flag stops and closed stations, shall, on advance notice of 12 hours or more, provide assistance to handicapped persons, except that those handicapped

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PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

NONDISCRIMINATION ON BASIS OF HANDICAP

Programs and Activities Receiving or Benefiting from Federal Financial Assistance

(735)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This regulation implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to federal financial assistance administered by the Department of Health, Education, and Welfare. Section 504 provides that "no otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The regulation, which applies to all recipients of federal assistance from HEW, is intended to ensure that their federally assisted programs and activities are operated without discrimination on the basis of handicap. The regulation defines and forbids acts of discrimination against qualified handicapped persons in employment and in the operation of programs and activities receiving assistance from the Department. As employers, recipients must make reasonable accommodation to the handicaps of applicants and employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, to ensure that new facilities are constructed so as to be readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

EFFECTIVE DATE: June 3, 1977.

FOR FURTHER INFORMATION, CONTACT:

John Wodatch, Director, Office of New Programs, Office for Civil Rights, Department of Health, Education, and Welfare, Washington, D.C. 20201, 202-245-1821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of the Rehabilitation Act of 1973 (Public Law 93-112) Congress enacted section 504, which provides that "no otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financal assistance." In the same statute, Congress defined the term "handicapped individual" solely with relationship to employment; section 7(6) of the 1973 Act defined the term "handicapped individual" as "any individual who (a) has a physical or mental disability which for such individual constitutes or results in substantial handicap to employment and (b) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services * * *." However, the following year, in section 111(a) of the Rehabilitation Act Amendments of 1974 (Public Law 93-516), Congress amended the definition of "handicapped individual" for purposes of section 504 and the other provisions of titles IV and V of the Rehabilitation Act so that the definition is no longer limited to the dimension of employability. For purposes of section 504 of the Act, a "handicapped individual" is defined as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment." With this amended definition, it became clear that section 504 was intended to forbid discrimination against all handicapped individuals, regardless of their need for or ability to benefit from vocational rehabilitation services.

Section 504 thus represents the first Federal civil rights law protecting the rights of handicapped persons and reflects a national commitment to end discrimination on the basis of handicap. The language of section 504 is almost identical to the comparable nondiscrimination provisions of title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 (applying to racial discrimination and to discrimination in education on the basis of sex). It establishes a mandate to end discrimination and to bring handicapped persons into the mainstream of American life. The Secretary intends vigorously to implement and enforce that mandate.

THE PROBLEM OF DISCRIMINATION

From the outset, the Department has recognized that the problem of ending discrimination on the basis of handicap presents considerations that are extremely complex. The diversity of types of handicaps, as well as the wide variety of settings in which programs financed by the Department are offered, make the task of prescribing general rules of nondiscriminatory treatment a difficult one.

There is overwhelming evidence that in the past many handicapped persons have been excluded from programs entirely or denied equal treatment, simply because they are handicapped. But eliminating such gross exclusions and denials of equal treatment is not sufficient to assure genuine equal opportunity. In drafting a regulation to prohibit exclusion and discrimination, it became clear that different or special treatment of handicapped persons, because of their handicaps, may be necessary in a number of contexts in order to ensure equal opportunity. Thus, for example, it is meaningless to "admit" a handicapped person in a wheelchair to a program if the program is offered only on the third floor of a walk-up building. Nor is one providing equal educational opportunity to a deaf child by admitting him or her to a classroom but providing no means for the child to understand the teacher or receive instruction.

These problems have been compounded by the fact that ending discriminatory practices and providing equal access to programs may involve major burdens on some recipients. Those burdens and costs, to be sure, provide no basis for exemption from section 504 or this regulation: Congress' mandate to end discrimination is clear. But it is also clear that factors of burden and cost had to be taken into account in the regulation in prescribing the actions necessary to end discrimination and to bring handicapped persons into full participation in federally financed programs and activities.

The very general language of section 504 itself and the scant legislative history surrounding its enactment provide little guidance as to how these complex issues should be resolved. The rulemaking process in which the Department has engaged has, however, provided a basis for an initial resolution of those issues. The Secretary believes the resulting regulation offers genuine promise of providing an effective and workable program for ending discrimination against handicapped persons.

RULEMAKING HISTORY

On May 17, 1976, the Department published a Notice of Intent to Issue Proposed Rules, seeking public comment on fifteen identified critical issues. 41 FR 20296. A draft proposed rule was attached to the Notice of Intent, as was a statement of the estimated economic and inflationary impact of the draft proposal, prepared in accordance with the requirements of Executive Order 11821.

Over three hundred written comments were received in response to the Notice of Intent. The written comments were supplemented by a series of ten meetings conducted by the Office for Civil Rights at various locations across the country.

On July 16, 1976, the Department published a Notice of Proposed Rulemaking analyzing comments received on the critical issues identified in the Notice of Intent and setting forth a revised proposed regulation for public comment. 41 FR 29548. The initial 60-day comment period was extended in response to numerous requests until October 14, 1976. Additional comments received since that date have also been considered to the extent feasible. A total of more than 700 comments were received in response to the July 16 Notice of Proposed Rulemaking; they have been analyzed along with approximately 180 comments sent in response to May 17 Notice that were received too late to be analyzed during the first comment period. Finally, an additional twenty-two public meetings were held after publication of the July 16 Notice, again designed to inform interested persons and organizations of the proposed regulation and to solicit their comments and recommendations. Transcripts of all these meetings were made and analyzed along with the written comments. Copies of these transcripts, as well as the written comments, are available for public inspection in Room 5400, 330 Independence Avenue, S.W., Washington, D.C. 20201.

The Secretary believes that both the written comments and the views expressed at the public meetings have illuminated the complex issues involved in implementing section 504 in an effective and workable fashion. The Secretary's response to the comments of interested parties, and the explanation for changes in the proposed regulation, are set forth in the section-by-section analysis of each subpart of the regulation, which appears as Appendix A to the regulation. As that analysis explains, a number of provisions in the proposed regulation have been eliminated as duplicative or unnecessary; others have been shortened or clarified. The goal throughout has been to design a regulation that preserves the essential elements of a strong and effective program for ending discrimination, while avoiding the imposition of unnecessary or counterproductive administrative obligations on recipients.

OVERVIEW OF REGULATION

The regulation is divided into seven subparts. Subpart A (General Provisions) defines the important terms that are used throughout the regulation and states in general terms the discriminatory acts that are prohibited. It also sets forth what the Secretary believes is a simple, workable system of administration: assurances of compliance, self-evaluation by recipients, establishment of grievance procedures, and notification of employes and beneficiaries of the recipient's policy of nondiscrimination on the basis of handicap. The regulation covers all types of physical and mental impairments, including drug addition and alcoholism.

Subpart B, dealing with employment practices, bars discrimination by recipients of HEW assistance in recruitment, hiring, compensation, job assignment and classification, and fringe benefits. It also requires employers to make reasonable accommodation to qualified handicapped applicants or employees unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

Subpart C sets forth the central requirement of the regulation—program accessibility. All new facilities are required to be constructed so as to be readily accessible to and usable by handicapped persons. Every existing facility need not be made physically accessible, but all recipients must ensure that programs conducted in those facilities are made accessible. While flexibility is allowed in choosing methods that in fact make programs in existing facilities accessible, structural changes in such facilities must be undertaken if no other means of assuring program accessibility is available.

Subparts A, B, and C of the regulation, as well as subpart G—which incorporates by reference the Department's procedures under title VI of the Civil Rights Act of 1964—apply to all recipients of financial assistance from the Department. The remaining subparts of the regulation contain more specific requirements applicable to three major classes of recipients.

Subpart D is concerned with preschool, elementary, and secondary education. Its provisions have been closely coordinated with those of the Education for All Handicapped Children Act of 1975 (Pub. L. 94-142). They require, basically, that recipients operating public education programs provide a free appropriate education to each qualified handicapped child in the most normal setting appropriate. The regulation also sets forth evaluation requirements designed to ensure the proper classification and placement of handicapped children, and due process procedures for resolving disputes over placement of students. While the Department does not intend to review individual placement decisions, it does intend to ensure that testing and evaluation procedures required by the regulation are carried out, and that school systems provide an adequate opportunity for parents to challenge and seek review of these critical decisions. And the Department will place a high priority on pursuing cases in which a pattern or practice of discriminatory placements may be involved.

Subpart E deals with postsecondary education. It proscribes discrimination against handicapped persons in recruitment, admission and treatment after admission. Colleges and universities are required to make reasonable adjustments to permit handicapped persons to fulfill academic requirements, and to ensure that they are not effectively excluded from programs because of the absence of auxiliary aids. Groups of colleges may not establish consortia exclusively for handicapped students.

Finally, Subpart F deals with health, welfare and other social service programs. It forbids discrimination in providing such services and requires larger recipients to provide auxiliary aids to handicapped individuals where necessary. Specific provisions require hospitals not to discriminate against addicts or alcoholics who need medical services and to establish emergency room procedures for communication with persons with impaired hearing. Under Subpart C, health and social service providers may satisfy their program accessibility obligations with respect to existing facilities by arranging to meet beneficiaries in accessible locations. In addition, small providers may refer patients or other beneficiaries to accessible providers as a "last resort" alternative to making significant structural changes.

EXECUTIVE ORDER 11914

Under Executive Order 11914 (41 FR 17871, April 28, 1976), the Department is required to issue general standards for other departments and agencies of the Federal government to follow in promulgating regulations implementing Section 504. This responsibility will be fulfilled promptly and independently from this regulation. The Department does, however, expect to incorporate the definition of handicapped person adopted in § 84.3 (j) of this regulation in the standards for determining what persons are covered by the Act. The Secretary also anticipates that the relevant provisions of Subparts A, B and C of the regulation will be the basis for guidelines, pursuant to the Executive Order, as to what are discriminatory practices.

ECONOMIC IMPACT

The Department has previously certified, in issuing the Notice of Intent and the Notice of Proposed Rulemaking, that the economic and inflationary impact of the proposed regulation had been carefully evaluated in accordance with OMB Circular A-107. That analysis, which was printed at 41 FR 20312 (May 17, 1976), has been revised and updated, and is available on request.

SECTION-BY-SECTION ANALYSIS OF REGULATION

Appended to the final regulation is a section-by-section analysis of the regulation, which describes the basis and purpose of each section, discusses significant comments, and explains the basis for any changes made from the proposed regulation published in July 1976.

In consideration of the foregoing, Part 84, to read as set forth below, is hereby ordered to be added to Title 45 of the Code of Federal Regulations.

Dated: April 28, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary, Department of
Health, Education, and Welfare.

Subpart A—General Provisions

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APPENDIX A—ANALYSIS OF FINAL REGULATION

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat 795; sec. 321, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 84 Stat. 182 (42 U.S.C. 4581), as amended; sec. 407, Drug Abuse Office and Treatment Act of 1972, 86 Stat. 78 (21 U.S.C. 1174), as amended.

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 84.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Health, Education, and Welfare and to each program or activity that receives or benefits from such assistance.

§ 84.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "Director" means the Director of the Office for Civil Rights of the Department.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life acitivities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under § 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 84.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 84.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 84.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years followed completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 84.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 84.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 84.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 84.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 84.7 and 84.8, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 84.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 84.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 84.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 84.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 84.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 84.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 84.15—84.20 [Reserved]

Subpart C—Program Accessibility

§ 84.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 84.22 Existing facilities.

(a) *Program accessibility*. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods*. A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 84.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers*. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period*. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan*. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice*. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 84.23 New construction.

(a) *Design and construction*. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration*. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards*. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)),[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

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[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

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§§ 84.24–84.30 [Reserved]

Subpart D—Preschool, Elementary, and Secondary Education

§ 84.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of, such programs or activities.

§ 84.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 84.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 84.34, 84.35, and 84.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 84.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 84.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 84.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 84.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 84.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 84.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 84.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 84.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 84.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 84.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 84.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 84.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 84.35 and 84.36. Each recipient to which this section applies is subject to the provisions of §§ 84.34, 84.37, and 84.38.

§ 84.40 [Reserved]

Subpart E—Postsecondary Education

§ 84.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of, such programs or activities.

§ 84.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure), (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 84.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 84.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 84.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 84.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impair sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 84.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 84.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 84.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of §84.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 84.48—84.50 [Reserved]

Subpart F—Health, Welfare, and Social Services

§ 84.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of, such programs or activities.

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§ 84.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 84.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 84.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 84.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 84.3(k)(2), in its program or activity is provided an appropriate education, as defined in § 84.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

§§ 84.55–84.60 [Reserved]

Subpart G—Procedures

§ 84.61 Procedures.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1975. Incorporated documents are on file at the Office of the Federal Register.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 80.6–80.10 and Part 81 of this Title.

§§ 84.62–84.99 [Reserved]

APPENDIX A—ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

Definitions—1. *"Recipient".* Section 84.3 contains definitions used throughout the regulation. Most of the comments concerning § 84.3(f), which contains the definition of "recipient," commended the inclusion of recipients whose sole source of federal financial assistance is Medicaid. The Secretary believes that such Medicaid providers should be regarded as recipients under the statute and the regulation and should be held individually responsible for administering services in a nondiscriminatory fashion. Accordingly, § 84.3(f) has not been changed. Small Medicaid providers, however, are exempt from some of the regulation's administrative provisions (those that apply to recipients with fifteen or more employees). And such recipients will be permitted to refer patients to accessible facilities in certain limited circumstances under revised § 84.22(b). The Secretary recognizes the difficulties involved in federal enforcement of this regulation with respect to thousands of individual Medicaid providers. As in the case of title VI of the Civil Rights Act of 1964, the Office for Civil Rights will concentrate its compliance efforts on the state Medicaid agencies and will look primarily to them to ensure compliance by individual providers.

One other comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of § 84.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *"Federal financial assistance".* In § 84.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

In its May 1976 Notice of Intent, the Department suggested that the arrangement under which individual practitioners, hospitals, and other facilities receive reimbursement for providing services to beneficiaries under Part B of title XVIII of the Social Security Act (Medicare) constitutes a contract of insurance or guaranty and thus falls within the exemption from the regulation. This explanation oversimplified the Department's view of whether Medicare Part B constitutes Federal financial assistance. The Department's position has consistently been that, whether or not Medicare Part B arrangements involve a contract of insurance or guaranty, no Federal financial assistance flows from the Department to the doctor or other practitioner under the program, since Medicare Part B—like other social security programs—is basically a program of payments to direct beneficiaries.

3. *"Handicapped person".* Section 84.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered, nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. *Drug addicts and alcoholics.* As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to services, there is evidence that drug addicts and alcoholics are often denied treatment at hospitals for conditions unrelated to their addiction or alcoholism. In addition, some addicts and alcoholics have been denied emergency treatment. These practices have been specifically prohibited by section 407 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1174) and section 321 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. 4581), as amended. These statutory provisions are also administered by the Department's Office for Civil Rights and are implemented in § 84.53 of this regulation.

With respect to other services, the implications of coverage of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *"Qualified handicapped person."* Paragraph (k) of § 84.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 84.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of § 84.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 84.3(k)(2) (formerly § 84.3(k)(3)) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several

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commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of § 84.6(a)(3), however, persons beyond the age limits prescribed in § 84.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 84.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which state law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Section 84.3(k)(3) (formerly § 84.3(k)(2)) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 84.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that, in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. For example, a welfare office that uses the telephone for communicating with its clients must provide alternative modes of communicating with its deaf clients. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriate to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to § 84.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§ 84.38 and 84.47 in connection with physical education and athletics programs.

Section 84.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret § 84.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of § 84.23.

7. *Assurances of compliance.* Section 84.5(a) requires a recipient to submit to the Director an assurance that each of its programs and activities receiving or benefiting from federal financial assistance from this Department will be conducted in compliance with this regulation. To facilitate the submission of assurances by thousands of Medicaid providers, the Department will follow the title VI procedures of accepting, in lieu of assurances, certification on Medicaid vouchers. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick*, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols*, *supra*.

9. *Remedial action.* Where there has been a finding of discrimination, § 84.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees, and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In § 84.6(b) the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c)(ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 84.7 (formerly § 84.8) requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that

grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of § 84.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 84.8 (formerly § 84.9) sets forth requirements for dissemination of statements of nondiscrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In § 84.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paperwork burdens on them and unduly stretch the enforcement resources of the Department.

Section 84.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of § 84.8(a) has been revised to list possible, rather than required, means of notification. Section 84.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, § 84.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Former § 84.9(b)(2), which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new § 84.9 the Director may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 84.10(a) states that compliance with the regulation is not excused by state or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind lawyers may find it more difficult to find jobs than do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (45 CFR Part 86) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requires certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive federal procurement contracts in excess of $2500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 84.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of § 84.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of § 84.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirement of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 84.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 84.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a state welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

The reasonable accommodation standard in § 84.12 is similar to the obligation imposed upon federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the federal government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, hospitals, colleges and universities, nursing homes, day-care centers, and welfare offices. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to and understandable by recipients of HEW funds.

17. *Tests and selection criteria.* Revised § 84.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, § 84.13(a) has been revised to place the burden on the Director, rather than the recipient, to identify alternate tests.

Section 84.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries*. Section 84.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 84.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination*. Sections 84.15 (recruitment), 84.16 (compensation), 84.17 (job classification and structure) and 84.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of § 84.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

Proposed § 84.18, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 84.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities*. Section 84.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipient's program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under § 84.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with § 84.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with § 84.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised § 84.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service. The Secretary believes this "last resort" referral provision is appropriate to avoid imposition of additional costs in the health care area, to encourage providers to remain in the Medicaid program, and to avoid imposing significant costs on small, low-budget providers such as day-care centers or foster homes.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. Many physicians and dentists, among others, may be eligible for this tax deduction. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit

staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 84.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The Secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 84.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 84.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 84.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs, and new § 84.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 84.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 84.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words "if construction has commenced" will be considered to mean "if groundbreaking has taken place." Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 84.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of §§ 84.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility. Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 84.23(c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 84.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 84.32 and 84.33 apply only to public programs and § 84.39 applies only to private programs; §§ 84.35 and 84.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D.Pa. 1972), and *Lebanks v. Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Public Law 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) **that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs**, (3) **that educational agencies undertake to identify and locate all unserved handicapped children**, (4) **that evaluation procedures be improved in order to avoid the inapproriate education that results from the misclassification of students**, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process precedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 84.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Former §§ 84.34 ("Free education") and 84.36(a) ("Suitable education") have been consolidated and revised in new § 84.33. Under § 84.34(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 84.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 84.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new § 84.33(b)(2) has been added, which allows this requirements to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of § 84.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in § 84.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 84.33. Section 84.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 84.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 84.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under § 84.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by § 84.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 84.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§ 84.34 and 84.36.

New paragraph (b) specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 84.34(c) (formerly § 84.38) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, section 84.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§ 84.35 and 84.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 84.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of § 84.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Subparagraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, § 84.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under § 84.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 84.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the

provisions of § 84.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in former § 84.37(a)(3) was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 84.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 84.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under § 84.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of § 84.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

SUBPART E—POSTSECONDARY EDUCATION

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in § 84.42(a), the regulation delineates, in § 84.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 84.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that § 84.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Director of the Office for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first-year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 84.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 84.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessible so long as a sufficient number of facilities are available to handicapped persons.

Revised § 84.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of § 84.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed § 84.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 84.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of § 84.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It should be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (§ 84.42(b)) and will be similarly interpreted.

Under § 84.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 84.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons, pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§ 86.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with § 84.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* Section 84.46 of the proposed regulation, providing that recipients may not discriminate on the basis of handicap in the provision of health and related services, has been deleted as duplicative of the general provisions of section 84.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 84.46(a) (formerly § 84.47), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on § 84.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under § 84.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as § 84.43(b) to include the "as a whole" concept and will be interpreted in the same manner as § 84.43(b).

35. *Nonacademic services.* Section 84.47 (formerly § 84.48) establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does § 84.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

SUBPART F—HEALTH WELFARE AND SOCIAL SERVICES

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services (proposed § 84.52) has been consolidated with the section regulating providers of welfare and social services (proposed § 84.53). Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, § 84.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state health, welfare, and social service agencies to take an active role in the enforcement of section 504 with regard to local health and social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration. Moreover, the Department will rely largely on state Medicaid agencies, as it has under title VI, for monitoring compliance by individual Medicaid providers.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* As already noted, § 84.53 has been combined with proposed § 84.53 into a single section covering health, welfare, and other social services. Section 84.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 84.4(b)(ii) and 84.43(b). New paragraph (a)(3) requires the provision of effective benefits or services, as defined in § 84.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 84.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. (These provisions were previously included in the welfare recipient section (§ 84.53(a)).) One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 84.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 84.52(a)(2) of the proposed regulation has been omitted as duplicative of revised § 84.22 (b) and (c) in Subpart C. As discussed above, these sections permit health care providers to arrange to meet patients in accessible facilities and to make referrals in carefully limited circumstances.

Section 84.52(a)(3) of the proposed regulation has been redesignated § 84.52(b) and has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For Example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tactile devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Sections 84.52(a)(4), 84.52(a)(5), and 84.52(b) have been omitted from the regulation as unnecessary. They are clearly comprehended by the more general sections banning discrimination.

Section 84.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 84.52(d), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Director may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or services. Thus, although a small nonprofit neighborhood clinic might not be obligated to have available an interpreter for deaf persons, the Director may require provision of such aids as may be reasonably available to ensure that qualified handicapped persons are not denied appropriate benefits or services because of their handicaps.

37. *Treatment of Drug Addicts and Alcoholics.* Section 84.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. This section is included pursuant to section 407, Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1174), as amended, and section 321, Public Law 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4581), as amended, and section 321, Public Law 93-282. Section 504 itself also prohibits such discriminatory treatment and, in addition, prohibits similar discriminatory treatment by other types of health providers. Section 84.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 84.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

SUBPART G—PROCEDURES

In § 84.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedural regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX B—ENFORCEMENT PROCEDURES

Sections 80.6–80.10 and Part 81 of Title 45 of the Code of Federal Regulations are reprinted here without change for the convenience of the reader.

STATUTES CITED IN THE HOUSE OR SENATE REPORTS

42 U.S.C. 2000e-4, 2000e, 2000e-10, 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, 3601 et seq. (Fair Housing Act of 1968), 2000-a(e) (Title II of the Civil Rights Act of 1964), 2000-a-3(a); 21 U.S.C. 812; 41 U.S.C. 701 et seq. (Drug Free Workplace Bill); 45 U.S.C. 502(8), 431(e); 29 U.S.C. 794a, 794, 792, 706(8); 47 U.S.C. 201 et seq. (Title II of the Communications Act of 1934), 152(b), 221(b); 16 U.S.C. 470 et seq. (National Historic Preservation Act), 1131 et seq. (Wilderness Act; General Accounting Office Personnel Act of 1980

under this subchapter if he is satisfied that such action is consistent with the policies and goals of the executive branch.

(Pub. L. 96-247, § 10, May 23, 1980, 94 Stat. 354.)

§ 1997i. Disclaimer respecting standards of care

Provisions of this subchapter shall not authorize promulgation of regulations defining standards of care.

(Pub. L. 96-247, § 11, May 23, 1980, 94 Stat. 354.)

§ 1997j. Disclaimer respecting private litigation

The provisions of this subchapter shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be conducting an investigation or contemplating litigation pursuant to this subchapter shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.

(Pub. L. 96-247, § 12, May 23, 1980, 94 Stat. 354.)

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2000h of this title.

[redacted] Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; criteria; "commerce" defined

The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers of a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Support by State action

Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments

The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.

(Pub. L. 88-352, title II, § 201, July 2, 1964, 78 Stat. 243.)

Short Title of 1972 Amendment

Pub. L. 92-261, § 1, Mar. 24, 1972, 86 Stat. 103, provided: "That this Act [enacting sections 2000e-16 and 2000e-17 of this title, amending sections 5108 and 5314 to 5316 of Title 5, Government Organization and Employees, and sections 2000e to 2000e-6, 2000e-8, 2000e-9, 2000e-13, and 2000e-14 of this title, and enacting provisions set out as a note under section 2000e-5 of this title] may be cited as the 'Equal Employment Opportunity Act of 1972'."

Short Title

Section 1 of Pub. L. 88-352 provided: "That this Act [enacting subchapters II to IX of this chapter, amending sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, section 1447(d) of Title 28, Judiciary and Judicial Procedure, and sections 1971 and 1975a to 1975d of this title, and enacting provisions set out as a note under section 2000e of this title] may be cited as the 'Civil Rights Act of 1964'."

Act Referred to in Other Sections

The Civil Rights Act of 1964 [subchapters II to IX of this chapter] is referred to in sections 1437o, 1490m, 5304, 5306, 5307, 6727, 11111 of this title; title 20 sections 1221, 1221-3; title 43 section 1626.

Section Referred to in Other Sections

This section is referred to in section 2000a-2 of this title.

§ 2000a-1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

(Pub. L. 88-352, title II, § 202, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000a-2 of this title.

§ 2000a-2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a-1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title.

(Pub. L. 88-352, title II, § 203, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000a-3 of this title.

§ 2000a-3. Civil actions for injunctive relief

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a-2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs

In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: *Provided*, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

(Pub. L. 88-352, title II, § 204, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000a-4 of this title.

§ 2000a-4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a-3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

(Pub. L. 88-352, title II, § 205, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000g-3 of this title.

§ 2000a-5. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Pub. L. 88-352, title II, § 206, July 2, 1964, 78 Stat. 245.)

§ 2000a-6. Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(Pub. L. 88-352, title II, § 207, July 2, 1964, 78 Stat. 245.)

TRANSFER OF FUNCTIONS

"Secretary of Education" was substituted for "Department of Health, Education, and Welfare" in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96-88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of the Department and Secretary of Health, Education, and Welfare to the Secretary of Education.

§ 2000d-7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99-506, title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2000h, 11111 of this title; title 8 section 1324b; title 21 section 848; title 43 section 1863.

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(Pub. L. 88-352, title VII, § 701, July 2, 1964, 78 Stat. 253; Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92-261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95-598, title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

Amendments

1986—Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Subsec. (k). Pub. L. 95-555 added subsec. (k).

1972—Subsec. (a). Pub. L. 92-261, § 2(1), included within "person" governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92-261, § 2(2), substituted "fifteen or more employees" for "twenty-five or more employees", extended coverage to include State and local governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92-261, § 2(3), struck out from term "employment agency" exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92-261, § 2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92-261, § 2(5), inserted provisions enumerating persons excepted from term "employee".

Subsec. (h). Pub. L. 92-261, § 2(6), inserted ", and further includes any governmental industry, business, or activity" after "Labor-Management Reporting and Disclosure Act of 1959".

Subsec. (j). Pub. L. 92-261, § 2(7), added subsec. (j).

1966—Subsec. (b). Pub. L. 89-554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1978 Amendment; Exceptions to Application

Section 2 of Pub. L. 95-555 provided that:

"(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

"(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act."

Effective Date

Subsecs. (a), (b) of section 716 of Pub. L. 88-352 provided that:

"(a) This title [enacting this section and sections 2000e-1, 2000e-4, 2000e-7 to 2000e-15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

"(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e-2, 2000e-3, 2000e-5, and 2000e-6 of this title] shall become effective immediately [July 2, 1964]."

Readjustment of Benefits

Section 3 of Pub. L. 95-555 provided that: "Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act."

Executive Order No. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out as a note below.

Ex. Ord. No. 11246. Equal Opportunity in Federal Employment

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I—Nondiscrimination in Government Employment

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

Part II—Nondiscrimination in Employment by Government Contractors and Subcontractors

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

SUBPART B—CONTRACTORS' AGREEMENTS

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive Orders, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct

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from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

Sec. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d-4 of this title and this subchapter] or other provision of Federal law.

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

SUBPART E—CERTIFICATES OF MERIT

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III—Nondiscrimination Provisions in Federally Assisted Construction Contracts

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

Sec. 302. (a) "Construction contract," as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303(a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

Sec. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d-4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d-1 of this title] and the regulations of the administering department or agency issued thereunder.

Part IV—Miscellaneous

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

Sec. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

Sec. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

Sec. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Sec. 405. This Order shall become effective thirty days after the date of this Order.

EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

EXECUTIVE ORDER NO. 12050

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e-4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1-1. IMPLEMENTATION OF REORGANIZATION PLAN

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e-4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1-2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1-202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1-203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1-3. SPECIFIC RESPONSIBILITIES

1-301. To implement its responsibilities under Section 1-2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1-302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1-303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1-304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1-305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1-306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1-307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1-4. ANNUAL REPORT

1-401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1-5. GENERAL PROVISIONS

1-501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1-502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

EX. ORD. NO. 12086. CONSOLIDATION OF CONTRACT COMPLIANCE FUNCTIONS FOR EQUAL EMPLOYMENT OPPORTUNITY

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1-1. TRANSFER OF FUNCTIONS

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health and Human Services.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1-2. CONFORMING AMENDMENTS TO EXECUTIVE ORDER No. 11246

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.".

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.".

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.".

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.".

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.".

1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.".

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.".

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.".

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.".

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.".

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order.".

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.".

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.".

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.".

1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.".

1-3. General Provisions

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.

Executive Order No. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out as a note below.

Ex. Ord. No. 12336. Task Force on Legal Equity for Women

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force:

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.
(14) Agency for International Development.
(15) Veterans Administration.
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION.
(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

SEC. 2. *Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

SEC. 3. *Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

SEC. 4. *General Provisions.* (a) Section 1-101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1626.

§ 2000e-1. Subchapter not applicable to employment of aliens outside State and individuals for performance of activities of religious corporations, associations, educational institutions, or societies

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(Pub. L. 88-352, title VII, § 702, July 2, 1964, 78 Stat. 255; Pub. L. 92-261, § 3, Mar. 24, 1972, 86 Stat. 103.)

AMENDMENTS

1972—Pub. L. 92-261 struck out exemption for employment of individuals engaged in educational activities of nonreligious educational institutions.

§ 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such diffeerences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(Pub. L. 88-352, title VII, § 703, July 2, 1964, 78 Stat. 255; Pub. L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109.)

REFERENCES IN TEXT

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapter I (§ 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92-261, § 8(a), inserted "or applicants for employment" after "his employees".

Subsec. (c)(2). Pub. L. 92-261, § 8(b), inserted "or applicants for membership" after "membership".

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, § 12, 64 Stat. 977, and ceased to operate on June 30, 1973.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e, 2000e–5 of this title, title 8 section 1324b, title 23 section 140.

§ 2000e–3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88-352, title VII, § 704, July 2, 1964, 78 Stat. 257; Pub. L. 92-261, § 8(c), Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-261, § 8(c)(1), inserted provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub. L. 92-261, § 8(c)(2), inserted provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission to, or employment in, any program established to provide apprenticeship or other training.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2000e–5 of this title.

§ 2000e–4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities

The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of title 5, notwithstanding any exemption contained in such section.

(Pub. L. 88-352, title VII, § 705, July 2, 1964, 78 Stat. 258; Pub. L. 92-261, § 8(d)-(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93-608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95-251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

The effective date of this Act, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 92-261, which was approved Mar. 24, 1972.

CODIFICATION

In subsec. (a), reference to section 5372 of title 5 was substituted for section 5362 on authority of Pub. L. 95-454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

In subsec. (i), "section 7324 of title 5" was substituted for "section 9 of the Act of August 2, 1939, as amended (the Hatch Act)" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 9 of the Act of August 2, 1939, as amended, was classified to section 118i of Title 5.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

1975—Subsec. (e). Pub. L. 93-608 struck out reporting requirement of names, salaries, and duties of all individuals in employ of Commission.

1972—Subsec. (a). Pub. L. 92-261, § 8(d), struck out provisions setting forth length of terms of original members of Commission and provisions authorizing Vice Chairman to act as Chairman in certain circumstances, inserted provisions relating to continuation in office of all members of Commission, and substituted provisions requiring appointment of officers, etc., in accordance with provisions of title 5, fixing compensation of such officers, etc., in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, and requiring assignment, removal, and compensation of hearing examiners in accordance with specified sections, for provisions requiring appointment of officers, etc., in accordance with civil service laws, and fixing compensation of such officers, etc., in accordance with the Classification Act of 1949, as amended.

Subsecs. (b) to (e). Pub. L. 92-261, § 8(e), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees.

and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6). Pub. L. 92-261, § 8(f), substituted provisions which authorized Commission to intervene in a civil action brought under section 2000e-5 of this title where respondent is other than a government, governmental agency, or political subdivision for provisions which authorized Commission to refer matters to Attorney General with recommendations to intervene or institute civil actions.

Subsecs. (h) to (j). Pub. L. 92-261, § 8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

Reorganization Plan No. 1 of 1978 Superseded by Civil Service Reform Act of 1978

Section 905 of Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 [set out below] inconsistent with any provision of that Act [see Tables for classification] was superseded thereby.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Transfer of Equal Pay Enforcement Functions

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

Sec. 2. Transfer of Age Discrimination Enforcement Functions

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

Sec. 3. Transfer of Equal Opportunity in Federal Employment Enforcement Functions

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

Sec. 4. Transfer of Federal Employment of Handicapped Individuals Enforcement Functions

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

Sec. 5. Transfer of Public Sector 707 Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

Sec. 6. Transfer of Functions and Abolition of the Equal Employment Opportunity Coordinating Council

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

Sec. 7. Savings Provision

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

Sec. 8. Incidental Transfers

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide.

except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[Pursuant to Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, the transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission relating to enforcement of equal employment opportunity programs as provided by sections 1 to 4 of this Reorg. Plan is effective Jan. 1, 1979.]

[Pursuant to Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, sections 1 and 2 of this Reorg. Plan are effective July 1, 1979, except for transfer of functions already effective Jan. 1, 1979, under Ex. Ord. No. 12106 above.]

[Pursuant to Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, section 5 of this Reorg. Plan is effective July 1, 1978.]

[Pursuant to Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, section 6 of this Reorg. Plan is effective July 1, 1978.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

- —inconsistent standards of compliance;
- —duplicative, inconsistent paperwork requirements and investigative efforts;
- —conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
- —confusion on the part of workers about how and where to seek redress;
- —lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e-4 of this title]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e-14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a "pattern or practice" of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own "pattern or practice" cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statues should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilites, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.

THE WHITE HOUSE, February 23, 1978.

EX. ORD. NO. 12106. TRANSFER OF CERTAIN EQUAL EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1-101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1-102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting "national origin, handicap, or age" for "or national origin" in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

"SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

"SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

"SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order."

1-103. Executive Order No. 11022, as amended [set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

"(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission."

1-104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting "and the Chairman of the United States Civil Service Commission" in Section 4 and substituting therefor "Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission".

1-105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

"In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

"(1) Secretary of Defense.

"(2) Secretary of Labor.

"(3) Secretary of Health, Education, and Welfare [now Health and Human Services], Co-Chairman.

"(4) Director of the Office of Personnel Management.

"(5) Administrator of Veterans Affairs.

"(6) Administrator of General Services.

"(7) Chairman of the Federal Communications Commission.

"(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

"(9) Such other members as the President may designate."

1-106. This Order shall be effective on January 1, 1979.

JIMMY CARTER.

EX. ORD. NO. 12144. TRANSFER OF CERTAIN EQUAL PAY AND AGE DISCRIMINATION IN EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1-101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out as a note above]).

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this

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Order, including the transfer of funds, records, property, and personnel.

1-104. This Order shall be effective July 1, 1979.

JIMMY CARTER.

CROSS REFERENCES

Per diem and mileage of witnesses, see section 1821 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 2000e–5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

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[1] So in original. Probably should be subsection "(b)".

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(Pub. L. 88-352, title VII, § 706, July 2, 1964, 78 Stat. 259; Pub. L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f)(2), means Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Rules 65 and 53 of the Federal Rules of Civil Procedure, referred to in subsec. (f)(2), (5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Chapter 6 (§ 101 et seq.) of title 29, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, as amended, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-261, § 4(a), added subsec. (a). Former subsec. (a) redesignated (b) and amended generally.

Subsec. (b). Pub. L. 92-261, § 4(a), redesignated former subsec. (a) as (b), modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and inserted provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 92-261, § 4(a), redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92-261, § 4(a), redesignated former subsec. (d) as (e), extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and inserted requirement that notice of the charge be served on the respondent within ten days after filing. Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 92-261, § 4(a), redesignated former subsec. (e) as par. (1), substituted provisions setting forth the procedure for civil actions where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful employment practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and inserted provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), substituted "aggrieved person" for "plaintiff", and added pars. (4) and (5).

Subsec. (g). Pub. L. 92-261, § 4(a), inserted provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsecs. (i), (j). Pub. L. 92-261, § 4(b)(1), (2), substituted "this section" for "subsection (e) of this section".

EFFECTIVE DATE OF 1972 AMENDMENT

Section 14 of Pub. L. 92-261 provided that: "The amendments made by this Act to section 706 of the Civil Rights Act of 1964 [this section] shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act [Mar. 24, 1972] and all charges filed thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-4, 2000e-6, 2000e-8, 2000e-16 of this title; title 5 section 7701; title 29 section 794a; title 31 section 755.

§ 2000e–6. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

(Pub. L. 88-352, title VII, § 707, July 2, 1964, 78 Stat. 261; Pub. L. 92-261, § 5, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsecs. (c) to (e). Pub. L. 92-261 added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

Any function of the Equal Employment Opportunity
Commission concerning initiation of litigation with re-
spect to State or local government, or political subdivi-
sions under this section, and all necessary functions
related thereto, including investigation, findings,
notice and an opportunity to resolve the matter with-
out contested litigation, were transferred to the Attor-
ney General, to be exercised by him in accordance
with procedures consistent with this subchapter, and
with the Attorney General authorized to delegate any
function under this section to any officer or employee
of the Department of Justice, by Reorg. Plan No. 1 of
1978, § 5, 43 F.R. 19807, 92 Stat. 3781, set out as a note
under section 2000e-4 of this title.

EX. ORD. NO. 12068. TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President
of the United States by the Constitution and laws of
the United States, including Section 9 of Reorganiza-
tion Plan Number 1 of 1978 (43 FR 19807) [set out as a
note under section 2000e-4 of this title], in order to
clarify the Attorney General's authority to initiate
public sector litigation under Section 707 of Title VII
of the Civil Rights Act of 1964, as amended (42 U.S.C.
2000e-6), it is ordered as follows:

1-1. SECTION 707 FUNCTIONS OF THE ATTORNEY GENERAL

1-101. Section 5 of Reorganization Plan Number 1 of
1978 (43 FR 19807) [set out as a note under section
2000e-4 of this title] shall become effective on July 1,
1978.

1-102. The functions transferred to the Attorney
General by Section 5 of Reorganization Plan Number
1 of 1978 [set out as a note under section 2000e-4 of
this title] shall, consistent with Section 707 of Title
VII of the Civil Rights Act of 1964, as amended [this
section], be performed in accordance with Department
of Justice procedures heretofore followed under Sec-
tion 707.

JIMMY CARTER

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2000e-4 of this title.

§ 2000e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

(Pub. L. 88-352, title VII, § 708, July 2, 1964, 78 Stat. 262.)

§ 2000e-8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a
charge filed under section 2000e-5 of this title,
the Commission or its designated representa-
tive shall at all reasonable times have access to,
for the purposes of examination, and the right
to copy any evidence of any person being inves-
tigated or proceeded against that relates to un-
lawful employment practices covered by this
subchapter and is relevant to the charge under
investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State
and local agencies charged with the administra-
tion of State fair employment practices laws
and, with the consent of such agencies, may,
for the purpose of carrying out its functions
and duties under this subchapter and within
the limitation of funds appropriated specifical-
ly for such purpose, engage in and contribute to
the cost of research and other projects of
mutual interest undertaken by such agencies,
and utilize the services of such agencies and
their employees, and, notwithstanding any
other provision of law, pay by advance or reim-
bursement such agencies and their employees
for services rendered to assist the Commission
in carrying out this subchapter. In furtherance
of such cooperative efforts, the Commission
may enter into written agreements with such
State or local agencies and such agreements
may include provisions under which the Com-
mission shall refrain from processing a charge
in any cases or class of cases specified in such
agreements or under which the Commission
shall relieve any person or class of persons in
such State or locality from requirements im-
posed under this section. The Commission shall
rescind any such agreement whenever it deter-
mines that the agreement no longer serves the
interest of effective enforcement of this sub-
chapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and
labor organization subject to this subchapter
shall (1) make and keep such records relevant
to the determinations of whether unlawful em-
ployment practices have been or are being com-
mitted, (2) preserve such records for such peri-
ods, and (3) make such reports therefrom as
the Commission shall prescribe by regulation or
order, after public hearing, as reasonable, nec-
essary, or appropriate for the enforcement of
this subchapter or the regulations or orders
thereunder. The Commission shall, by regula-
tion, require each employer, labor organization,
and joint labor-management committee subject

to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

(Pub. L. 88-352, title VII, § 709, July 2, 1964, 78 Stat. 262; Pub. L. 92-261, § 6, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92-261 inserted provisions authorizing the Commission to engage in and contribute to the cost of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission, and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e-5 of this title in specified cases.

Subsec. (c). Pub. L. 92-261 struck out "Except as provided in subsection (d) of this section," before "every employer, employment agency, and labor organization subject to this subchapter shall (1)", required the party seeking an exemption to bring an action in the district court only after the Commission denied the application for the exemption, and inserted provision which authorized the Commission, or the Attorney General in a case involving a government, etc., to apply for a court order compelling compliance with the recordkeeping and reporting obligations set out in this subsection.

Subsec. (d). Pub. L. 92-261 substituted provisions requiring consultation and coordination between Federal and State agencies in prescribing recordkeeping and reporting requirements pursuant to subsec. (c) of this section, and authorizing the Commission to furnish information obtained pursuant to subsec. (c) of this section to interested State and local agencies, for provisions exempting from recordkeeping and reporting requirements employers, etc., required to keep records and make reports under State or local fair employment practice laws, except for the maintenance of notations by such employers, etc., which reflect the differences in coverage or enforcement between State or local laws and the provisions of this subchapter, and dispensing with recordkeeping and reporting requirements where the employer reports under some Executive Order prescribing fair employment practices for Government contractors or subcontractors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2000e-9 of this title.

§ 2000e-9. Conduct of hearings and investigations pursuant to section 161 of title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 shall apply.

(Pub. L. 88-352, title VII, § 710, July 2, 1964, 78 Stat. 264; Pub. L. 92-261, § 7, Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Pub. L. 92-261 substituted provisions making applicable section 161 of title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

§ 2000e-10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(Pub. L. 88-352, title VII, § 711, July 2, 1964, 78 Stat. 265.)

§ 2000e-11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

(Pub. L. 88-352, title VII, § 712, July 2, 1964, 78 Stat. 265.)

§ 2000e-12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

(Pub. L. 88-352, title VII, § 713, July 2, 1964, 78 Stat. 265.)

CODIFICATION

In subsec. (a), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 2000e-13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

(Pub. L. 88-352, title VII, § 714, July 2, 1964, 78 Stat. 265; Pub. L. 92-261, § 8(g), Mar. 24, 1972, 86 Stat. 110.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1972—Pub. L. 92-261 inserted provisions which made section 1114 of title 18 applicable to officers, etc., of the Commission and set forth punishment for violation of such section 1114.

§ 2000e-14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

(Pub. L. 88-352, title VII, § 715, July 2, 1964, 78 Stat. 265; Pub. L. 92-261, § 10, Mar. 24, 1972, 86 Stat. 111; Pub. L. 94-273, § 3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, § 6, eff. July 1, 1978, 43 F.R. 19807, 92 Stat. 3781.)

CODIFICATION

The first sentence of this section, which read "There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) Penalty

(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 503(i) of this title under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 503(i) of this title about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 503(i), or any regulation implementing this section or such section 503(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 503(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(d) Effective date

(1) In general

Except as provided in paragraphs (2) and (3), the provisions of this section shall take effect on September 30, 1989.

(2) Optional early implementation

At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after November 7, 1988.

(3) Requirements for State agencies

In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between November 7, 1988, and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 calendar days after the first day on which such legislature is in session on or after September 30, 1989.

(Pub. L. 100-628, title IX, § 904, Nov. 7, 1988, 102 Stat. 3259.)

REFERENCES IN TEXT

The amendments made by subsection (c)(1), referred to in subsec. (d)(2), (3), mean the amendments made by section 904(c)(1) of Pub. L. 100-628, which enacted section 503(i) and amended section 504(a)(2) of this title. See Codification note below.

CODIFICATION

Section is comprised of section 904 of Pub. L. 100-628. Subsec. (c)(1) of section 904 of Pub. L. 100-628 amended sections 503 and 504 of this title.

Section was enacted as part of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

[redacted]

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SUBCHAPTER II—PREVENTION OF INTIMIDATION

3631. Violations; bodily injury; death; penalties.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5304 of this title.

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437*l*, 3608a, 4621, 672*l* of this title; title 23 section 117; title 49 App. sections 1604, 2208.

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

(Pub. L. 90-284, title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.)

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-430, § 13(a), Sept. 13, 1988, 102 Stat. 1636, provided that: "This Act and the amendments made by this Act [see Short Title of 1988 Amendment note below] shall take effect on the 180th day beginning after the date of the enactment of this Act [Sept. 13, 1988]."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-430, § 1, Sept. 13, 1988, 102 Stat. 1619, provided that: "This Act [enacting sections 3610 to 3614a of this title, amending sections 3602, 3604 to 3608, 3615 to 3619, and 3631 of this title and sections 2341 and 2342 of Title 28, Judiciary and Judicial Procedure, repealing former sections 3610 to 3613 of this title, and enacting provisions set out as notes under sections 3601 and 3602 of this title] may be cited as the 'Fair Housing Amendments Act of 1988'."

SHORT TITLE

Section 1 of Pub. L. 90-284, as added by Pub. L. 100-430, § 2, Sept. 13, 1988, 102 Stat. 1619, provided: "That this Act [enacting this chapter, sections 231 to 233, 245, 2101, and 2102 of Title 18, Crimes and Criminal Procedure, and sections 1301 to 1303, 1311, 1312, 1321 to 1326, 1331, and 1341 of Title 25, Indians, amending sections 1973j, 3533, 3535 of this title, and sections 241, 242, and 1153 of Title 18, enacting provisions set out as notes under sections 231 and 245 of Title 18, and repealing provisions set out as notes under section 1360 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Civil Rights Act of 1968'."

Section 800 of Pub. L. 90-284, title VIII, as added by Pub. L. 100-430, § 4, Sept. 13, 1988, 102 Stat. 1619, provided that: "This title [enacting this subchapter and amending sections 3533 and 3535 of this title] may be cited as the 'Fair Housing Act'."

SEPARABILITY OF PROVISIONS

Pub. L. 100-430, § 14, Sept. 13, 1988, 102 Stat. 1636, provided that: "If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

DISCLAIMER OF PREEMPTIVE EFFECT ON OTHER ACTS

Pub. L. 100-430, § 12, Sept. 13, 1988, 102 Stat. 1636, provided that: "Nothing in the Fair Housing Act [this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above] limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended."

INITIAL RULEMAKING

Pub. L. 100-430, § 13(b), Sept. 13, 1988, 102 Stat. 1636, provided that: "In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act [Sept. 13, 1988], issue rules to implement title VIII [this subchapter] as amended by this Act [see Short Title of 1988 Amendment note above]. The Secretary shall give public notice and opportunity for comment with respect to such rules."

Federally Protected Activities; Penalties

Penalties for violations respecting federally protected activities not applicable to and not affecting activities under this subchapter, see section 101(b) of Pub. L. 90-284, set out as a note under section 245 of Title 18, Crimes and Criminal Procedure.

§ 3602. Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21).

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(*l*) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means—

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

(*o*) "Prevailing party" has the same meaning as such term has in section 1988 of this title.

(Pub. L. 90-284, title VIII, § 802, Apr. 11, 1968, 82 Stat. 81; Pub. L. 95-598, title III, § 331, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 100-430, § 5, Sept. 13, 1988, 102 Stat. 1619.)

Amendments

1988—Subsec. (f). Pub. L. 100-430, § 5(a), substituted "3606, or 3617" for "or 3606".

Subsecs. (h) to (*o*). Pub. L. 100-430, § 5(b), added subsecs. (h) to (*o*).

1978—Subsec. (d). Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Transvestism

Section 6(b)(3) of Pub. L. 100-430 provided that: "For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 3601 of this title] as well as chapter 16 of title 29 of the United States Code [29 U.S.C. 701 et seq.], neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite."

§ 3603. Effective dates of certain prohibitions

(a) Application to certain described dwellings

Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) Business of selling or renting dwellings defined

For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Pub. L. 90-284, title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3604, 3617 of this title.

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,[1]

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[2]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Pub. L. 90-284, title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93-383, title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub. L.

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[1] So in original. The comma probably should be a semicolon.

[2] So in original. The period probably should be a semicolon.

100-430, §§ 6(a)-(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

AMENDMENTS

1988—Pub. L. 100-430, § 6(e), inserted "and other prohibited practices" in section catchline.

Subsecs. (a), (b). Pub. L. 100-430, § 6(b)(2), inserted "familial status," after "sex,".

Subsecs. (c) to (e). Pub. L. 100-430, § 6(b)(1), inserted "handicap, familial status," after "sex,".

Subsec. (f). Pub. L. 100-430, § 6(a), added subsec. (f).

Subsec. (f)(3)(A). Pub. L. 100-430, § 15, which directed the substitution of "except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted." for the period at the end of subpar. (A) was executed by making the substitution for a semicolon as the probable intent of Congress because subpar. (A) ended with a semicolon, not a period.

1974—Pub. L. 93-383 inserted ", sex" after "religion" wherever appearing in cls. (a) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3602, 3603, 3617 of this title.

§ 3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(Pub. L. 90-284, title VIII, § 805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93-383, title VIII, § 808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100-430, § 6(c), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100-430 amended section generally. Prior to amendment, section read as follows: "After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title."

1974—Pub. L. 93-383 inserted ", sex" after "religion".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3602, 3617 of this title; title 15 section 1691e.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(Pub. L. 90-284, title VIII, § 806, Apr. 11, 1968, 82 Stat. 84; Pub. L. 93-383, title VIII, § 808(b)(3), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100-430, § 6(b)(1), Sept. 13, 1988, 102 Stat. 1622.)

AMENDMENTS

1988—Pub. L. 100-430 inserted "handicap, familial status," after "sex,".

1974—Pub. L. 93-383 inserted ", sex" after "religion".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3602, 3617 of this title.

§ 3607. Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections[3] (2)(B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections[3] (2)(B) or (C); or

(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections[3] (2)(B) or (C).

(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21.

(Pub. L. 90-284, title VIII, § 807, Apr. 11, 1968, 82 Stat. 84; Pub. L. 100-430, § 6(d), Sept. 13, 1988, 102 Stat. 1622.)

CODIFICATION

September 13, 1988, referred to in subsec. (b)(3)(A), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 100-430, which enacted subsec. (b) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1988—Pub. L. 100-430 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3603, 3604 of this title.

§ 3608. Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe

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[3] So in original. Probably should be "paragraph".

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such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress—

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this subchapter, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

(i) investigations are not completed as required by section 3610(a)(1)(B) of this title;

(ii) determinations are not made within the time specified in section 3610(g) of this title; and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 3612(g) of this title;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) of this section which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law applicable to Department programs

The provisions of law and Executive orders to which subsection (e)(6) of this section applies are—

(1) title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.];

(2) this subchapter;

(3) section 794 of title 29;

(4) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];

(5) the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.];

(6) section 1982 of this title;

(7) section 637(a) of title 15;

(8) section 1735f-5 of title 12;

(9) section 5309 of this title;

(10) section 1701u of title 12;

(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(Pub. L. 90-294, title VIII, § 808, Apr. 11, 1968, 82 Stat. 84; Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 95-454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 100-430, § 7, Sept. 13, 1988, 102 Stat. 1623.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968, which enacted this chapter, sections 231 to 233, 245, 2101, and 2102 of Title 18, Crimes and Criminal Procedure, and sections 1301 to 1303, 1311, 1312, 1321 to 1326, 1331, and 1341 of Title 25, Indians, amended sections 1973j, 3533, 3535 of this title, and sections 241, 242, and 1153 of Title 18, enacted provisions set out as notes under sections 231 and 245 of Title 18, and repealed provisions set out as notes under section 1360 of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

The Civil Rights Act of 1964, referred to in subsec. (f)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (f)(4), is title III of Pub. L. 94-135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Equal Credit Opportunity Act, referred to in subsec. (f)(5), is title VII of Pub. L. 90-321, as added by Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, as amended, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Executive orders referred to in subsec. (f)(11) are set out as notes under sections of the Code as follows:

Ex. Ord. 11063. 42 U.S.C. 1982.
Ex. Ord. 11246. 42 U.S.C. 2000e.
Ex. Ord. 11625. 15 U.S.C. 631.
Ex. Ord. 12250. 42 U.S.C. 2000d-1.
Ex. Ord. 12259. 42 U.S.C. 3608, and
Ex. Ord. 12432. 15 U.S.C. 631.

CODIFICATION

The second sentence of subsec. (b) of this section has been omitted as it amended sections 3533(a) and 3535(c) of this title.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-430, § 7(a), inserted "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

Subsec. (e)(2). Pub. L. 100-430, § 7(b)(1)(A), inserted provisions relating to annual report to Congress.

Subsec. (e)(6). Pub. L. 100-430, § 7(b)(1)(B)-(D), added par. (6).

Subsec. (f). Pub. L. 100-430, § 7(b)(2), added subsec. (f).

1978—Subsec. (c). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

Pub. L. 95-454 substituted "5372" for "5362".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4)(A) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5, Government Organization and Employees.

EX. ORD. NO. 12259. LEADERSHIP AND COORDINATION OF FAIR HOUSING IN FEDERAL PROGRAMS

Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide under the leadership of the Secretary of Housing and Urban Development, in accordance with Section 808 of the Act of April 11, 1968, as amended (sometimes referred to as the Federal Fair Housing Act or as Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3608, for the administration of all Federal programs and activities relating to housing and urban development in a manner affirmatively to further fair housing throughout the United States, it is hereby ordered as follows:

1-1. ADMINISTRATION OF PROGRAMS AND ACTIVITIES RELATING TO HOUSING AND URBAN DEVELOPMENT

1-101. All programs and activities of Executive agencies, including agencies which exercise regulatory responsibility, relating to housing and urban development shall be administered in a manner affirmatively to further fair housing.

1-2. RESPONSIBILITIES OF EXECUTIVE AGENCIES

1-201. The authority and responsibility for administering the Federal Fair Housing Act is vested in the Secretary of Housing and Urban Development.

1-202. The head of each Executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by Section 808 of the Act of April 11, 1968, as amended (Title VIII of the Civil Rights Act of 1968) [this section], and for cooperating with the Secretary of Housing and Urban Development, who shall be responsible for exercising leadership in furthering the purposes of the Act. As used in this Order, the terms "programs and activities" include programs and activities operated, administered, or undertaken by the Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.

1-203. In carrying out the responsibilities in this Order the head of each Executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development comply with this Order.

1-3. SPECIFIC RESPONSIBILITIES

1-301. In implementing the responsibilities under Section 1-2 the Secretary of Housing and Urban Development shall:

(a) Develop guidelines for determining the categories of programs and activities relating to housing and urban development which are operated, administered, undertaken, controlled or regulated by Executive agencies.

(b) Promulgate regulations regarding programs and activities of Executive agencies related to housing and urban development which shall:

(1) describe an institutionalized method for analyzing the impact of housing and urban development programs and activities in promoting the goal of fair housing.

(2) describe the responsibilities and obligations in assuring that programs and activities are administered and executed in a manner affirmatively to further fair housing; and

(3) describe the responsibilities and obligations of applicants, participants and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing.

(c) Coordinate Executive agency implementation of the requirements of this Order and issue standards and procedures regarding the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.

1-302. Upon publication of guidelines by the Secretary of Housing and Urban Development under Section 1-301(a), each Executive agency shall provide the Secretary with a description of all programs and activities relating to housing and urban development within its jurisdiction.

1-303. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under Section 1-301(a) the head of each Executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development regulations, and with the standards and procedures issued pursuant to Section 1-301(c). As soon as practicable, each Executive agency shall issue its final regulations. All Executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

1-304. The Secretary of Housing and Urban Development shall review regulations, standards and actions under Sections 1-302 and 1-303 to ensure conformity with the purposes of the Federal Fair Housing Act [this chapter] and consistency among the operations of the various Executive agencies and shall make any comments with respect thereto on a timely basis.

1-305. In addition to the regulations and guidelines described in Section 1-301, the Secretary of Housing and Urban Development shall implement the Secretary's authority and responsibility for administering the Federal Fair Housing Act [this chapter] by promulgating regulations describing the nature and scope of coverage and the conduct prohibited.

1-4. COOPERATIVE EFFORTS

1-401. The Secretary of Housing and Urban Development shall:

(a) Cooperate with, and render assistance to, the heads of all Executive agencies in the formulation of policies and procedures to implement this Order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of rights accorded persons by the Federal Fair Housing Act [this chapter], and

(b) initiate cooperative efforts, including the development of memoranda of understanding between Executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development.

1-402. In connection with carrying out functions under this Order the Secretary of Housing and Urban Development is authorized to request from any Executive agency such information and assistance deemed necessary. Each agency shall, to the extent permitted by law, furnish such information and assistance to the Secretary.

1-5. ADMINISTRATIVE ENFORCEMENT

1-501. Each Executive agency shall be responsible for enforcement of this Order and, to the extent permitted by law, shall cooperate and provide records, data and documentation in connection with any other agency's investigation of compliance with provisions of this Order.

1-502. If any Executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this Order or any applicable rule, regulation or procedure issued or adopted pursuant to this Order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation and persuasion. An Executive agency need not pursue informal resolution of matters where similar efforts made by another Executive agency have been unsuccessful. In event of failure of such informal means, the Executive agency, in conformity with rules, regulations, procedures or policies issued or adopted by it pursuant to Section 1-3 hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this Order until it is satisfied that the affected person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this Order.

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it which is affected by this Order or revoke such approval if previously given;

(d) any other action as may be appropriate under its governing laws.

1-503. Findings of any violation under Section 1-502 shall be promptly reported to the Secretary of Housing and Urban Development. The Secretary of Housing and Urban Development shall forward this information to all other Executive agencies.

1-504. Any Executive agency shall also consider invoking appropriate sanctions against any person or entity where any other Executive department or agency has initiated action against that person or entity pursuant to Section 1-502 of this Order.

1-505. Each Executive agency shall seek the advice of the Secretary of Housing and Urban Development in this regard prior to a decision to initiate actions to invoke sanctions. Each such decision and the reasons therefor, shall be documented and shall be provided to the Secretary of Housing and Urban Development in a timely manner.

1-6. GENERAL PROVISIONS

1-601. Nothing in this Order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250 [set out as a note under section 2000d-1 of this title].

1-602. All provisions of regulations, guidelines and procedures proposed to be issued by Executive agencies pursuant to this Order which implement nondiscrimination requirements of laws covered by Executive Order No. 12250 [set out as a note under section 2000d-1 of this title] shall be submitted to the Attorney General for review in accordance with that Executive Order. In addition, the Secretary will consult with the Attorney General regarding all regulations, guidelines and procedures proposed to be issued under Sections 1-301, 1-302 and 1-303 of this Order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

1-603. Nothing in this Order shall affect the authority and responsibility of the Attorney General to commence civil actions in cases involving a pattern or practice of discrimination or raising an issue of general public importance under the Federal Fair Housing Act [this chapter].

1-604. (a) Part IV and Sections 501 and 503 of Executive Order No. 11063 [set out as a note under section 1982 of this title] are revoked. The activities and functions of the President's Commission on Equal Opportunity in Housing described in that Executive Order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 [set out as a note under section 1982 of this title] are revised to apply to discrimination because of "race, color, religion (creed), sex or national origin." All departments and agencies shall revise regulations, guidelines and procedures issued pursuant to Part II of Executive Order No. 11063 [set out as a note under section 1982 of this title] to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 [set out as a note under section 1982 of this title] is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

1-605. Nothing in this Order shall affect any requirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), the Home Mortgage Disclosure Act (12 U.S.C. 2901 et seq.) [12 U.S.C. 2801 et seq.] or the Community Reinvestment Act (12 U.S.C. 2810 et seq.) [12 U.S.C. 2901 et seq.].

1-7. REPORT

1-701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress the Department of Housing and Urban Development and other Executive agencies have made in carrying out requirements and responsibilities under this Executive Order.

JIMMY CARTER.

§ 3608a. Collection of certain data

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88-352 [42 U.S.C. 2000d et seq.] and title VIII of Public Law 90-284 [42 U.S.C. 3601 et seq.]), the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary involved determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) of this section during the preceding year.

(Pub. L. 100-242, title V, § 562, Feb. 5, 1988, 101 Stat. 1944.)

REFERENCES IN TEXT

Public Law 88-352, referred to in subsec. (a), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964. title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Title VIII of Public Law 90-284, referred to in subsec. (a), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, popularly known as the Fair Housing Act of 1968, which is classified principally to subchapter I (§ 3601 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of title VIII of Pub. L. 90-284, popularly known as the Fair Housing Act of 1968, which comprises this subchapter.

§ 3609. Education and conciliation; conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

(Pub. L. 90-284, title VIII, § 809, Apr. 11, 1968, 82 Stat. 85.)

§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge—

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served—

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

(Pub. L. 90-284, title VIII, § 810, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (e)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3610, Pub. L. 90-284, title VIII, § 810, Apr. 11, 1968, 82 Stat. 85, which related to enforcement, was repealed by Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.

EFFECTIVE DATE

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3602, 3604, 3608, 3613, 3614 of this title.

§ 3611. Subpoenas; giving of evidence

(a) In general

The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness fees

Witnesses summoned by a subpoena under this subchapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal penalties

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this subchapter—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(Pub. L. 90-284, title VIII, § 811, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1628.)

PRIOR PROVISIONS

A prior section 3611, Pub. L. 90-284, title VIII, § 811, Apr. 11, 1968, 82 Stat. 87, which related to evidence, was repealed by Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.

EFFECTIVE DATE

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3612 of this title.

§ 3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the

charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may—

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(*l*) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

(1) which is filed by the Secretary under subsection (j) of this section after the end of such day; or

(2) under subsection (m) of this section.

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Secretary has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (*l*) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

(Pub. L. 90-284, title VIII, § 812, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1629.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3612, Pub. L. 90-284, title VIII, § 812, Apr. 11, 1968, 82 Stat. 88, which related to enforcement by private persons, was repealed by Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.

EFFECTIVE DATE

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3608 of this title; title 28 sections 2341, 2342.

§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a

complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90-284, title VIII, § 813, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1633.)

PRIOR PROVISIONS

A prior section 3613, Pub. L. 90-284, title VIII, § 813, Apr. 11, 1968, 82 Stat. 88, which related to enforcement by Attorney General by bringing civil action requesting preventive relief, was repealed by Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.

EFFECTIVE DATE

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3612, 3614 of this title.

§ 3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

(Pub. L. 90-284, title VIII, § 814, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1634.)

Prior Provisions

A prior section 3614, Pub. L. 90-284, title VIII, § 814, Apr. 11, 1968, 82 Stat. 88, which related to expedition of court proceedings under section 3612 or 3613 of this title, was repealed by Pub. L. 98-620, title IV, § 402(40), Nov. 8, 1984, 98 Stat. 3360.

Effective Date

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3610, 3613 of this title.

§ 3614a. Rules to implement subchapter

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

(Pub. L. 90-284, title VIII, § 815, as added Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1635.)

Prior Provisions

A prior section 815 of Pub. L. 90-284 was renumbered section 816 and is classified to section 3615 of this title.

Effective Date

Section effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as an Effective Date of 1988 Amendment note under section 3601 of this title.

Initial Rulemaking

Secretary to issue rules to implement this subchapter as amended by Pub. L. 100-430 not later than the 180th day after Sept. 13, 1988, see section 13(b) of Pub. L. 100-430, set out as a note under section 3601 of this title.

§ 3615. Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

(Pub. L. 90-284, title VIII, § 816, formerly § 815, Apr. 11, 1968, 82 Stat. 89; renumbered § 816, Pub. L. 100-430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

Prior Provisions

A prior section 816 of Pub. L. 90-284 was renumbered section 817 and is classified to section 3616 of this title.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

(Pub. L. 90-284, title VIII, § 817, formerly § 816, Apr. 11, 1968, 82 Stat. 89; renumbered § 817, Pub. L. 100-430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

Prior Provisions

A prior section 817 of Pub. L. 90-284 was renumbered section 818 and is classified to section 3617 of this title.

Fair Housing Initiatives Program

Pub. L. 100-242, title V, § 561, Feb. 5, 1988, 101 Stat. 1942, provided that:

"(a) In General.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

"(1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 [42 U.S.C. 3601 et seq.] (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and

"(2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

"(b) PROGRAM ADMINISTRATION.—

"(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(2) The Secretary shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a quarterly report that summarizes the activities funded under this section and describes the geographical distribution of grants, contracts, or cooperative agreements funded under this section.

"(c) REGULATIONS.—

"(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

"(2) The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section, the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

"(3) Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain—

"(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

"(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

"(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

"(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

"(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

"(F) any additional information required by the Secretary.

"(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(5) The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section, including any program evaluations, $5,000,000 for fiscal year 1988, and $5,000,000 for fiscal year 1989, of which not more than $3,000,000 in each year shall be for the private enforcement initiative demonstration. Any amount appropriated under this section shall remain available until expended.

"(e) SUNSET.—The demonstration period authorized in this section shall end on September 30, 1989."

§ 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

(Pub. L. 90-284, title VIII, § 818, formerly § 817, Apr. 11, 1968, 82 Stat. 89; renumbered § 818 and amended Pub. L. 100-430, §§ 8(1), 10, Sept. 13, 1988, 102 Stat. 1625, 1635.)

PRIOR PROVISIONS

A prior section 818 of Pub. L. 90-284 was renumbered section 819 and is classified to section 3618 of this title.

AMENDMENTS

1988—Pub. L. 100-430 struck out at end "This section may be enforced by appropriate civil action."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3602 of this title.

§ 3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

(Pub. L. 90-284, title VIII, § 819, formerly § 818, Apr. 11, 1968, 82 Stat. 89; renumbered § 819, Pub. L. 100-430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

PRIOR PROVISIONS

A prior section 819 of Pub. L. 90-284 was renumbered section 820 and is classified to section 3619 of this title.

§ 3619. Separability of provisions

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 90-284, title VIII, § 820, formerly § 819, Apr. 11, 1968, 82 Stat. 89; renumbered § 820, Pub. L. 100-430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

SUBCHAPTER II—PREVENTION OF INTIMIDATION

§ 3631. Violations; bodily injury; death; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injuries, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(Pub. L. 90-284, title IX, § 901, Apr. 11, 1968, 82 Stat. 89; Pub. L. 93-383, title VIII, § 808(b)(4), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100-430, § 9, Sept. 13, 1988, 102 Stat. 1635.)

AMENDMENTS

1988—Cls. (a), (b)(1), (c). Pub. L. 100-430 inserted ", handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title)," after "sex".

1974—Pub. L. 93-383 inserted ", sex" after "religion" wherever appearing in cls. (a), (b)(1), and (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of this title.

FEDERALLY PROTECTED ACTIVITIES; PENALTIES

Penalties for violations respecting federally protected activities not applicable to and not affecting activities under fair housing provisions of subchapter I of this chapter, see section 101(b) of Pub. L. 90-284, set out as a note under section 245 of Title 18, Crimes and Criminal Procedure.

CHAPTER 46—JUSTICE SYSTEM IMPROVEMENT

Sec.
3701. Repealed.

SUBCHAPTER I—OFFICE OF JUSTICE PROGRAMS

3711. Establishment of Office of Justice Programs.
3712. Duties and functions of Assistant Attorney General.
    (a) Specific, general and delegated powers.
    (b) Annual report to President and Congress.
3713. Omitted.

SUBCHAPTER II—NATIONAL INSTITUTE OF JUSTICE

3721. Statement of purpose.
3722. National Institute of Justice.
    (a) Establishment; general authority of Attorney General over Institute.
    (b) Director of Institute; appointment by President; authority; restrictions.
    (c) Duties and functions.
    (d) Criminal and civil justice research.
3723. Authority for 100 per centum grants.
3724. Repealed.

SUBCHAPTER III—BUREAU OF JUSTICE STATISTICS

3731. Statement of purpose.
3732. Bureau of Justice Statistics.
    (a) Establishment.
    (b) Appointment of Director; experience; authority; restrictions.
    (c) Duties and functions of Bureau.
    (d) Justice statistical collection, analysis, and dissemination.
    (e) Furnishing of information, data, or reports by Federal agencies.
    (f) Consultation with representatives of State and local government and judiciary.

minent hazard to the public safety, only those factors set forth in paragraphs (4), (5), and (6) of subsection (c) of this section, including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(4) The Attorney General shall transmit notice of an order proposed to be issued under paragraph (1) to the Secretary of Health and Human Services. In issuing an order under paragraph (1), the Attorney General shall take into consideration any comments submitted by the Secretary in response to a notice transmitted pursuant to this paragraph.

(5) An order issued under paragraph (1) with respect to a substance shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under subsection (a) of this section with respect to such substance.

(6) An order issued under paragraph (1) is not subject to judicial review.

(Pub. L. 91-513, title II, § 201, Oct. 27, 1970, 84 Stat. 1245; Pub. L. 95-633, title I, § 102(a), Nov. 10, 1978, 92 Stat. 3769; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 98-473, title II, §§ 508, 509(a), Oct. 12, 1984, 98 Stat. 2071, 2072.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(8), (d)(3), (4)(A), (B), and (g)(2), (3), was in the original "this title", meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the "Controlled Substances Act". For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(3) and (g)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables.

Schedules I, IV, and V, referred to in subsecs. (d)(4)(A), (B), and (h)(1), are set out in section 812(c) of this title.

The Psychotropic Substances Act of 1978, referred to in subsec. (d)(5), is Pub. L. 95-633, Nov. 10, 1978, 92 Stat. 3768, which enacted sections 801a, 830, and 852 of this title, amended sections 352, 802, 811, 812, 823, 827, 841 to 843, 872, 881, 952, 953, and 965 of this title and section 242a of Title 42, The Public Health and Welfare, repealed section 830 of this title effective Jan. 1, 1981, and enacted provisions set out as notes under sections 801, 801a, 812, and 830 of this title. For complete classification of the Act to the Code, see Short Title of 1978 Amendment note set out under section 801 of this title and Tables.

AMENDMENTS

1984—Subsec. (g)(3). Pub. L. 98-473, § 509(a), added par. (3).

Subsec. (h). Pub. L. 98-473, § 508, added subsec. (h).

1978—Subsec. (d). Pub. L. 95-633 designated existing provisions as par. (1) and added pars. (2) to (5).

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (d)(2), (3), (4)(A), (B), (5) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective on the date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 812, 872, 1115 of this title.

~~§ 812.~~ Schedules of controlled substances

(a) Establishment

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

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(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Initial schedules of controlled substances

Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Schedule I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Propheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salt of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine.
(2) 5-methoxy-3,4-methylenedioxy amphetamine.
(3) 3,4,5-trimethoxy amphetamine.
(4) Bufotenine.
(5) Diethyltryptamine.
(6) Dimethyltryptamine.
(7) 4-methyl-2,5-diamethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Marihuana.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.
(14) N-methyl-3-piperidyl benzilate.
(15) Psilocybin.
(16) Psilocyn.
(17) Tetrahydrocannabinols.

Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) coca [3] leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphan.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(14) Pethidine.
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
(2) Chorhexadol.
(3) Glutehimide.
(4) Lysergic acid.
(5) Lysergic acid amide.
(6) Methyprylon.
(7) Phencyclidine.
(8) Sulfondiethylmethane.
(9) Sulfonethylmethane.
(10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams

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[3] So in original. Probably should be "Coca".

with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(1) Barbital.
(2) Chloral betaine.
(3) Chloral hydrate.
(4) Ethchlorvynol.
(5) Ethinamate.
(6) Methohexital.
(7) Meprobamate.
(8) Methylphenobarbital.
(9) Paraldehyde.
(10) Petrichloral.
(11) Phenobarbital.

SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(d) Repealed. Pub. L. 98–473, title II, § 509(b), Oct. 12, 1984, 98 Stat. 2072

(Pub. L. 91-513, title II, § 202, Oct. 27, 1970, 84 Stat. 1247; Pub. L. 95-633, title I, § 103, Nov. 10, 1978, 92 Stat. 3772; Pub. L. 98-473, title II, §§ 507(c), 509(b), Oct. 12, 1984, 98 Stat. 2071, 2072; Pub. L. 99-570, title I, § 1867, Oct. 27, 1986, 100 Stat. 3207-55; Pub. L. 99-646, § 84, Nov. 10, 1986, 100 Stat. 3619.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-646 amended schedule II(a)(4) generally. Prior to amendment, schedule II(a)(4) read as follows: "Coca leaves (except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed); cocaine, its salts, optical and geometric isomers, and salts of isomers; and ecgonine, its derivatives, their salts, isomers, and salts of isomers."

Pub. L. 99-570 amended schedule II(a)(4) generally. Prior to amendment, schedule II(a)(4) read as follows: "Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine."

1984—Subsec. (c). Pub. L. 98-473, § 507(c), in schedule II(a)(4) added applicability to cocaine and ecgonine and their salts, isomers, etc.

Subsec. (d). Pub. L. 98-473, § 509(b), struck out subsec. (d) which related to authority of Attorney General to except stimulants or depressants containing active medicinal ingredients.

1978—Subsec. (d)(3). Pub. L. 95-633 added cl. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective on the date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of this title.

PLACEMENT OF PIPRADROL AND SPA IN SCHEDULE IV TO CARRY OUT OBLIGATION UNDER CONVENTION ON PSYCHOTROPIC SUBSTANCES

Section 102(c) of Pub. L. 95-633 provided that: "For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1-dimethylamino-1,2-diphenylethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substances Act [this section and section 811 of this title], place such drugs in schedule IV of such Act [see subsec. (c) of this section]."

Provision of section 102(c) of Pub. L. 95-633, set out above, effective on the date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 811, 1115 of this title; title 10 section 912a; title 19 section 2484; title 29 section 2006.

§ 813. Treatment of controlled substance analogues

A controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of any Federal law as a controlled substance in schedule I.

(Pub. L. 91-513, title II, § 203, as added Pub. L. 99-570, title I, § 1202, Oct. 27, 1986, 100 Stat. 3207-13, and amended Pub. L. 100-690, title VI, § 6470(c), Nov. 18, 1988, 102 Stat. 4378.)

REFERENCES IN TEXT

Schedule I, referred to in text, is set out in section 812(c) of this title.

AMENDMENTS

1988—Pub. L. 100-690 substituted "any Federal law" for "this subchapter and subchapter II of this chapter".

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 811 of this title.

§ 821. Rules and regulations

The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

(Pub. L. 91-513, title II, § 301, Oct. 27, 1970, 84 Stat. 1253.)

[redacted]

Sec.
701. Drug-free workplace requirements for Federal contractors.
  (a) Drug-free workplace requirement.
  (b) Suspension, termination, or debarment of contractor.
702. Drug-free workplace requirements for Federal grant recipients.
  (a) Drug-free workplace requirement.
  (b) Suspension, termination, or debarment of grantee.
703. Employee sanctions and remedies.
704. Waiver.
  (a) In general.
  (b) Exclusive authority.
705. Regulations.
706. Definitions.
707. Construction of chapter.

[redacted] Drug-free workplace requirements for Federal contractors

(a) Drug-free workplace requirement

(1) Requirement for persons other than individuals

No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 403(8) of this title, for the purposes of being awarded a contract for the procurement of any property or services of a value of $25,000 or more from any Federal agency unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment on such contract, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) Requirement for individuals

No Federal agency shall enter into a contract with an individual unless such contract includes a certification by the individual that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) Suspension, termination, or debarment of contractor

(1) Grounds for suspension, termination, or debarment

Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) the contractor or individual has made a false certification under subsection (a) of this section;

(B) the contractor violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1) of this section; or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100–690, title V, § 5152, Nov. 18, 1988, 102 Stat. 4304.)

EFFECTIVE DATE

Section 5160 of Pub. L. 100–690 provided that: "Sections 5152 and 5153 [enacting sections 701 and 702 of this title] shall be effective 120 days after the date of the enactment of this subtitle [Nov. 18, 1988]."

SHORT TITLE

Section 5151 of Pub. L. 100–690 provided that: "This subtitle [subtitle D (§§ 5151–5160) of title V of Pub. L. 100–690, enacting this chapter] may be cited as the 'Drug-Free Workplace Act of 1988'."

CONSISTENCY OF REGULATIONS WITH INTERNATIONAL OBLIGATIONS OF UNITED STATES; EXTRATERRITORIAL APPLICATION

Section 4804 of Pub. L. 100–690 provided that:

"(a) In prescribing regulations under subtitle D of title V of this Act [this chapter], the head of the appropriate agency—

"(1) shall only establish requirements that are consistent with the international obligations of the United States, and

"(2) shall take into consideration any applicable laws and regulations of foreign countries.

"(b) Section 5152 [enacting this section] shall not be construed as conferring extraterritorial application of the provisions of such section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 703, 704, 706 of this title.

§ 702. Drug-free workplace requirements for Federal grant recipients

(a) Drug-free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) Individuals

No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

(b) Suspension, termination, or debarment of grantee

(1) Grounds for suspension, termination, or debarment

Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to suspension or debarment, in accordance with the requirements of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a) of this section;

(B) the grantee violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1) of this section; or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100-690, title V, § 5153, Nov. 18, 1988, 102 Stat. 4306.)

REFERENCES IN TEXT

Executive Order 12549, referred to in subsec. (b)(2), is set out as a note under section 6101 of Title 31, Money and Finance.

EFFECTIVE DATE

Section effective 120 days after Nov. 18, 1988, see section 5160 of Pub. L. 100-690, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 703, 706 of this title.

§ 703. Employee sanctions and remedies

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 701(a)(1)(D)(ii) or 702(a)(1)(D)(ii) of this title—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub. L. 100-690, title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 701, 702 of this title.

§ 704. Waiver

(a) In general

A termination, suspension of payments, or suspension or debarment under this chapter may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 701(b)(1) of this title, after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) Exclusive authority

The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

(Pub. L. 100-690, title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.)

§ 705. Regulations

Not later than 90 days after November 18, 1988, the governmentwide regulations governing actions under this chapter shall be issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(Pub. L. 100-690, title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.)

REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in text, is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

§ 706. Definitions

For purposes of this chapter—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in section 701 or 702 of this title of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term "employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 701 or 702 of this title;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 812 of title 21;

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person responsible for the performance under the grant;

(7) the term "contractor" means the department, division, or other unit of a person responsible for the performance under the contract; and

(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of title 5.

(Pub. L. 100-690, title V, § 5157, Nov. 18, 1988, 102 Stat. 4308.)

REFERENCES IN TEXT

This Act, referred to in par. (1), is Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4181, known as the Anti-Drug Abuse Act of 1988. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 21, Food and Drugs, and Tables.

§ 707. Construction of chapter

Nothing in this chapter shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this chapter.

(Pub. L. 100-690, title V, § 5158, Nov. 18, 1988, 102 Stat. 4308.)

[illegible]

(2) "Amtrak Commuter" means the Amtrak Commuter Services Corporation created under subchapter V of this chapter.

(3) "Auto-ferry service" means intercity rail passenger service characterized by transportation of automobiles or recreational vehicles and their occupants, and, when space is available, of used unoccupied vehicles.

(4) "Avoidable loss" means the avoidable costs of providing passenger service, less revenues attributable thereto, as determined by the Interstate Commerce Commission under the provisions of section 553 of title 5.

(5) "Basic system" means (A) prior to October 1, 1979, the system of intercity rail passenger service designated by the Secretary under subchapter II of this chapter and section 563(a) of this title, and (B) on and after October 1, 1979, the system of intercity rail passenger service designated by the Secretary under section 4 of the Amtrak Improvement Act of 1978 (Public Law 95-421) and approved by the Congress, and service required to be operated under sections 564(d) and 564(e)[1] of this title and under section 4(g) of the Amtrak Improvement Act of 1978, including changes to such system or service made by the Corporation using the Route and Service Criteria.

(6) "Center" means the Performance Evaluation Center established under section 545 of this title.

(7) "Commission" means the Interstate Commerce Commission.

[illegible] "Commuter authority" means any State, local, or regional authority, corporation, or other entity established for purposes of providing commuter service, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service.

(9) "Commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, usually characterized by reduced fare, multiple-ride, and commutation tickets and by morning and evening peak period operations.

(10) "Corporation" means the National Railroad Passenger Corporation created under subchapter III of this chapter.

(11) "Intercity rail passenger service" means all rail passenger service other than commuter service.

(12) "Model Program" means a program carried out by the Corporation under section 646 or section 648 of this title and the employee assistance program established by the Corporation.

(13) "Panel" means a Technical Assistance Panel established under section 563(b) of this title.

(14) "Rail carrier" and "railroad" mean a person providing railroad transportation for compensation.

(15) "Regional transportation agency" means an authority, corporation, or other entity established for the purpose of providing passenger service within a region.

(16) "Route and Service Criteria" means the Criteria and Procedures for Making Route and Service Decisions established pursuant to section 564(c) of this title.

(17) "Secretary" means the Secretary of Transportation or his delegate unless the context indicates otherwise.

(Pub. L. 91-518, title I, § 103, formerly § 102, Oct. 30, 1970, 84 Stat. 1328; amended Pub. L. 93-146, § 2, Nov. 3, 1973, 87 Stat. 548; renumbered and amended Pub. L. 96-73, title I, §§ 103(a), 104, Sept. 29, 1979, 93 Stat. 537, 538; Pub. L. 97-35, title XI, § 1173, Aug. 13, 1981, 95 Stat. 689; Pub. L. 99-272, title IV, § 4012, Apr. 7, 1986, 100 Stat. 109.)

References in Text

Section 4 of the Amtrak Improvement Act of 1978 (Public Law 95-421), referred to in par. (5), is Pub. L. 95-421, § 4, Oct. 5, 1978, 92 Stat. 923, as amended, which is set out as a note under section 521 of this title.

Section 564(e) of this title, referred to in par. (5), was repealed by Pub. L. 97-35, title XI, § 1183(d), Aug. 13, 1981, 95 Stat. 697.

Amendments

1986—Par. (3). Pub. L. 99-272 inserted ", and, when space is available, of used unoccupied vehicles".

1981—Pars. (2) to (6). Pub. L. 97-35, § 1173(1), (2), added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Par. (7). Pub. L. 97-35, § 1173(1), redesignated former par. (6) as (7). Former par. (7) redesignated (10).

Pars. (8), (9). Pub. L. 97-35, § 1173(1), (3), added pars. (8) and (9) and redesignated former pars. (8) and (9) as (11) and (12), respectively.

Par. (10). Pub. L. 97-35, § 1173(1), redesignated former par. (7) as (10).

Par. (11). Pub. L. 97-35, § 1173(1), (4), redesignated former par. (8) as (11) and substituted "commuter service" for "commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations".

Pars. (12) to (17). Pub. L. 97-35, § 1173(1), redesignated former pars. (9) to (14) as (12) to (17), respectively.

1979—Par. (1). Pub. L. 96-73, § 104, added par. (1). Former par. (1) redesignated (11).

Par. (2). Pub. L. 96-73, § 104, redesignated former par. (9) as (2) and included transportation of recreational vehicles. Former par. (2) redesignated (14).

Par. (3). Pub. L. 96-73, § 104, redesignated former par. (6) as (3) and substituted "under" for "pursuant to". Former par. (3) redesignated (6).

Par. (4). Pub. L. 96-73, § 104, designated existing provision as cl. (A), provided that cl. (A) be applicable to service prior to Oct. 1, 1979, and added cl. (B).

Par. (5). Pub. L. 96-73, § 104, added par. (5). Former par. (5) redesignated (8).

Par. (6). Pub. L. 96-73, § 104, redesignated former par. (3) as (6). Former par. (6) redesignated (3).

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[1] See References in Text note below.

regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

(b) Hearings

Hearings shall be conducted in accordance with the provisions of section 553 of title 5 for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety rules, regulation, order, or standard under this subchapter, and an opportunity shall be provided for oral presentations.

(c) Waiver of compliance; authority of Secretary

The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this subchapter, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) Consideration by Secretary of relevant existing safety data and standards; development and publication of rules of practice applicable to proceedings

In prescribing rules, regulations, orders, and standards under this section, the Secretary shall consider relevant existing safety data and standards and shall, within 180 days after July 8, 1976, take such action as may be necessary to develop and publish rules of practice applicable to all proceedings under this chapter. Such rules of practice shall take into consideration the varying nature of proceedings under this chapter and shall include specific time limits upon the disposition of all proceedings initiated under this chapter. In no event shall the time limit for any such proceeding extend for more than 12 months after the date such proceeding is initiated.

(e) "Railroad" defined

The term "railroad" as used in this subchapter means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(f) Judicial review

Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5.

(g) Restricted access to rolling equipment during inspection, testing, etc. and visibility of rear car of trains; requirements; enforcement of State laws, etc.

The Secretary shall, within 180 days after July 8, 1976, issue such rules, regulations, orders, and standards as may be necessary to require that—

(1) in any case in which activities of railroad employees (other than train or yard crews) assigned to inspect, test, repair, or service rolling equipment require such employees to work on, under, or between such equipment, each manually operated switch, including any crossover switch, providing access to the track on which such equipment is located must be lined against movement to that track and secured by an effective locking device which may not be removed except by the class or craft of employees performing such inspection, testing, repair, or servicing.

(2) the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility; and

(3) the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility.

Notwithstanding the provisions of section 434 of this title, nothing in paragraphs (2) and (3) of this subsection shall prohibit a State from continuing in force any law, rule, regulation, order or standard in effect on July 8, 1976, relating to lighted markers on the rear car of freight trains except to the extent that such law, rule, regulation, order, or standard would cause such cars to be in violation of this section.

(h) Safety of railroad passenger equipment

(1)(A) The Secretary shall, within one year after January 14, 1983, issue such initial rules, regulations, orders, and standards as may be necessary to insure that the construction, maintenance, and operation of railroad passenger equipment maximize safety to rail passengers. The Secretary shall, as a part of any such rulemaking, consider comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration. The Secretary shall also consider relevant differences between commuter and intercity passenger service. The Secretary shall periodically review any such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in any such rules, regulations, orders, and standards as may be necessary.

(B) The Secretary shall submit to the Congress a report within one year after January 14, 1983, with respect to rules, regulations, orders, and standards issued under subparagraph (A) of this paragraph which describes any rules, regulations, orders, and standards issued or to be issued under this subsection, explains the reasons for their issuance, and compares them without compensation. The Chairman and the Vice Chairmen of the President's Committee may receive transportation and per diem allowances as authorized by law for persons serving without compensation. Persons with disabilities serving as Chairman or Vice Chairmen may be compensated for attendant expenses, consistent with government procedures and practices.

(g) Employees of the President's Committee shall be appointed, subject to law, and shall be directed by the Chairman of the Committee. To such extent as may be mutually arranged by the Chairman of the Committee and the Secretary of Labor, employees of the Committee shall be subject to the administrative rules, regulations, and procedures of the Department of Labor.

(h) The Department of Labor is requested to make available to the President's Committee necessary office space and to furnish the Committee, under such arrangements respecting financing as may be appropriate, necessary equipment, supplies, and services. The estimates of appropriations for the operations of the Committee shall be included within the framework of the appropriations structure of the Department of Labor, in such manner as the Director of the Office of Management and Budget may prescribe. The Chairman of the Committee, in cooperation with the Assistant Secretary for Administration and Management of the Department of Labor, shall be responsible for the preparation and justification of the estimates of appropriations for the Committee.

Sec. 6. *Reporting*. The President's Committee shall report annually to the President, who may apprise the Congress, and other interested organizations and individuals on the progress and problems of maximizing employment opportunities for people with disabilities.

Sec. 7. *Prior Orders; Transition*. (a) To the extent that this Order is inconsistent with any provision of any prior order, or with any provisions of any regulation or other measure or disposition, heretofore issued, made, or taken by the President or by any other officer of the Executive branch of the Government, this Order shall control. Executive Order No. 11480 of September 9, 1969, as amended, is hereby superseded.

(b) Without further action by the President or the Chairman of the Committee, all members, employees, records, property, funds, and pending business of the President's Committee on Employment of the Handicapped provided for in Executive Order No. 11480 of September 9, 1969, as amended, shall on the date of this Order become members, employees, records, property, funds, and pending business of the Committee established by this Order.

(c) The tenure of persons as members of the Committee in pursuance of the provisions of Section 7(b) of this Order, (i), in the case of persons appointed to the predecessor Committee by the President, shall be at the pleasure of the President, and (ii), in the case of other members, shall be for periods equal to their respective unexpired terms under Executive Order No. 11480, as amended, but shall also be subject to the provisions of the last sentence of Section 1(b) of this Order.

Ronald Reagan.

Section Referred to in Other Sections

This section is referred to in section 794a of this title; title 5 sections 2302, 3102, 7702; title 22 section 3905; title 38 section 2014; title 42 section 5057.

[redacted] Architectural and Transportation Barriers Compliance Board

(a) Establishment; membership; chairperson; vice-chairperson; term of office; termination of membership; reappointment; compensation and travel expenses; bylaws; quorum requirements

(1) There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") which shall be composed as follows:

(A) Twelve members shall be appointed by the President from among members of the general public of whom six shall be individuals with handicaps.

(B) The remaining members shall be the heads of each of the following departments or agencies (or their designees whose positions are executive level IV or higher):

(i) Department of Health and Human Services.

(ii) Department of Transportation.

(iii) Department of Housing and Urban Development.

(iv) Department of Labor.

(v) Department of the Interior.

(vi) Department of Defense.

(vii) Department of Justice.

(viii) General Services Administration.

(ix) Veterans' Administration.

(x) United States Postal Service.

(xi) Department of Education.

The Chairperson[1] and vice-chairperson of the Board shall be elected by majority vote of the members of the Board to serve for terms of one year. When the chairperson is a member of the general public, the vice-chairperson shall be a Federal official; and when the chairperson is a Federal official, the vice-chairperson shall be a member of the general public. Upon the expiration of the term as chairperson of a member who is a Federal official, the subsequent chairperson shall be a member of the general public; and vice versa.

(2)(A) The term of office of each appointed member of the Board shall be three years. Each year, the terms of office of four appointed members of the board shall expire.

(B) A member whose term has expired may continue to serve until a successor has been appointed.

(C) A member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

(3) If any appointed member of the Board becomes a Federal employee, such member may continue as a member of the Board for not longer than the sixty-day period beginning on the date the member becomes such an employee.

(4) No individual appointed under paragraph (1)(A) of this subsection who has served as a member of the Board may be reappointed to the Board more than once unless such individual has not served on the Board for a period of two years prior to the effective date of such individual's appointment.

(5)(A) Members of the Board who are not regular full-time employees of the United States shall, while serving on the business of the Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily rate prescribed for GS-18 under section 5332 of title 5, including travel time, for each day they are engaged in the performance of their duties as members of the Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

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[1] So in original. Probably should not be capitalized.

(B) Members of the Board who are employed by the Federal Government shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(6)(A) The Board shall establish such bylaws and other rules as may be appropriate to enable the Board to carry out its functions under this chapter.

(B) The bylaws shall include quorum requirements. The quorum requirements shall provide that (i) a proxy may not be counted for purposes of establishing a quorum, and (ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).

(b) Functions

It shall be the function of the Board to: (1) insure compliance with the standards prescribed pursuant to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) (including the application of that Act to the United States Postal Service) including but not limited to enforcing all standards under that Act, and insuring that all waivers and modifications of standards are based upon findings of fact and are not inconsistent with the provisions of such Act and this section; (2) investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting individuals with handicaps, particularly with respect to telecommunication devices, public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation, whether interstate, foreign, intrastate, or local), and residential and institutional housing; (3) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in clause (2) of this subsection; (4) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of General Services, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968; (5) make to the President and to Congress reports which shall describe in detail the results of its investigations under clauses (2) and (3) of this subsection; (6) make to the President and to the Congress such recommendations for legislation and administration as it deems necessary or desirable to eliminate the barriers described in clause (2) of this subsection; (7) establish minimum guidelines and requirements for the standards issued pursuant to the Act of August 12, 1968, as amended, commonly known as the Architectural Barriers Act of 1968; and (8) insure that public conveyances, including rolling stock, are readily accessible to, and usable by, individuals with physical handicaps.

(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals

The Board shall also (1)(A) determine how and to what extent transportation barriers impede the mobility of individuals with handicaps and aged individuals with handicaps and consider ways in which travel expenses in connection with transportation to and from work for individuals with handicaps can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of individuals with handicaps; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems, and (B) to make housing available and accessible to individuals with handicaps or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for individuals with handicaps, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

(d) Investigations; hearings; orders; administrative procedure applicable; final orders; judicial review; civil action; intervention; development of standards; technical assistance to persons or entities affected

(1) In carrying out its functions under this chapter, the Board shall, directly or through grants to public or private nonprofit organizations or contracts with private nonprofit or for profit organizations, carry out its functions under subsections (b) and (c) of this section, and shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to insure compliance with the provisions of the Acts cited in subsection (b) of this section. Except as provided in paragraph (3) of subsection (e) of this section, the provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to procedures under this section, and an order of compliance issued by the Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building or public conveyance or rolling stock found not to be in compliance with standards enforced under this section. Pursuant to chapter 7 of title 5, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding.

(2) The executive director is authorized, at the direction of the Board—

(A) to bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final order of the Board under this subsection; and

(B) to intervene, appear, and participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in civil actions that relate to this section or to the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.].

Except as provided in section 518(a) of title 28, relating to litigation before the Supreme Court, the executive director may appear for and represent the Board in any civil litigation brought under this section.

(3) The Board, in consultation and coordination with other concerned Federal departments and agencies and agencies within the Department of Education, shall develop standards and provide appropriate technical assistance to any public or private activity, person, or entity affected by regulations prescribed pursuant to this subchapter with respect to overcoming architectural, transportation, and communication barriers. Any funds appropriated to any such department or agency for the purpose of providing such assistance may be transferred to the Board for the purpose of carrying out this paragraph. The Board may arrange to carry out its responsibilities under this paragraph through such other departments and agencies for such periods as the Board determines is appropriate. In carrying out its technical assistance responsibilities under this paragraph, the Board shall establish a procedure to insure separation of its compliance and technical assistance responsibilities under this section.

(e) Appointment of executive director, administrative law judges, and other personnel; provisions applicable to administrative law judges; authority and duties of executive director; finality of orders of compliance

(1) There shall be appointed by the Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this chapter. The Board is authorized to appoint as many administrative law judges as are necessary for proceedings required to be conducted under this section. The provisions applicable to administrative law judges appointed under section 3105 of title 5 shall apply to administrative law judges appointed under this subsection.

(2) The Executive Director shall exercise general supervision over all personnel employed by the Board (other than administrative law judges and their assistants). The Executive Director shall have final authority on behalf of the Board, with respect to the investigation of alleged noncompliance and in the issuance of formal complaints before the Board, and shall have such other duties as the Board may prescribe.

(3) For the purpose of this section, an order of compliance issued by an administrative law judge shall be deemed to be an order of the Board and shall be the final order for the purpose of judicial review.

(f) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants

The departments or agencies specified in subsection (a) of this section shall make available to the Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this subsection shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily pay rate for a person employed as a GS-18 under section 5332 of title 5, including travel time, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(g) Reports to Congress; reports on transportation barriers and housing needs

The Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Board, and the reports and recommendations described in clauses (5) and (6) of subsection (b) of this section. The Board shall prepare two final reports of its activities under subsection (c) of this section. One such report shall be on its activities in the field of transportation barriers facing individuals with handicaps, and the other such report shall be on its activities in the field of the housing needs of individuals with handicaps. The Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Board shall also prepare for such submission an interim report of its activities in each such field within 18 months after September 26, 1973. The Board shall prepare and submit two additional reports of its activities under subsection (c) of this section, one report on its activities in the field of transportation barriers facing individuals with handicaps and the other report on its activities in the field of the housing needs of individuals with handicaps. The two additional reports required by the previous sentence shall be submitted not later than February 1, 1988.

(h) Report to President and Congress on assessments of State expenditures to provide full access to programs and activities; grants and contracts to aid Board in carrying out its functions; report to Congressional committees on accessibility of Federally funded buildings; joint transmittal

(1) Within one year following November 6, 1978, the Board shall submit to the President and the Congress a report containing an assessment of the amounts required to be expended

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by States and by political subdivisions thereof to provide individuals with handicaps with full access to all programs and activities receiving Federal assistance.

(2) The Board may make grants to, or enter into contracts with, public or private organizations to carry out its duties under subsections (b) and (c) of this section. The Board may also make grants to any designated State unit for the purpose of conducting studies to provide the cost assessments required by paragraph (1). Before including in such report the findings of any study conducted for the Board under a grant or contract to provide the Board with such cost assessments, the Board shall take all necessary steps to validate the accuracy of any such findings.

(3) The Board shall, at the same time that the Board transmits the report required under section 7(b) of the Act entitled "An Act to ensure that certain buildings financed with Federal funds are so designated and constructed as to be accessible to the physically handicapped", approved August 12, 1968 (commonly known as the Architectural Barriers Act of 1968) [42 U.S.C. 4157(b)] transmit that report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

(i) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Board under this section such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991, but in no event shall the amount appropriated for any one fiscal year exceed $3,000,000.

(Pub. L. 93-112, title V, § 502, Sept. 26, 1973, 87 Stat. 391; Pub. L. 93-516, title I, §§ 110, 111(n)-(q), Dec. 7, 1974, 88 Stat. 1619, 1621, 1622; Pub. L. 93-651, title I, §§ 110, 111(n)-(q), Nov. 21, 1974, 89 Stat. 2-4, 2-6, 2-7; Pub. L. 94-230, §§ 10, 11(b)(13), Mar. 15, 1976, 90 Stat. 212, 214; Pub. L. 95-251, § 2(a)(8), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-602, title I, § 118, Nov. 6, 1978, 92 Stat. 2979; Pub. L. 96-374, title XIII, § 1321, Oct. 3, 1980, 94 Stat. 1499; Pub. L. 98-221, title I, § 151, Feb. 22, 1984, 98 Stat. 28; Pub. L. 99-506, title I, § 103(d)(2)(C), title VI, § 601, title X, § 1002(e)(2)(B)-(D), Oct. 21, 1986, 100 Stat. 1810, 1829, 1844; Pub. L. 100-630, title II, § 206(b), Nov. 7, 1988, 102 Stat. 3311.)

REFERENCES IN TEXT

Executive level IV, referred to in subsec. (a)(1)(B), is set out in section 5315 of Title 5, Government Organization and Employees.

The Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, referred to in subsecs. (b) and (d)(2)(B), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of Title 42 and Tables.

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see Codification note set out under section 701 of this title.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100-630, § 206(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term of office of each appointed member of the Board shall be three years; except that (i) the members first taking office shall serve, as designated by the President at the time of appointment, four for a term of one year, four for a term of two years, and three for a term of three years, (ii) a member whose term has expired may continue to serve until a successor has been appointed, and (iii) a member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed."

Subsec. (a)(3). Pub. L. 100-630, § 206(b)(2), substituted "the member" for "he".

Subsec. (a)(5)(A). Pub. L. 100-630, § 206(b)(3), substituted "travel time" for "traveltime".

Subsec. (b). Pub. L. 100-630, § 206(b)(4)-(7), inserted a comma after "surface transportation" in cl. (2), and substituted "Administrator of General Services" for "Administrator of the General Services Administration" in cl. (4), "results of" for "results to" in cl. (5), and "individuals with physical handicaps" for "physically handicapped persons" in cl. (8).

Subsec. (c)(2)(A). Pub. L. 100-630, § 206(b)(8), inserted a comma after "expanded transportation systems".

Subsec. (d)(2)((B). Pub. L. 100-630, § 206(b)(9), substituted "that relate to" for "which related to".

Subsec. (f). Pub. L. 100-630, § 206(b)(10), substituted "daily pay rate for" for "daily pay rate, for", "section 5332 of title 5" for "section 5332 of title 45", and "travel time" for "traveltime".

Subsec. (g). Pub. L. 100-630, § 206(b)(11), substituted "transportation barriers facing individuals with handicaps" for "transportation barriers to individuals with handicaps" and for "transportation barriers of handicapped individuals" in fourth and seventh sentences, respectively, and "housing needs of individuals with handicaps" for "housing needs of handicapped individuals" in seventh sentence.

1986—Subsec. (a)(1)(A). Pub. L. 99-506, §§ 103(d)(2)(C), 601(a)(2), substituted "Twelve" for "Eleven", "six" for "five", and "individuals with handicaps" for "handicapped individuals".

Subsec. (a)(1)(B). Pub. L. 99-506, § 601(a)(1), substituted provision that Chairperson and vice-chairperson of Board shall be elected by majority vote of members of Board to serve for terms of one year, for provision that President had to appoint first Chairman of such Board who was to serve for term of not more than two years, with subsequent Chairmen to be elected by majority vote of Board for term of one year, and inserted provisions that positions of Chairperson and vice-chairperson each be held alternately in succession by Federal official and by member of general public, and that when either office is held by member of general public, the other will be held by Federal official.

Subsec. (a)(2)(ii), (iii). Pub. L. 99-506, § 601(a)(3), added cls. (ii) and (iii), and struck out former cl. (ii) which read as follows: "any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed".

Subsec. (a)(6). Pub. L. 99-506, § 601(a)(4), added par. (6).

Subsecs. (b)(2), (c). Pub. L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Subsec. (d)(2)(A). Pub. L. 99-506, § 1002(e)(2)(B), substituted "any final order" for "any, final order".

Subsec. (d)(3). Pub. L. 99-506, § 1002(e)(2)(C), substituted "Department of Education" for "Department of Health, Education, and Welfare" and "with respect to overcoming" for "with respect overcoming to".

Subsec. (e)(2). Pub. L. 99-506, § 1002(e)(2)(D), substituted "alleged noncompliance and in" for "alleged noncompliance in".

Subsec. (g). Pub. L. 99-506, § 601(b), inserted provisions requiring the Board to submit, not later than Feb. 1, 1988, two additional reports on its activities under subsec. (c), one report to deal with its activities relating to transportation barriers to handicapped individuals, the other to deal with activities relating to the housing needs of handicapped individuals.

Pub. L. 99-506, § 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" wherever appearing.

Subsec. (h)(1). Pub. L. 99-506, § 103(d)(2)(C), substituted reference to individuals with handicaps for reference to handicapped individuals.

Subsec. (i). Pub. L. 99-506, § 601(c), which directed the substitution of "of the fiscal years 1987, 1988, 1989, 1990, and 1991," for "fiscal year ending before October 1, 1986," was executed by making the substitution for "fiscal year ending before October 1, 1986.," as the probable intent of Congress. See 1984 Amendment note below.

1984—Subsec. (i). Pub. L. 98-221 substituted "October 1, 1986," for "October 1, 1982".

1980—Subsec. (a)(1)(B)(i). Pub. L. 96-374, § 1321(a)(1), substituted "Department of Health and Human Services" for "Department of Health, Education, and Welfare".

Subsec. (a)(1)(B)(xi). Pub. L. 96-374, § 1321(a)(2), added cl. (xi).

Subsec. (h)(3). Pub. L. 96-374, § 1321(b), added par. (3).

1978—Subsec. (a). Pub. L. 95-602, § 118(a), substituted provision permitting President to appoint eleven members of Board from general public of whom five are to be handicapped, adding head of the Department of Justice as a Board member, authorizing President to appoint the first chairman, and providing for the term of office, reappointment, and compensation of Board members for provision restricting Board membership to head of Department of Health, Education, and Welfare, Department of Transportation, Department of Housing and Urban Development, Department of Labor, Department of Interior, Department of Defense, General Services Administration, United States Postal Service, and Veterans' Administration, appointing Secretary of Health, Education, and Welfare as chairman, and authorizing appointment of a Consumer Advisory Panel, a majority of members of which were to be handicapped, to provide guidance, advice, and recommendations to Board.

Subsec. (b)(1). Pub. L. 95-602, § 118(b)(1), substituted provision requiring Board to insure compliance with standards of Architectural Barriers Act of 1968, including application to United States Postal Service, and to insure all waivers and modifications of standards are based on findings of fact and are not inconsistent with that Act or this section for provision requiring Board to insure compliance with the standards prescribed by General Services Administration, Department of Defense, and Department of Housing and Urban Development pursuant to Architectural Barriers Act of 1968.

Subsec. (b)(2). Pub. L. 95-602, § 118(b)(2), inserted "communication," before "and attitudinal" and "telecommunication devices," before "public buildings".

Subsec. (b)(7), (8). Pub. L. 95-602, § 118(b)(3), added pars. (7) and (8).

Subsec. (d). Pub. L. 95-602, § 118(c), designated existing provision as par. (1), substituted "public or private nonprofit organizations or contracts with private nonprofit or forprofit organizations" for "or contracts with public or private nonprofit organizations", "Except as provided in paragraph (3) of subsection (e) of this section, provisions" for "The provisions", "building or public conveyance or rolling stock found" for "building found", and "enforced under this section" for "prescribed pursuant to the Acts cited in subsection (b) of this section", inserted provision permitting a complainant or participant in a proceeding under this subsection to obtain review of a final order pursuant to chapter 7 of title 5, and added pars. (2) and (3).

Subsec. (e). Pub. L. 95-602, § 118(d), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing. Such substitution was made in pars. (2) and (3) as the probable intent of Congress in view of the amendment to subsec. (e) by section 2(a)(8) of Pub. L. 95-251 (although prior in time to the amendment by Pub. L. 95-602) requiring such substitution wherever appearing in text.

Subsec. (h). Pub. L. 95-602, § 118(e), added subsec. (h). Former subsec. (h), which authorized appropriations for carrying out duties and functions of the Board of $1,000,000 for each of fiscal years ending June 30, 1974, and June 30, 1975, $1,500,000 for fiscal year ending June 30, 1976, and $1,500,000 for each of fiscal years ending Sept. 30, 1977 and Sept. 30, 1978, was struck out.

Subsec. (i). Pub. L. 95-602, § 118(e), added subsec. (i).

1976—Subsec. (h). Pub. L. 94-230, § 10, authorized appropriation of $1,500,000 for fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, § 11(b)(13), authorized appropriation of $1,500,000 for fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516, § 111(n), redesignated cls. (6), (7), and (8), as cls. (7), (8), and (9), added cl. (6), and following designated clauses, inserted provisions that Secretary of Health, Education, and Welfare shall be Chairman of Board, and that Board shall appoint, upon recommendation of Secretary, a Consumer Advisory Panel, a majority of members of which shall be handicapped individuals, to provide guidance, advice, and recommendations to Board in carrying out its functions.

Pub. L. 93-651, § 111(n), amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (d). Pub. L. 93-516, § 111(o), substituted "this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carrying out its functions under subsections (b) and (c) of this section, and shall conduct" for "this section, the Board shall conduct", and inserted provisions that any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality, and that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts referred to in subsec. (b) of this section.

Pub. L. 93-651, 111(o), amended subsec. (d) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (e). Pub. L. 93-516, § 111(p), inserted provisions relating to appointment of an executive director and other professional and clerical personnel.

Pub. L. 93-651, § 111(p), amended subsec. (e) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (g). Pub. L. 93-516, § 111(q), substituted "not later than September 30, 1975" for "prior to January 1, 1975".

Pub. L. 93-651, § 111(q), amended subsec. (g) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (h). Pub. L. 93-516, § 110, authorized appropriation of $1,500,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, § 110, amended subsec. (h) in exactly the same manner as it was amended by Pub. L. 93-516.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 201 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96-374, set out as a note under section 1001 of Title 20, Education.

EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 776, 794b of this title; title 42 section 4157; title 49 App. section 1304.

§ 793. Employment under Federal contracts

(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified individuals with handicaps; regulations

Any contract in excess of $2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract, the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with handicaps as defined in section 706(8) of this title. The provisions of this section shall apply to any subcontract in excess of $2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action

If any individual with handicaps believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with handicaps, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements

The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

(Pub. L. 93-112, title V, § 503, Sept. 26, 1973, 87 Stat. 393; Pub. L. 95-602, title I, § 122(d)(1), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 99-506, title I, § 103(d)(2)(B), (C), title X, §§ 1001(f)(2), (3), 1002(e)(3), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub. L. 100-630, title II, § 206(c), Nov. 7, 1988, 102 Stat. 3312.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-630, § 206(c)(1), inserted a comma after "to carry out such contract".

Subsec. (b). Pub. L. 100-630, § 206(c)(2), substituted "refused" for "refuses".

Subsec. (c). Pub. L. 100-630, § 206(c)(3), substituted "which the President" for "which The President" and "when the President" for "when The President".

1986—Subsec. (a). Pub. L. 99-506, §§ 103(d)(2)(C), 1002(e)(3), substituted "individuals with handicaps" for "handicapped individuals" and "section 706(8) of this title" for "section 706(7) of this title".

Subsec. (b). Pub. L. 99-506, §§ 103(d)(2)(B), (C), 1001(f)(2), substituted "individual with handicaps" for "handicapped individual", "individuals with handicaps" for "handicapped individuals", and "a contract" for "his contract".

Subsec. (c). Pub. L. 99-506, § 1001(f)(3), substituted "The President" for "he" in two places and substituted "the reasons" for "his reasons".

1978—Subsec. (a). Pub. L. 95-602 substituted "section 706(7) of this title" for "section 706(6) of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 721 of this title.

[redacted] Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(Pub. L. 93-112, title V, § 504, Sept. 26, 1973, 87 Stat. 394; Pub. L. 95-602, title I, §§ 119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub. L. 99-506, title I, § 103(d)(2)(B), title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub. L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub. L. 100-630, title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312.)

REFERENCES IN TEXT

The amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, referred to in subsec. (a), mean the amendments made by Pub. L. 95-602. See 1978 Amendments note below.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-630, § 206(d)(1), substituted "her or his handicap" for "his handicap".

Pub. L. 100-259, § 4(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 100-259, § 4(2), added subsec. (b).

Subsec. (b)(2)(B). Pub. L. 100-630, § 206(d)(2), substituted "section 2891(12) of title 20" for "section 2854(a)(10) of title 20".

Subsec. (c). Pub. L. 100-259, § 4(2), added subsec. (c).

1986—Pub. L. 99-506 substituted "individual with handicaps" for "handicapped individual" and "section 706(8) of this title" for "section 706(7) of this title".

1978—Pub. L. 95-602 substituted "section 706(7) of this title" for "section 706(6) of this title" and inserted provision prohibiting discrimination under any program or activity conducted by any Executive agency or by the United States Postal Service and requiring the heads of these agencies to promulgate regulations prohibiting discrimination.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100-259 not to be construed to extend application of this chapter to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100-259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of Title 20, Education.

CONSTRUCTION OF PROHIBITION AGAINST DISCRIMINATION UNDER FEDERAL GRANTS

Rights or protections of this section not affected by any provision of Pub. L. 98-457, see section 127 of Pub. L. 98-457, set out as a note under section 5101 of Title 42, The Public Health and Welfare.

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this section by the Attorney General, see section 1-201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d-1 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11914

Ex. Ord. No. 11914, Apr. 28, 1976, 41 F.R. 17871, which related to nondiscrimination in federally assisted programs, was revoked by Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d-1 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 774, 775, 794a, 1577 of this title; title 5 section 3102; title 12 section 1715z-1a; title 20 sections 1132a, 1232e; title 25 section 2005; title 42 sections 290cc-34, 300w-7, 300x-7, 708, 1437*l*, 2000d-7, 3608, 5057, 5309, 6727, 8625, 9849, 9906, 10406; title 49 App. section 1612.

§ 794a. Remedies and attorney fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub. L. 93-112, title V, § 505, as added Pub. L. 95-602, title I, § 120(a), Nov. 6, 1978, 92 Stat. 2982.)

References in Text

The Civil Rights Act of 1964, referred to in subsec. (a)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Section Referred to in Other Sections

This section is referred to in title 22 section 3905; title 42 section 10406.

§ 794b. Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

(a) The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance—

(1) to persons operating rehabilitation facilities; and

(2) with the concurrence of the Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Board under this paragraph shall reflect its consideration of the cost studies carried out by States under section 792(c)(1) of this title.

(b) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of basic pay payable for grade GS-18 of the General Schedule, under section 5332 of title 5, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c) The Secretary, with the concurrence of the Board and the President, may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this paragraph until a study demonstrating the need for such assistance has been conducted and submitted under section 792(h)(2) of this title.

(d) In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 93-112, title V, § 506, as added Pub. L. 95-602, title I, § 120(a), Nov. 6, 1978, 92 Stat. 2983, and amended Pub. L. 100-630, title II, § 206(e), Nov. 7, 1988, 102 Stat. 3312.)

Amendments

1988—Subsec. (a). Pub. L. 100-630, § 206(e)(1), (2), redesignated former par. (1) as subsec. (a) and former subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 100-630, § 206(e)(1), (3), redesignated former par. (2) as subsec. (b) and substituted "travel time" for "traveltime".

Subsec. (c). Pub. L. 100-630, § 206(e)(1), (4), redesignated former par. (3) as subsec. (c) and inserted a comma after "the President".

Subsec. (d). Pub. L. 100-630, § 206(e)(1), redesignated former par. (4) as subsec. (d).

§ 794c. Interagency Coordinating Council; membership; duties; annual report to President and Congress

There shall be established an Interagency Coordinating Council (hereinafter referred to in this section as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Assistant Secretary of the Interior for Indian Affairs, the Attorney General, the Chairman[1] of the Office of Personnel Management, the Chairman of the Equal Employment Opportunity Commission, and the Chairperson of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this subchapter, and the regulations prescribed thereunder. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. Nothing in this section shall impair any responsibilities assigned by any Executive Order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this subchapter.

(Pub. L. 93-112, title V, § 507, as added Pub. L. 95-602, title I, § 120(a), Nov. 6, 1978, 92 Stat. 2983, and amended Pub. L. 96-88, title V, § 508(m)(2), Oct. 17, 1979, 93 Stat. 694; Pub. L.

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[1] So in original. Probably should be "Director".

98-221, title I, § 104(b)(4), Feb. 22, 1984, 98 Stat. 18; Pub. L. 99-506, title VI, § 602, title X, § 1001(f)(4), Oct. 21, 1986, 100 Stat. 1830, 1843.)

AMENDMENTS

1986—Pub. L. 99-506, § 602, inserted reference to Assistant Secretary of the Interior for Indian Affairs.

Pub. L. 99-506, § 1001(f)(4), which directed the substitution of "Chairperson" for "Chairman" was executed by substituting "Chairperson of the Architectural and Transportation Barriers Compliance Board" for "Chairman of the Architectural and Transportation Barriers Compliance Board" to reflect the probable intent of Congress.

1984—Pub. L. 98-221 substituted "Chairman of the Office of Personnel Management" for "Chairman of the United States Civil Service Commission" and purported to substitute "Secretary of Education, the Secretary of Health and Human Services," for "Secretary of Health, Education, and Welfare" which amendment could not be executed in view of the previous amendment by Pub. L. 96-88. See 1979 Amendment note below.

1979—Pub. L. 96-88 substituted requirement that the Secretaries of Education and Health and Human Services be members of the Council for requirement that the Secretary of Health, Education, and Welfare be a member.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 5057.

§ 794d. Electronic equipment accessibility

(a) Guidelines; development, establishment, applicability, and revision

(1) The Secretary, through the Director of the National Institute on Disability and Rehabilitation Research and the Administrator of General Services, in consultation with the electronics industry, shall develop and establish guidelines for electronic equipment accessibility designed to insure that individuals with handicaps may use electronic office equipment with or without special peripherals.

(2) The guidelines established pursuant to paragraph (1) shall be applicable with respect to electronic equipment, whether purchased or leased.

(3) The initial guidelines shall be established not later than October 1, 1987, and shall be periodically revised by the Director of the National Institute on Disability and Rehabilitation Research and the Administrator of General Services in consultation with the electronics industry and the Interagency Committee for Computer Support of Handicapped Employees as technologies advance or change.

(b) Adoption of guidelines by Administrator of General Services; compliance by Federal agencies

Beginning after September 30, 1988, the Administrator of General Services shall adopt guidelines for electronic equipment accessibility established under subsection (a) of this section for Federal procurement of electronic equipment. Each agency shall comply with the guidelines adopted under this subsection.

(c) "Special peripherals" defined

For the purpose of this section, the term "special peripherals" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to an individual with handicaps.

(Pub. L. 93-112, title V, § 508, as added Pub. L. 99-506, title VI, § 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Pub. L. 100-630, title II, § 206(f), Nov. 7, 1988, 102 Stat. 3312.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-630, § 206(f)(1), inserted "the Director of" before "the National Institute", struck out "the" before "General Services", and substituted "individuals with handicaps" for "handicapped individuals".

Subsec. (a)(3). Pub. L. 100-630, § 206(f)(2), inserted "by the Director of the National Institute on Disability and Rehabilitation Research and the Administrator of General Services in consultation with the electronics industry and the Interagency Committee for Computer Support of Handicapped Employees" after "revised".

Subsec. (c). Pub. L. 100-630, § 206(f)(3), substituted "an individual with handicaps" for "a handicapped individual".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2213 of this title.

SUBCHAPTER VI—EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS

PART A—COMMUNITY SERVICE EMPLOYMENT PILOT PROGRAMS FOR INDIVIDUALS WITH HANDICAPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 702 of this title.

§ 795. Pilot programs

(a) Establishment

In order to promote useful opportunities in community service activities for individuals with handicaps who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the "Secretary") is authorized to establish a community service employment pilot program for individuals with handicaps. For purposes of this part, the term "eligible individuals" means persons who are individuals with handicaps (as defined in section 706(8) of this title) and who are referred to programs under this part by designated State units.

(b) Agreements; factors determining eligibility for cost payments; rate of pay; certificate of exemption by Department of Labor

(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program referred to in subsection (a) of this section. Such

each agency. When the principal agency involved is the Rehabilitation Services Administration, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this chapter, which requirement is inconsistent with the similar requirements of the administering agency under or pursuant to this chapter.

(Pub. L. 93-112, § 5, Sept. 26, 1973, 87 Stat. 359.)

DELEGATION OF FUNCTIONS

Authority of the President under this section delegated to Director of Office of Management and Budget by section 1 of Ex. Ord. No. 11893, Dec. 31, 1975, 41 F.R. 1040, set out as a note under section 7103 of Title 31, Money and Finance.

§ 705. Consolidated rehabilitation plan

(a) Election by State; agency concurrence

In order to secure increased flexibility to respond to the varying needs and local conditions within the State, and in order to permit more effective and interrelated planning and operation of its rehabilitation programs, the State may submit a consolidated rehabilitation plan which includes the State's plan under section 721(a) of this title and its program for persons with developmental disabilities under the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6000 et seq.]: *Provided*, That the agency administering such State's program under such Act concurs in the submission of such a consolidated rehabilitation plan.

(b) Approval by Secretary of consolidated rehabilitation plan meeting statutory requirements; submission by State of separate rehabilitation plans

Such a consolidated rehabilitation plan must comply with, and be administered in accordance with, all the requirements of this chapter and the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6000 et seq.]. If the Secretary finds that all such requirements are satisfied, the Secretary may—

(1) approve the plan to serve in all respects as the substitute for the separate plans which would otherwise be required with respect to each of the programs included therein; or

(2) advise the State to submit separate plans for such programs.

(c) Noncompliance; assistance termination procedures

Findings of noncompliance in the administration of an approved consolidated rehabilitation plan, and any reductions, suspensions, or terminations of assistance as a result thereof, shall be carried out in accordance with the procedures set forth in subsections (c) and (d) of section 721 of this title.

(Pub. L. 93-112, § 6, Sept. 26, 1973, 87 Stat. 359; Pub. L. 99-506, title X, § 1001(a)(2), Oct. 21, 1986, 100 Stat. 1841; Pub. L. 100-630, title II, § 201(b), Nov. 7, 1988, 102 Stat. 3303.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsecs. (a) and (b), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, and amended, which is classified generally to chapter 75 (§ 6000 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of Title 42 and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-630, § 201(b)(1), substituted "Assistance and Bill of Rights Act" for "Services and Facilities Construction Amendments of 1970".

Subsec. (b). Pub. L. 100-630, § 201(b)(2), substituted "Assistance and Bill of Rights Act" for "Services and Facilities Construction Amendments of 1970" and "the Secretary may—" for "the Secretary may" in introductory provisions and substituted pars. (1) and (2) for "approve the plan to serve in all respects as the substitute for the separate plans which would otherwise be required with respect to each of the programs included therein, or may advise the State to submit separate plans for such programs".

1986—Subsec. (b). Pub. L. 99-506 substituted "the Secretary may approve" for "he may approve" and "or may advise" for "or he may advise".

§ [illegible] Definitions

For the purposes of this chapter:

(1) The term "construction" means the construction of new buildings, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such buildings, and the term "cost of construction" includes architects' fees and acquisition of land in connection with construction but does not include the cost of offsite improvements.

(2) The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(3) The term "designated State unit" means (A) any State agency unit required under section 721(a)(2)(A) of this title, or (B) in cases in which no such unit is so required, the State agency described in section 721(a)(B)(i) of this title.

(4) The term "establishment of a rehabilitation facility" means the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to rehabilitation facility purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations the Secretary shall prescribe, in order to prevent inpairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of such facilities), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(5) The term "evaluation of rehabilitation potential" means, as appropriate in each case:

(A) a preliminary diagnostic study to determine that the individual has a substantial handicap to employment, and that vocational rehabilitation services are needed;

(B) a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, recreational, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's employability, personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(C) an appraisal of the individual's patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(D) any other goods or services provided for the purpose of ascertaining the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services;

(E) referral;

(F) the administration of these evaluation services;

(G)(i) the provision of vocational rehabilitation services to any individual for a total period not in excess of eighteen months for the purpose of determining whether such individual is an individual with handicaps, an individual with handicaps for whom a vocational goal is not possible or feasible (as determined in accordance with section 722(c) of this title), or neither; and (ii) an assessment, at least once in every ninety-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subclause (i) may be made; and

(H) where appropriate, the provision of rehabilitation engineering services to any individual with a handicap to assess and develop the individual's capacities to perform adequately in a work environment.

(6) The term "employability", with respect to an individual, means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, and when appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market or any other vocational outcome the Secretary may determine consistent with this chapter.

(7)(A) Subject to subparagraphs (B) and (C), the term "Federal share" means 80 percent.

(B) For any fiscal year for which payments to a State under section 731(a) of this title exceed such payments for fiscal year 1988, the Federal share for those payments in excess of the fiscal year 1988 amount shall be 79 percent for fiscal year 1989, 78 percent for fiscal year 1990, 77 percent for fiscal year 1991, 76 percent for fiscal year 1992, and 75 percent for fiscal year 1993.

(C) The term "Federal share" means 90 percent for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 771(b)(3) of this title, except that with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 771(b)(3) of this title applicable with respect to the State.

(D) For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.

[illegible]A) Except as otherwise provided in subparagraph (B), the term "individual with handicaps" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to subchapters I and III of this chapter.

(B) Subject to the second sentence of this subparagraph, the term "individual with handicaps" means, for purposes of subchapters IV and V of this chapter, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of sections 793 and 794 of this title as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(C) For the purpose of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(9) The term "local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an agreement with the State agency designated pursuant to section 721(a)(1) of this title to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from utilizing another local public or nonprofit agency to provide vocational rehabilitation services: *Provided*, That such an arrangement is made part of the agreement specified in this paragraph.

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(10) The term "nonprofit", when used with respect to a rehabilitation facility, means a rehabilitation facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of title 26.

(11) The term "public safety officer" means a person serving the United States or a State or unit of general local government, with or without compensation, in any activity pertaining to—

(A) the enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces,

(B) a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees,

(C) a court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees, or

(D) firefighting, fire prevention, or emergency rescue missions.

(12) The term "rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas which include education, rehabilitation, employment, transportation, independent living, and recreation.

(13) The term "rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps, and which provides singly or in combination one or more of the following services for individuals with handicaps: (A) vocational rehabilitation services which shall include, under one management, medical, psychiatric, psychological, social, and vocational services, (B) testing, fitting, or training in the use of prosthetic and orthotic devices, (C) prevocational conditioning or recreational therapy, (D) physical and occupational therapy, (E) speech and hearing therapy, (F) psychiatric, psychological, and social services, (G) evaluation of rehabilitation potential, (H) personal and work adjustment, (I) vocational training with a view toward career advancement (in combination with other rehabilitation services), (J) evaluation or control of specific disabilities, (K) orientation and mobility services to the blind, (L) extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market, except that all medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to prescribe or supervise the provision of such services in the State, and (M) psychosocial rehabilitation services for individuals with chronic mental illness.

(14) The term "Secretary", except when the context otherwise requires, means the Secretary of Education.

(15)(A) Except as provided in subparagraph (B)[1] the term "individual with severe handicaps" means an individual with handicaps (as defined in paragraph (8))—

(i) who has a severe physical or mental disability which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employability;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(B) For purposes of subchapter VII of this chapter the term "individual with severe handicaps" means an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

(16) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, and for the purposes of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 721(a)(1) of this title shall be the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands, as the case may be.

(17) The term "vocational rehabilitation services" means those services identified in section 723 of this title which are provided to individuals with handicaps under this chapter.

(18) The term "supported employment" means competitive work in integrated work settings—

(A) for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or

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[1] So in original. Probably should be followed by a comma.

(B) for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicap, need on-going support services to perform such work. Such term includes transitional employment for individuals with chronic mental illness. For the purpose of this chapter, supported employment as defined in this paragraph may be considered an acceptable outcome for employability.

(19) The term "public or nonprofit agency or organization" shall include an Indian tribe.

(20) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(21) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]).

(Pub. L. 93-112, § 7, Sept. 26, 1973, 87 Stat. 359; Pub. L. 93-516, title I, § 111(a), Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 111(a), Nov. 21, 1974, 89 Stat. 2-5; Pub. L. 95-602, title I, § 122(a)(4)-(8), Nov. 6, 1978, 92 Stat. 2984, 2985; Pub. L. 98-221, title I, § 101, Feb. 22, 1984, 98 Stat. 17; Pub. L. 99-506, title I, § 103(a), (b), (c)(1), (d)(1), (2)(A), (C), (e)-(h)(1), (i), (j), title X, §§ 1001(a)(3), 1002(a), Oct. 21, 1986, 100 Stat. 1809-1811, 1841, 1844; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-259, § 9, Mar. 22, 1988, 102 Stat. 31; Pub. L. 100-630, title II, § 201(c), Nov. 7, 1988, 102 Stat. 3303.)

REFERENCES IN TEXT

Section 721(a)(B)(i) of this title, referred to in par. (3), was in the original "section 101(a)(B)(i) of this Act". As enacted the citation omitted a paragraph designation but is probably a reference to section 721(a)(1)(B)(i) of this title.

The Alaska Native Claims Settlement Act, referred to in par. (21), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see note set out under section 701 of this title.

PRIOR PROVISIONS

Prior similar provisions were contained in former sections 41, 41a, 42-1, and 42a of this title.

AMENDMENTS

1988—Par. (2). Pub. L. 100-630, § 201(c)(1), inserted comma after "local government".

Par. (5)(B). Pub. L. 100-630, § 201(c)(2), inserted comma after "employability".

Par. (5)(C). Pub. L. 100-630, § 201(c)(3), substituted "skills" for "skill".

Par. (5)(G)(i). Pub. L. 100-630, § 201(c)(4), substituted "neither" for "neither such individual".

Par. (8)(C). Pub. L. 100-259 added subpar. (C).

Par. (13)(B). Pub. L. 100-630, § 201(c)(5), reenacted cl. (B). See 1986 Amendment note below.

Par. (13)(F). Pub. L. 100-630, § 201(c)(6), amended cl. (F) generally, inserting a comma after "psychological". See 1986 Amendment note below.

Par. (13)(L). Pub. L. 100-630, § 201(c)(7), which directed the substitution of "provision" for "provisions", could not be executed because the word "provisions" did not appear.

Par. (15)(A). Pub. L. 100-630, § 201(c)(8), struck out ", for purposes of this chapter" before "the term" in introductory provisions.

1986—Par. (3). Pub. L. 99-506, § 1002(a)(1), substituted "designated State unit" for "designated State units".

Par. (4). Pub. L. 99-506, § 1001(a)(3), substituted "the Secretary shall prescribe" for "he shall prescribe".

Par. (5)(B). Pub. L. 99-506, § 103(a)(1), (2), inserted "recreational," after "cultural, social," and "employability" after "an evaluation of the individual's".

Par. (5)(G). Pub. L. 99-506, § 103(d)(2)(A), substituted "an individual with handicaps" for "a handicapped individual" in two places.

Par. (5)(H). Pub. L. 99-506, § 103(a)(3)-(5), added subpar. (H).

Par. (6). Pub. L. 99-506, § 103(b), added par. (6) and redesignated former par. (6) as (7).

Par. (7). Pub. L. 99-506, § 103(c)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "The term 'Federal share' means 80 per centum, except that it shall mean 90 per centum for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 771(b)(3) of this title: *Provided*, That with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 771(b)(3) of this title applicable with respect to that State and that, for the purpose of determining the non-Federal share with respect to any State, expenditures by a political subdivision thereof or by a local agency shall, subject to such limitations and conditions as the Secretary shall by regulation prescribe, be regarded as expenditures by such State."

Pub. L. 99-506, § 103(b), redesignated former par. (6) as (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 99-506, § 103(b), (d)(1), redesignated former par. (7) as (8) and substituted "individual with handicaps" for "handicapped individual" in subpars. (A) and (B). Former par. (8) redesignated (9).

Par. (9). Pub. L. 99-506, § 103(b), (e), redesignated former par. (8) as (9) and substituted "Indian tribe (or combination of such units or tribes)" for "Indian tribal organization (or combination of such units or organizations)". Former par. (9) redesignated (10).

Par. (10). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-506, § 103(b), redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Par. (11). Pub. L. 99-506, § 103(b), redesignated former par. (10) as (11). Former par. (11) redesignated (13).

Par. (12). Pub. L. 99-506, § 103(f), added par. (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 99-506, § 1002(a)(2), which provided for the reenactment of cl. (B) of par. (11), and the amendment of cl. (F) of par. (11) by inserting "psychiatric," before "psychological", to correct amendment made by section 122(a)(7)(B) of Pub. L. 95-602 (see 1978 Amendment note below), was executed to cls. (B) and (F) of par. (13) to reflect the probable intent of Congress and the intervening redesignation of par. (11) as par. (13) by section 103(f) of Pub. L. 99-506. See note below.

Pub. L. 99-506, § 103(d)(2)(C), (f), (g), redesignated former par. (11) as (13) and substituted "individuals with handicaps" for "handicapped individuals" in three places and added cl. (M). Former par. (13) redesignated (15).

Par. (14). Pub. L. 99-506, § 103(f), redesignated former par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 99-506, § 103(f), (h)(1), redesignated former par. (13) as (15) and amended it generally, substituting definition of term "individual with severe handicaps" for definition of term "severe handicap". Former par. (15) redesignated (17).

Par. (16). Pub. L. 99-506, § 103(i)(1), redesignated former par. (14) as (16).

Par. (17). Pub. L. 99-506, § 103(d)(2)(C), (i)(1), redesignated former par. (15) as (17) and substituted "individuals with handicaps" for "handicapped individuals".

Pars. (18) to (21). Pub. L. 99-506, § 103(i)(2), (j), added pars. (18) to (21).

1984—Par. (12). Pub. L. 98-221 substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

1978—Par. (3). Pub. L. 95-602, § 122(a)(8), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 95-602, § 122(a)(4), (8), redesignated former par. (3) as (4) and substituted "and may include such additional equipment and staffing as the Commissioner considers appropriate" for "and the initial equipment for such buildings, and may include the initial staffing thereof". Former par. (4) redesignated (5).

Par. (5). Pub. L. 95-602, § 122(a)(5), (8), redesignated former par. (4) as (5) and inserted in subpar. (B), "psychiatric" after "medical". Former par. (5) redesignated (6).

Par. (6). Pub. L. 95-602, § 122(a)(8), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 95-602, § 122(a)(6), (8), redesignated former par. (6) as (7), substituted "(A) Except as otherwise provided in subparagraph (B), the term" for "The term", redesignated cls. (A) and (B) as cls. (i) and (ii), respectively, struck out provision defining "handicapped individual" for purposes of subchapters IV and V of this chapter as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment, and added subpar. (B). Former par. (7) redesignated (8).

Pars. (8) to (10). Pub. L. 95-602, § 122(a)(8), redesignated former pars. (7) to (9) as (8) to (10), respectively.

Par. (11). Pub. L. 95-602, § 122(a)(7), (8), redesignated former par. (10) as (11) and inserted in cl. (A), ", psychiatric" after "medical" and in cl. (F), "psychiatric" before "psychological". Notwithstanding directory language that amendment be made to cl. (B) of par. (11), amendment was executed to cl. (F) of par. (11) to reflect the probable intent of Congress. Former par. (11) redesignated (12).

Pars. (12) to (15). Pub. L. 95-602, § 122(a)(8), redesignated former pars. (11) to (14) as (12) to (15), respectively.

1974—Par. (6). Pub. L. 93-516 expanded definition of handicapped individual to include for the purposes of subchapters IV and V of this chapter any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such as impairment, or is regarded as having such an impairment.

Pub. L. 93-651 made identical amendment as made by Pub. L. 93-516.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 103(c)(1) of Pub. L. 99-506 provided that the amendment made by section 103(c)(1) is effective Oct. 1, 1986.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100-259 not to be construed to extend application of this chapter to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100-259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 794, 795, 795k, 1503, 1583, 1791a of this title; title 42 sections 1975c, 6862.

§ 707. Allotment percentage

(a) Percentage limitation; promulgation and computation; "United States" defined

(1) The allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands shall be 75 per centum.

(2) The allotment percentages shall be promulgated by the Secretary between October 1 and December 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning on the October 1 next succeeding such promulgation.

(3) The term "United States" means (but only for purposes of this subsection) the fifty States and the District of Columbia.

(b) Population determination

The population of the several States and of the United States shall be determined on the basis of the most recent data available, to be furnished by the Department of Commerce by October 1 of the year preceding the fiscal year for which funds are appropriated pursuant to statutory authorizations.

(Pub. L. 93-112, § 8, Sept. 26, 1973, 87 Stat. 362; Pub. L. 94-273, § 10, Apr. 21, 1976, 90 Stat. 378.)

PRIOR PROVISIONS

Prior similar provisions were contained in former section 41 of this title.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94-273 substituted "October" for "July" wherever appearing, and "December 31" for "September 30".

Schedule of Charges—Continued

	Service	Fee amount
	e. Minor modifications and additional licenses	50.00
3	Rural Radio (Central Office, Interoffice or Relay Facilities)	
	a. Initial Construction Permit, Assignments & Transfers (Per transmitter)	90.00
	b. Renewals & Modifications (Per station)	20.00
4	Offshore Radio Service	
	a. Initial Construction Permit, Assignments & Transfers (Per transmitter)	90.00
	b. Renewals & Modifications (Per station)	20.00
5	Local Television or Point To Point Microwave Radio Service	
	a. Construction Permits, Modifications of Construction Permits, and Renewals of Licenses	135.00
	b. Assignments & Transfers of Control (Per Station)	45.00
	c. Initial License for New Frequency	135.00
6	International Fixed Public Radio (Public & Control Stations)	
	a. Initial Construction Permits, Assignments & Transfers	450.00
	b. Renewals & Modifications	325.00
7	Satellite Services	
	a. Transmit Earth Stations	
	(1) Initial Station Authorization	1,350.00
	(2) Assignments & Transfers of Station Authorizations	450.00
	(3) All Other Applications	90.00
	b. Small Transmit/Receive Earth Stations (2 meters or less)	
	(1) Lead Authorization	3,000.00
	(2) Routine Authorization	30.00
	(3) All Other Applications	90.00
	c. Receive Only Earth Stations	
	(1) Initial Station Authorization	200.00
	(2) All Other Applications	90.00
	d. Applications For Authority To Construct a Space Station	1,800.00
	e. Applications For Authority To Launch & Operate a Space Station	18,000.00
	f. Satellite System Application	
	(1) Initial Station Authorization	5,000.00
	(2) Assignments & Transfers of Systems	1,333.00
	(3) All Other Applications	90.00
8	Multipoint Distribution Service	
	a. Construction Permits, Renewals & Modifications of Construction Permits	135.00
	b. Assignments & Transfers of Control (Per station)	45.00
	c. Initial License (Per channel)	400.00
9	Section 214 Applications	
	a. Applications for Overseas Cable Construction	8,100.00
	b. Applications for Domestic Cable Construction	540.00
	c. All Other 214 Applications	540.00
10	Tariff Filings	
	a. Filing Fee	250.00
	b. Special Permission Filings	200.00
11	Telephone Equipment Registration	135.00
12.	Digital Electronic Message Service	
	a. Construction Permits, Renewals & Modifications of Construction Permits	135.00
	b. Assignments & Transfers of Control (Per station)	45.00
	c. Initial License (First License or License Adding a New Frequency)	135.00"

SUBCHAPTER II—COMMON CARRIERS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 153, 503, 504, 522, 533, 541, 741, 753 of this title.

[redacted]

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful: *Provided*, That communications by wire or radio subject to this chapter may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further*, That nothing in this chapter or in any other provision of law shall be construed to prevent a common carrier subject to this chapter from entering into or operating under any contract with any common carrier not subject to this chapter, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this chapter or in any other provision of law shall prevent a common carrier subject to this chapter from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.

(June 19, 1934, ch. 652, title II, § 201, 48 Stat. 1070; May 31, 1938, ch. 296, 52 Stat. 588.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1938—Subsec. (b). Act May 31, 1938, inserted proviso relating to reports of positions of ships at sea.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 222 of this title.

§ 202. Discriminations and preferences

(a) Charges, services, etc.

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services included

Charges or services, whenever referred to in this chapter, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Penalty

Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of $500 for each such offense and $25 for each and every day of the continuance of such offense.

(June 19, 1934, ch. 652, title II, § 202, 48 Stat. 1070; Sept. 13, 1960, Pub. L. 86-751, 74 Stat. 888.)

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-751 substituted "common carrier lines of communication, whether derived from wire or radio facilities," for "wires".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 152 of this title.

§ 203. Schedules of charges

(a) Filing; public display

Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) Changes in schedule; discretion of Commission to modify requirements

(1) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after ninety days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe.

(2) The Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than ninety days.

(c) Overcharges and rebates

No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) Rejection or refusal

The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) Penalty for violations

In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

(June 19, 1934, ch. 652, title II, § 203, 48 Stat. 1070; Aug. 4, 1976, Pub. L. 94-376, § 1, 90 Stat. 1080.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-376 designated existing provisions as par. (1), substituted "after ninety days notice" for "after thirty days' notice", and struck out provision that the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 222 of this title.

§ 204. Hearings on new charges; suspension pending hearing; refunds; duration of hearing; appeal of order concluding hearing

(a)(1) Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or an increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such charge for a new service or increased charge, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or increased charges as by its decision shall be found not justified. At any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective, or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

(B) The Commission shall, with respect to any such hearing initiated prior to November 3, 1988, issue an order concluding the hearing not later than 12 months after November 3, 1988.

(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a) of this title.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commission may allow part of a charge, classification, regulation, or practice to go into effect, based upon a written showing by the carrier or carriers affected, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. Additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. Authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a) of this section.

(June 19, 1934, ch. 652, title II, § 204, 48 Stat. 1071; Aug. 4, 1976, Pub. L. 94-376, § 2, 90 Stat. 1080; Nov. 3, 1988, Pub. L. 100-594, § 8(b), 102 Stat. 3023.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-594 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94-376 designated existing provisions as subsec. (a), substituted "any new or revised charge" for "any new charge", "in whole or in part but not for a longer period than five months" for "but not for a longer period than three months", "after such charge, classification, regulation, or practice had become effective" for "after it had become effective", "the proposed new or revised charge" for "the proposed change of charge", "but in case of a proposed charge for a new service or an increased charge" for "but in case of a proposed increased charge", "by reason of such charge for a new service or increased charge" for "by reason of such increase", "such portion of such charge for a new service or increased charges" for "such portion of such increased charges", "burden of proof to show that the increased charge, or proposed charge" for "burden of proof to show that the increased charge, or proposed increased charge", and struck out "after the organization of the Commission" before "the burden of proof."

Subsec. (b). Pub. L. 94-376 added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 155, 405 of this title.

§ 205. Commission authorized to prescribe just and reasonable charges; penalties for violations

(a) Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(b) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this section shall forfeit to the United States the sum of $1,000 for each offense. Every distinct violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

(June 19, 1934, ch. 652, title II, § 205, 48 Stat. 1072.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 152 of this title.

§ 206. Carriers' liability for damages

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

(June 19, 1934, ch. 652, title II, § 206, 48 Stat. 1072.)

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 54 on this section, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgment and costs, see rule 54.

§ 207. Recovery of damages

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

(June 19, 1934, ch. 652, title II, § 207, 48 Stat. 1073.)

§ 208. Complaints to Commission; investigations; duration of investigation; appeal of order concluding investigation

(a) Any person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complaint.

(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

(2) The Commission shall, with respect to any such investigation initiated prior to November 3, 1988, issue an order concluding the investigation not later than 12 months after November 3, 1988.

(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a) of this title.

(June 19, 1934, ch. 652, title II, § 208, 48 Stat. 1073; Nov. 3, 1988, Pub. L. 100-594, § 8(c), 102 Stat. 3023.)

AMENDMENTS

1988—Pub. L. 100-594 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 405 of this title.

§ 209. Orders for payment of money

If, after hearing on a complaint, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

(June 19, 1934, ch. 652, title II, § 209, 48 Stat. 1073.)

§ 210. Franks and passes; free service to governmental agencies in connection with national defense

(a) Nothing in this chapter or in any other provision of law shall be construed to prohibit common carriers from issuing or giving franks to, or exchanging franks with each other for the use of, their officers, agents, employees, and their families, or, subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with other common carriers not subject to the provisions of this chapter, for the use of their officers, agents, employees, and their families. The term "employees", as used in this section, shall include furloughed, pensioned, and superannuated employees.

(b) Nothing in this chapter or in any other provision of law shall be construed to prohibit common carriers from rendering to any agency of the Government free service in connection with the preparation for the national defense: *Provided*, That such free service may be rendered only in accordance with such rules and regulations as the Commission may prescribe therefor.

(June 19, 1934, ch. 652, title II, § 210, 48 Stat. 1073; June 25, 1940, ch. 422, 54 Stat. 570.)

AMENDMENTS

1940—Act June 25, 1940, designated existing provisions as subsec. (a) and added subsec. (b).

§ 211. Contracts of carriers; filing with Commission

(a) Every carrier subject to this chapter shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this chapter, in relation to any traffic affected by the provisions of this chapter to which it may be a party.

(b) The Commission shall have authority to require the filing of any other contracts of any carrier, and shall also have authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine.

(June 19, 1934, ch. 652, title II, § 211, 48 Stat. 1073.)

§ 212. Interlocking directorates; officials dealing in securities

After sixty days from June 19, 1934, it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this chapter, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby: *Provided*, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person. After this section takes effect it shall be unlawful for any officer or director of any carrier subject to this chapter to receive for his own benefit directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carriers from any funds properly included in capital account.

(June 19, 1934, ch. 652, title II, § 212, 48 Stat. 1074; Aug. 2, 1956, ch. 874, § 1, 70 Stat. 931.)

AMENDMENTS

1956—Act Aug. 2, 1956, inserted proviso that Commission may authorize persons to hold position of officer or director in more than one carrier, where carrier owns more than 50 percent of the stock of the other carriers, or that 50 percent or more of the stock of all such carriers is owned by the same person, struck out "such" before "carrier" in sentence after proviso, inserted "subject to this chapter" after that word, and substituted "carriers" for "carrier" toward end of said sentence.

§ 213. Valuation of property of carrier

(a) Hearing

The Commission may from time to time, as may be necessary for the proper administration of this chapter, and after opportunity for hearing, make a valuation of all or of any part of the property owned or used by any carrier subject to this chapter, as of such date as the Commission may fix.

(b) Inventory

The Commission may at any time require any such carrier to file with the Commission an inventory of all or of any part of the property owned or used by said carrier, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such carrier shall file such inventory within such reasonable time as the Commission by order shall require.

(c) Original cost

The Commission may at any time require any such carrier to file with the Commission a statement showing the original cost at the time of dedication to the public use of all or of any part of the property owned or used by said carrier. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a carrier under this subsection shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

(d) Easement, license or franchise

Nothing shall be included in the original cost reported for the property of any carrier under subsection (c) of this section on account of any easement, license, or franchise granted by the United States or by any State or political subdivision thereof, beyond the reasonable necessary expense lawfully incurred in obtaining such easement, license, or franchise from the public authority aforesaid, which expense shall be reported separately from all other costs in such detail as the Commission may require; and nothing shall be included in any valuation of the property of any carrier made by the Commission on account of any such easement, license, or franchise, beyond such reasonable necessary expense lawfully incurred as aforesaid.

(e) Improvements; changes in condition

The Commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of carrier properties.

(f) Additional information; access to records and data

For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation or finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public. The Commission, in making any such valuation, shall be free to adopt any method of valuation which shall be lawful.

(g) Interstate Commerce Commission

Notwithstanding any provision of this chapter the Interstate Commerce Commission, if requested to do so by the Commission, shall complete, at the earliest practicable date, such valuations of properties of carriers subject to this chapter as are now in progress, and shall thereafter transfer to the Commission the records relating thereto.

(h) State commissions

Nothing in this section shall impair or diminish the powers of any State commission.

(June 19, 1934, ch. 652, title II, § 213, 48 Stat. 1074.)

§ 214. Extension of lines or discontinuance of service; certificate of public convenience and necessity

(a) Exceptions; temporary or emergency service or discontinuance of service; changes in plant, operation or equipment

No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 or 222 [1] of this title: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: *Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

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[1] See References in Text note below.

(b) Notification of Secretary of Defense, Secretary of State and State Governor

Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) Approval or disapproval; injunction

The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) Order of Commission; hearing; penalty

The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this subsection shall forfeit to the United States $100 for each day during which such refusal or neglect continues.

(June 19, 1934, ch. 652, title II, § 214, 48 Stat. 1075; Mar. 6, 1943, ch. 10, §§ 2-5, 57 Stat. 11; Nov. 30, 1974, Pub. L. 93-506, § 1, 88 Stat. 1577.)

REFERENCES IN TEXT

Section 222 of this title, referred to in subsec. (a), which related to consolidations and mergers of telegraph carriers, was amended generally by Pub. L. 97-130, § 2, Dec. 29, 1981, 95 Stat. 1687, and as so amended relates to competition among record carriers.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-506 substituted "the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points)," for "the Secretary of the Army, the Secretary of the Navy,".

1943—Subsec. (a). Act Mar. 6, 1943, § 2, among other changes inserted all after "no carrier shall discontinue", etc.

Subsec. (b). Act Mar. 6, 1943, § 3, among other changes provided notice should be filed with Secretary of War and the Secretary of the Navy.

Subsec. (c). Act Mar. 6, 1943, § 4, extended provisions to include discontinuance, reduction, or impairment of service.

Subsec. (d). Act Mar. 6, 1943, § 5, amended first sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 222, 721 of this title.

§ 215. Examination of transactions relating to furnishing of services, equipment, etc.; reports to Congress

(a) Access to records and documents

The Commission shall examine into transactions entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the services rendered or to be rendered by such carrier, in wire or radio communication subject to this chapter, and shall report to the Congress whether any such transactions have affected or are likely to affect adversely the ability of the carrier to render adequate service to the public, or may result in any undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service; and in order to fully examine into such transactions the Commission shall have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, of persons furnishing such equipment, supplies, research, services, finances, credit, or personnel. The Commission shall include in its report its recommendations for necessary legislation in connection with such transactions, and shall report specifically whether in its opinion legislation should be enacted (1) authorizing the Commission to declare any such transactions void or to permit such transactions to be carried out subject to such modification of their terms and conditions as the Commission shall deem desirable in the public interest; and/or (2) subjecting such transactions to the approval of the Commission where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a person directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; and/or (3) authorizing the Commission to require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

(b) Wire telephone and telegraph services

The Commission shall investigate the methods by which and the extent to which wire telephone companies are furnishing wire telegraph service and wire telegraph companies are furnishing wire telephone service, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(c) Exclusive dealing contracts

The Commission shall examine all contracts of common carriers subject to this chapter which prevent the other party thereto from dealing with another common carrier subject to this chapter, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(June 19, 1934, ch. 652, title II, § 215, 48 Stat. 1076.)

§ 216. Receivers and trustees; application of chapter

The provisions of this chapter shall apply to all receivers and operating trustees of carriers subject to this chapter to the same extent that it applies to carriers.

(June 19, 1934, ch. 652, title II, § 216, 48 Stat. 1077.)

§ 217. Agents' acts and omissions; liability of carrier

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

(June 19, 1934, ch. 652, title II, § 217, 48 Stat. 1077.)

§ 218. Management of business; inquiries by Commission

The Commission may inquire into the management of the business of all carriers subject to this chapter, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmisson of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

(June 19, 1934, ch. 652, title II, § 218, 48 Stat. 1077.)

§ 219. Reports by carriers; contents and requirements generally

(a) The Commission is authorized to require annual reports from all carriers subject to this chapter, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. Except as otherwise required by the Commission, such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any; the number of stockholders (and the names of the thirty largest holders of each class of stock and the amount held by each); the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same, as the Commission may require.

(b) Such reports shall be for such twelve months' period as the Commission shall designate and shall be filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such person shall forefeit to the United States the sum of $100 for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

(June 19, 1934, ch. 652, title II, § 219, 48 Stat. 1077; Aug. 2, 1956, ch. 874, § 2, 70 Stat. 931; Apr. 27, 1962, Pub. L. 87-444, §§ 1, 2, 76 Stat. 63.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-444, § 1, struck out "under oath" after "require annual report".

Subsec. (b). Pub. L. 87-444, § 2, struck out provisions that the periodical or special reports be under oath whenever the Commission so required.

1956—Subsec. (a). Act Aug. 2, 1956, substituted "Except as otherwise required by the Commission, such" for "Such" at beginning of second sentence.

§ 220. Accounts, records, and memoranda

(a) Forms

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this chapter, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(b) Depreciation charges

The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the clasess[2] of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) Access to information; burden of proof

The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

(d) Penalty for failure to comply

In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States the sum of $500 for each day of the continuance of each such offense.

(e) False entry; destruction; penalty

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $1,000 or more than $5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) Confidentiality of information

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(g) Use of other forms; alterations in prescribed forms

After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

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[2] So in original. Probably should be "classes".

(h) Exemption; regulation by State commission

The Commission may classify carriers subject to this chapter and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) Consultation with State commissions

The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) Report to Congress on need for further legislation

The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

(June 19, 1934, ch. 652, title II, § 220, 48 Stat. 1078.)

§ 221. Consolidations and mergers of telephone companies

(a) Notification of State Governor and State commission; public hearing; certification

Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this chapter, the Commission shall give reasonable notice in writing to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable, and shall afford such parties a reasonable opportunity to submit comments on the proposal. A public hearing shall be held in all cases where a request therefor is made by a telephone company, an association of telephone companies, a State commission, or local governmental authority. If the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

(b) State jurisdiction over services

Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) Determination of property used in interstate toll service

For the purpose of administering this chapter as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe.

(d) Valuation of property

In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service.

(June 19, 1934, ch. 652, title II, § 221, 48 Stat. 1080; Apr. 27, 1954, ch. 175, § 4, 68 Stat. 64; Aug. 2, 1956, ch. 874, § 3, 70 Stat. 932.)

AMENDMENTS

1956—Subsec. (a). Act Aug. 2, 1956, inserted provisions relating to submission of comments by parties and required a public hearing upon request, in lieu of former provisions requiring hearing upon application.

1954—Subsec. (b). Act Apr. 27, 1954, included mobile or point-to-point radio telephone exchange service within exclusions provided for in such subsection, where it is subject to regulation by a State commission or by local governmental authority, and made it clear that the Commission retains its licensing authority over the radio stations that might be involved in such service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 214 of this title.

§ 222. Competition among record carriers

(a) Definitions

For purposes of this section:

(1) The term "primary existing international record carrier" means any record carrier which (A) derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the

United States; (B) is eligible, on December 29, 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States; and (C) is engaged in the direct provision of record communications services between the United States and four or more continents.

(2) The term "record carrier" means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between two points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

(3) The term "record communications service" means those services traditionally offered by telegraph companies, such as telegraph, telegram, telegram exchange, and similar services involving an interconnected network of teletypewriters.

(b) Exercise of authorities by Commission

(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by competition. In order to meet the purposes of this section, the Commission shall forbear from exercising its authority under this chapter as the development of competition among record carriers reduces the degree of regulation necessary to protect the public.

(2) In furtherance of the purposes of this section, record carriers shall not impose upon users of any regulated record communications services the costs of any other services or facilities (including terminal equipment), whether regulated or unregulated.

(c) Implementation by Commission; procedures applicable

(1)(A)(i) In implementing its responsibilities under section 201(a) of this title, the Commission shall require each record carrier to make available to any other record carrier, upon reasonable request, full interconnection with any facility operated by such record carrier, and used primarily to provide record communications service. Such facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

(ii)(I) Subject to the provisions of subclause (II), if a request for interconnection under clause (i) is for the purpose of providing international record communications service, then the agreement entered into under clause (i) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

(B) The Commission shall require that—

(i) if any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering interconnection requirements;

(ii) in any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions; and

(iii) in any case in which such separate international record carrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

The requirements of clauses (i), (ii), and (iii) shall not apply to a record carrier if such record carrier does not have a significant share of the market for record communications services.

(2) If any request made by a record carrier under paragraph (1)(A)(i) will require an agreement under which any record communications service or facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203 of this title. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the costs of the record communications service or facility employed as a result of such agreement.

(3)(A) The Commission, as soon as practicable (but not later than fifteen days) after December 29, 1981, shall convene a meeting among all record carriers which the Commission determines would be parties to any agreement required by paragraph (1)(A)(i). Such meeting shall be held for the purpose of negotiating any such agreement. Representatives of the Commission shall attend such meeting for purposes of monitoring and presiding over such negotitions.[5]

(B)(i) In the case of any such required agreement, if—

(I) the record carrier subject to the interconnection requirement; and

(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the forty-five-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Any such agreement established by the Commission shall be binding upon such parties.

(ii) Such interim or final order shall be issued not later than ninety days after the date on which the Commission convenes the meeting under subparagraph (A). In the case of any such required agreement, if—

(I) the record carrier subject to the interconnection requirement; and

(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement. After a carrier makes such an election, the terms and arrangements established by the agreement shall apply to such carrier to the extent practicable, as determined by the Commission.

(4) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that (A) such agreement is not consistent with the purposes of this section; or (B) such agreement unjustly or unreasonably discriminates against any record carrier.

(5) If the Western Union Telegraph Company submits an application to the Commission for authority to provide international record communications service, the Commission shall not have any authority to take any final action with respect to such application until the end of the one hundred and twenty-day period following the date a written agreement is entered into between such Company and other record carriers under paragraph (3), or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers. The limitation upon Commission authority established in this paragraph shall expire at the end of the two hundred and ten-day period following December 29, 1981.

(d) Domestic and international market service

Subject to the provisions of subsection (c)(5) of this section, each record carrier may provide record communications service in the United States domestic market and in the international market. Any record carrier seeking to provide domestic record communications service may provide such service without submitting an application to the Commission under section 214 of this title unless the Commission requires such a submission. The Commission shall act expeditiously upon any application submitted pursuant to section 214 of this title.

(e) Termination of certain statutory oversight authorities of Commission

(1) At the end of the 36-month period following December 29, 1981, the provisions of subsection (c) of this section, other than paragraph (1)(B) of such subsection, shall cease to have any force or effect.

(2) The provisions of paragraph (1) shall not be construed to affect the obligation of any carrier to interconnect with any other carrier pursuant to this chapter.

(June 19, 1934, ch. 652, title II, § 222, as added Mar. 6, 1943, ch. 10, § 1, 57 Stat. 5, and amended July 12, 1960, Pub. L. 86-624, § 36, 74 Stat. 421; Nov. 30, 1974, Pub. L. 93-506, § 2, 88 Stat. 1577; Dec. 24, 1980, Pub. L. 96-590, 94 Stat. 3414; Dec. 29, 1981, Pub. L. 97-130, § 2, 95 Stat. 1687.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-130 substituted provisions defining terms applicable to authorities respecting competition among record carriers, for provisions defining terms applicable to consolidations and mergers of telegraph carriers.

Subsec. (b). Pub. L. 97-130 substituted provisions relating to exercise of authorities by Commission, for provisions relating to authorization of consolidations and mergers, and acquisition of facilities.

Subsec. (c). Pub. L. 97-130 substituted provisions relating to implementation of responsibilities by Commission and procedures applicable to agreements among parties, for provisions relating to procedures applicable to consolidation or merger applications.

Subsec. (d). Pub. L. 97-130 substituted provisions relating to service for the domestic and international markets, for provisions relating to alien ownership of capital stock.

Subsec. (e). Pub. L. 97-130 substituted provisions relating to termination of statutory oversight authorities of Commission, for provisions relating to distribution of telegraph traffic among international carriers, and procedures applicable.

Subsec. (f). Pub. L. 97-130 struck out subsec. (f) which related to protection of rights of employees of carriers involved in consolidations or mergers, procedures applicable for enforcement of rights, and exemptions.

Subsec. (g). Pub. L. 97-130 struck out subsec. (g) which related to applicability of provisions to Hawaii.

1980—Subsec. (a)(10). Pub. L. 96-590, § 1, struck out ", except Hawaii" after "Union".

Subsec. (g). Pub. L. 96-590, § 2, added subsec. (g).

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[5] So in original. Probably should be "negotiations."

1974—Subsec. (c)(1). Pub. L. 93-506 inserted reference to Secretary of Defense and struck out references to Secretary of the Army and Secretary of the Navy.

1960—Subsec. (a)(10). Pub. L. 86-624 substituted "the District of Columbia and the States of the Union, except Hawaii" for "the several States and the District of Columbia".

SHORT TITLE OF 1981 AMENDMENT

For short title of Pub. L. 97-130 as the Record Carrier Competition Act of 1981, see section 1 of Pub. L. 97-130, set out as a note under section 609 of this title.

OVERSIGHT OF DISTRIBUTION FORMULAS BY COMMISSION; TERMINATION OF AUTHORITIES

Section 3 of Pub. L. 97-130 provided that:

"(a) Subject to the provisions of subsection (b), the Federal Communications Commission shall exercise its authority under the Communications Act of 1934 [this chapter] to continue its oversight of the establishment of just and reasonable distribution formulas for unrouted outbound telegraph traffic and the allocation of revenues with respect to such traffic, consistent with the purposes of section 222 of the Communications Act of 1934, as amended in section 2 [this section].

"(b) The provisions of subsection (a) shall cease to have any force or effect at the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 29, 1981]."

VALIDITY OF CONTRACTS ENTERED INTO PRIOR TO JUNE 23, 1981

Section 4 of Pub. L. 97-130 provided that: "The amendment made in section 2 [amending this section] shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic between any domestic record carrier and any international record carrier if such contract was entered into before June 23, 1981."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 214 of this title; title 26 section 46.

§ 223. Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications

(a) Whoever—

(1) in the District of Columbia or in interstate or foreign communication by means of telephone—

(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(2) knowingly permits any telephone facility under his control to be used for any purpose prohibited by this section,

shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(b)(1) Whoever knowingly—

(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

shall be fined in accordance with title 18, or imprisoned not more than two years, or both.

(2) Whoever knowingly—

(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(June 19, 1934, ch. 652, title II, § 223, as added May 3, 1968, Pub. L. 90-299, § 1, 82 Stat. 112, and amended Dec. 8, 1983, Pub. L. 98-214, § 8[illegible], (b), 97 Stat. 1469, 1470; Apr. 28, 1988, Pub. L. 100-297, title VI, § 6101, 102 Stat. 424; Nov. 18, 1988, Pub. L. 100-690, title VII, § 7524, 102 Stat. 4502.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) Whoever knowingly—

"(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.

"(2) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(3)(A) In addition to the penalties under paragraphs (1) and (2), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(B) A fine under this paragraph may be assessed either—

"(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

"(ii) by the Commission after appropriate administrative proceedings.

"(4) The Attorney General may bring a suit in the appropriate district court of the United States to

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enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure."

Pub. L. 100-297, in par. (1)(A), struck out "under eighteen years of age or to any other person without that person's consent" after "to any person", redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.", redesignated par. (4) as (3) and substituted "under paragraphs (1) and (2)" for "under paragraphs (1) and (3)", and redesignated par. (5) as (4).

1983—Subsec. (a). Pub. L. 98-214, § 8(a)(1), (2), designated existing provisions as subsec. (a) and substituted "$50,000" for "$500" in provisions after par. (2).

Subsec. (a)(2). Pub. L. 98-214, § 8(b), inserted "facility" after "telephone".

Subsec. (b). Pub. L. 98-214, § 8(a)(3), added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-297 effective July 1, 1988, see section 6303 of Pub. L. 100-297, set out as a note under section 2701 of Title 20, Education.

REGULATIONS; DISPOSITION OF COMPLAINTS PENDING ON DECEMBER 8, 1983

Section 8(c), (d) of Pub. L. 98-214 provided that:

"(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) [subsec. (b)(2) of this section] not later than one hundred and eighty days after the date of the enactment of this Act [Dec. 8, 1983].

"(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 [this section] which are pending on the date of the enactment of this Act [Dec. 8, 1983] within ninety days of such date of enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) Within 180 days from February 21, 1978, the Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the at-

8.[illegible]

tachment of wires, cables, and associated equipment.

(June 19, 1934, ch. 652, title II, § 224, as added Feb. 21, 1978, Pub. L. 95-234, § 6, 92 Stat. 35, and amended Sept. 13, 1982, Pub. L. 97-259, title I, § 106, 96 Stat. 1091; Oct. 30, 1984, Pub. L. 98-549, § 4, 98 Stat. 2801.)

Amendments

1984—Subsec. (c)(3). Pub. L. 98-549 added par. (3).

1982—Subsec. (e). Pub. L. 97-259 struck out subsec. (e) which provided that, upon expiration of 5-year period that began on Feb. 21, 1978, provisions of subsec. (d) of this section would cease to have any effect.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

Effective Date

Section effective on thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

Section Referred to in Other Sections

This section is referred to in section 152 of this title.

SUBCHAPTER III—SPECIAL PROVISIONS RELATING TO RADIO

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 503, 741, 753 of this title.

Part I—General Provisions

§ 301. License for radio communication or transmission of energy

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States (except as provided in section 303(t) of this title); or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

(June 19, 1934, ch. 652, title III, § 301, 48 Stat. 1081; Sept. 13, 1982, Pub. L. 97-259, title I, §§ 107, 111(b), 96 Stat. 1091, 1093.)

References in Text

This chapter, referred to in text, was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Amendments

1982—Pub. L. 97-259 struck out "interstate and foreign" after "channels of" in first sentence, substituted "State, Territory," for "Territory" after "from one place in any" and inserted "State," after "to another place in the same" in cl. (a), and inserted "(except as provided in section 303(t) of this title)" in cl. (e).

Section Referred to in Other Sections

This section is referred to in sections 152, 221, 303, 305, 306, 510 of this title.

§ 302. Repealed. June 5, 1936, ch. 511, § 1, 49 Stat. 1475

Section, act June 19, 1934, ch. 652, title III, § 302, 48 Stat. 1081, divided United States into five zones for purposes of this subchapter.

§ 302a. Devices which interfere with radio reception

(a) Regulations

The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy. Such regulations shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems, and to the use of such devices.

(b) Restrictions

No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.

(c) Exceptions

The provisions of this section shall not be applicable to carriers transporting such devices without trading in them, to devices or home electronic equipment and systems manufac-

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Study of Telecommunications and Information Goals

Pub. L. 97-259, title II, § 202, Sept. 13, 1982, 96 Stat. 1099, provided that:

"(a) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-range international telecommunications and information goals of the United States, the specific international telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop international telecommunications and information policy.

"(b) In any study or review conducted pursuant to this section, the National Telecommunications and Information Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which *directly* affect such policies."

Commission on Governmental Use of International Telecommunications

Act July 29, 1954, ch. 647, 68 Stat. 587, established the Commission on Governmental Use of International Telecommunications to examine, study and report on the objectives, operations, and effectiveness of information programs with respect to the prompt development of techniques, methods, and programs for greatly expanded and far more effective operations in this vital area of foreign policy through the use of foreign telecommunications. The Commission was required to make a report of its findings and recommendations on or before Dec. 31, 1954, and the Commission ceased to exist 90 days after submission of its report to the Congress.

Communication Privileges to Participants in World Telecommunication Conferences

Act May 13, 1947, ch. 51, 61 Stat. 83, provided that nothing in this chapter, or in any other provision of law should be construed to prohibit United States communication common carriers from rendering free communication services to official participants in the world telecommunications conferences which were held in the United States in 1947.

Executive Order No. 10460

Ex. Ord. No. 10460, eff. June 16, 1953, 18 F.R. 3513, as amended by Ex. Ord. No. 10773, eff. July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, eff. Sept. 6, 1958, 23 F.R. 6971, which related to the performance of telecommunication functions by Director of the Office of Civil and Defense Mobilization, was revoked by section 4 of Ex. Ord. No. 10995, eff. Feb. 16, 1962, 27 F.R. 1519.

Section Referred to in Other Sections

This section is referred to in sections 332, 607 of this title.

§ 152. Application of chapter

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this chapter shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V-A.

([illegible] Except as provided in section 224 of this title and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

(June 19, 1934, ch. 652, title I, § 2, 48 Stat. 1064; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Apr. 27, 1954, ch. 175, § 1, 68 Stat. 63; Feb. 21, 1978, Pub. L. 95-234, § 5, 92 Stat. 35; Oct. 30, 1984, Pub. L. 98-549, § 3(a), 98 Stat. 2801.)

References in Text

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Codification

Words, "the Philippine Islands or", were omitted from this section on authority of Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, which recognized the independence of the Philippine Islands as of July 4, 1946. Proc. No. 2695 is set out under section 1394 of Title 22.

Amendments

1984—Subsec. (a). Pub. L. 98-549, § 3(a)(1), inserted provision making this chapter applicable with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V-A of this chapter.

Subsec. (b). Pub. L. 98-549, § 3(a)(2), inserted "and subchapter V-A of this chapter" after "section 301 of this title".

1978—Subsec. (b). Pub. L. 95-234 substituted "Except as provided in section 224 of this title and subject" for "Subject".

1954—Subsec. (b). Act Apr. 27, 1954, made it clear that intrastate communication service, whether by "wire or radio", would not be subject to the Commission's jurisdiction over charges, classifications, etc., and added cls. (3) and (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7 of Pub. L. 95-234 provided that "The amendments made by this Act [enacting section 224 of this title, amending this section and sections 503 and 504 of this title, repealing sections 510 of this title, and enacting provisions set out as a note under section 609 of this title] shall take effect on the thirtieth day after the date of enactment of this Act [Feb. 21, 1978]; except that the provisions of sections 503(b) and 510 of the Communications Act of 1934 [sections 503(b) and 510 of this title], as in effect on such date of enactment, shall continue to constitute the applicable law with the respect to any act or omission which occurs prior to such thirtieth day."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§ 153. Definitions

For the purposes of this chapter, unless the context otherwise requires—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this chapter.

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(g) "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(i) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(j) "Corporation" includes any corporation, joint-stock company, or association.

(k) "Radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(*l*) "Mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(m) "Land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(n) "Mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services.

(o) "Broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(p) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(q) "Amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(r) "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

(s) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge by the Commission at least six months before the same are to take effect.

(h) Exemption; regulation by State commission

The Commission may classify carriers subject to this chapter and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) Consultation with State commissions

The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) Report to Congress on need for further legislation

The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

(June 19, 1934, ch. 652, title II, § 220, 48 Stat. 1078.)

[redacted] Consolidations and mergers of telephone companies

(a) Notification of State Governor and State commission; public hearing; certification

Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this chapter, the Commission shall give reasonable notice in writing to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable, and shall afford such parties a reasonable opportunity to submit comments on the proposal. A public hearing shall be held in all cases where a request therefor is made by a telephone company, an association of telephone companies, a State commission, or local governmental authority. If the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

[redacted] State jurisdiction over services

Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) Determination of property used in interstate toll service

For the purpose of administering this chapter as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe.

(d) Valuation of property

In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service.

(June 19, 1934, ch. 652, title II, § 221, 48 Stat. 1080; Apr. 27, 1954, ch. 175, § 4, 68 Stat. 64; Aug. 2, 1956, ch. 874, § 3, 70 Stat. 932.)

AMENDMENTS

1956—Subsec. (a). Act Aug. 2, 1956, inserted provisions relating to submission of comments by parties and required a public hearing upon request, in lieu of former provisions requiring hearing upon application.

1954—Subsec. (b). Act Apr. 27, 1954, included mobile or point-to-point radio telephone exchange service within exclusions provided for in such subsection, where it is subject to regulation by a State commission or by local governmental authority, and made it clear that the Commission retains its licensing authority over the radio stations that might be involved in such service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 214 of this title.

§ 222. Competition among record carriers

(a) Definitions

For purposes of this section:

(1) The term "primary existing international record carrier" means any record carrier which (A) derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the

able basis such administrative support services as the Commission may request.

(h) Reports

The Commission shall transmit an annual report to the President and to each House of Congress as soon as practicable after the end of each fiscal year. Each report shall include a detailed statement of the activities and accomplishments of the Commission during the preceding fiscal year and any recommendations by the Commission for legislation and administrative actions.

(Pub. L. 99-83, title XIII, § 1303, Aug. 8, 1985, 99 Stat. 280.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (g)(2), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (g)(2), (3), is set out under section 5332 of Title 5.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as an Effective Date of 1985 Amendment note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER II—NATIONAL HISTORIC PRESERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 19dd, 398f, 410nn-1, 410pp-5, 460uu-41, 1247 of this title; title 20 section 4424; title 42 section 5320; title 43 section 1457a; title 45 sections 1116, 1212.

[illegible]. Short title; Congressional finding and declaration of policy

(a) This subchapter may be cited as the "National Historic Preservation Act".

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

(Pub. L. 89-665, § 1, Oct. 15, 1966, 80 Stat. 915; Pub. L. 96-515, title I, § 101(a), Dec. 12, 1980, 94 Stat. 2987.)

AMENDMENTS

1980—Pub. L. 96-515 added subsec. (a), designated existing provision as subsec. (b), and in subsec. (b) as so designated, redesignated pars. (a) to (d) as (1), (2), (5), and (7), respectively, in par. (1) as so redesignated, substituted "heritage" for "past", and added pars. (3), (4), and (6).

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-515 provided: "That this Act [enacting sections 469c-2, 470-1 470a-1, 470a-2, 470h-2, 470h-3, 470u, 470v and 470w to 470w-6 of this title, amending sections 470, 470a, 470b, 470c, 470d, 470h to 470j, 470*l*, 470m, and 470r to 470t of this title and enacting provisions set out as notes under sections 470a, 470j and 470h of this title and section 874 of Title 40, Public Buildings, Property, and Works] may be cited as the 'National Historic Preservation Act Amendments of 1980'."

EX. ORD. NO. 11593. PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT

Ex. Ord. No. 11593, May 13, 1971, 36 F.R. 8921, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

Sec. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

RICHARD NIXON.

§ 470-1. Declaration of policy of the Federal Government

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

(Pub. L. 89-665, § 2, as added Pub. L. 96-515, title I, § 101(a), Dec. 12, 1980, 94 Stat. 2988.)

§ 470a. Historic preservation program

(a) National Register of Historic Places; designation of properties as historic landmarks; properties deemed included; criteria; nomination of properties by States, local governments or individuals; regulations

(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this subchapter and sections 461 to 467 of this title; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), and any property nominated under this paragraph or under section 470h-2(a)(2) of this title shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determination shall be made within ninety days from the date of the nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of

this paragraph in the case of multiple ownership of a single property.

(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 470h-2 of this title, the Act of June 27, 1960 (16 U.S.C. 469c) [16 U.S.C. 469 et seq.], and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 470c(c) of this title.

(b) Regulations for State Historic Preservation Programs; periodic evaluations and fiscal audits of State programs; administration of State programs; contracts and cooperative agreements with nonprofit or educational institutions; treatment of State programs as approved programs

(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this subchapter. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1) of this section, unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training and technical assistance relating to the Federal and State Historic Preservation Programs; and

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section.

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after December 12, 1980.

(c) Certification of local governments by State Historic Preservation Officer; transfer of portion of grants; certification by Secretary; nomination of properties by local governments for inclusion on National Register

(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this subchapter and provide for the transfer, in accordance with section 470c(c) of this title, of a portion of the grants received by the States under this subchapter, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic

Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this subchapter.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this section. The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 470c(c) of this title, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(d) Matching grants-in-aid to States for programs and projects; matching grant-in-aid to National Trust for Historic Preservation in the United States; program of direct grants for preservation of properties included on National Register; grants or loans to Indian tribes and ethnic or minority groups for preservation of cultural heritage

(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.

(2) The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by sections 468 to 468e of this title, for the purposes of carrying out the responsibilities of the National Trust.

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 470h of this title. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation;[1] and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 470d of this title.

(e) Prohibition of use of funds for compensation of intervenors in preservation program

No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this subchapter.

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[1] So in original. The semicolon probably should be a comma.

(f) Guidelines for Federal agency responsibility for agency-owned historic properties

In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 470h-2 of this title.

(g) Professional standards for preservation of federally owned or controlled historic properties

Within one year after December 12, 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(h) Dissemination of information concerning professional methods and techniques for preservation of historic properties

The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

(Pub. L. 89-665, title I, § 101, Oct. 15, 1966, 80 Stat. 915; Pub. L. 93-54, § 1(d), July 1, 1973, 87 Stat. 139; Pub. L. 91-383, § 11, as added Pub. L. 94-458, § 2, Oct. 7, 1976, 90 Stat. 1942, and amended Pub. L. 96-205, title VI, § 608(a)(1), (2), Mar. 12, 1980, 94 Stat. 92; Pub. L. 96-515, title II, § 201(a), Dec. 12, 1980, 94 Stat. 2988.)

References in Text

The effective date of this Act, referred to in subsec. (a)(1)(B), probably means the effective date of the National Historic Preservation Act Amendments of 1980, Pub. L. 96-515, approved Dec. 12, 1980, rather than the effective date of the National Historic Preservation Act, Pub. L. 89-665, which was approved Oct. 15, 1966.

Act of June 27, 1960 (16 U.S.C. 469c), referred to in subsec. (a)(7)(A), is Pub. L. 86-523, June 27, 1960, 74 Stat. 220, as amended, which enacted sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following), referred to in subsec. (a)(7)(A), is Pub. L. 96-95, Oct. 31, 1979, 93 Stat. 721, as amended, which is classified generally to chapter 1B (§ 470aa et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 470aa of this title and Tables.

Section 468e of this title, referred to in subsec. (d)(2), was repealed by Pub. L. 86-533, § 1(19), June 29, 1960, 74 Stat. 248.

Amendments

1980—Subsec. (a). Pub. L. 96-515 substituted provision designating certain properties as National Historical Landmarks, providing for establishment by the Secretary of Interior of criteria for inclusion on or removal from the National Register, designation of properties as National Historical Landmarks and removal of such designation, and nomination of properties for inclusion in the World Heritage List, authorizing any State, local government, or person to nominate properties for inclusion on the National Register and to appeal a nomination or refusal to nominate, requiring that before property be included on the National Register or designated as a National Historic Landmark, the owner or owners of the property be given an opportunity to concur in, or object to, its inclusion, and authorizing the Secretary to promulgate regulations to ensure that significant prehistoric and historic artifacts and records receive proper treatment, to establish standards for documenting historic properties for incorporation in the national historical, architectural, and engineering records within the Library of Congress, and to certify local governments for allocation of funds, for provision authorizing the Secretary to grant funds to States for preparing comprehensive statewide historic surveys and plans for preservation and acquisition of historic properties, to establish programs of matching grants-in-aid to States for the purpose of historical preservation and to the National Trust for Historic Preservation in the United States for the purpose of carrying out the responsibilities of the National Trust, and to withhold from disclosure to the public, information relating to the location of sites or objects listed on the National Register whenever he determines that disclosure of specific information would create a risk of destruction or harm to such sites or objects.

Pub. L. 96-205, § 608(a)(1), in par. (2) struck out "and" after "culture;", and in par. (3) substituted "Trust; and" for "Trust.".

Subsec. (b). Pub. L. 96-515 substituted provision authorizing the establishment of State Historic Preservation Programs, providing for periodic evaluation of these programs and periodic fiscal audits, prescribing the responsibilities of the State Historic Preservation Officer, and designating the period within which prior State historic preservation programs are to remain in effect for provision defining the terms "State", "project", "historic preservation", and "Secretary".

Pub. L. 96-205, § 608(a)(2), inserted reference to the Commonwealth of the Northern Mariana Islands.

Subsecs. (c) to (h). Pub. L. 96-515 added subsecs. (c) to (h).

1976—Subsec. (a)(4). Pub. L. 91-383, § 11, as added Pub. L. 94-458, § 2, added par. (4).

1973—Subsec. (b)(1). Pub. L. 93-54 defined "State" to include the Trust Territory of the Pacific Islands.

Preservation and Conservation of Intangible Aspects of American Cultural Heritage; Report to President and Congress

Section 502 of Pub. L. 96-515 directed the Secretary, in cooperation with the American Folklife Center of the Library of Congress to submit within two years after Dec. 12, 1980, a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways, the report to take into account the view of other public and private organizations, as appropriate, and to include recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.

Coordinated System of Cultural Parks and Historic Conservation Districts; Comprehensive Study and Formulation of Recommendations; Report to President and Congress

Section 506 of Pub. L. 96-515 directed the Secretary to undertake a comprehensive study and formulate recommendations for a coordinated system of cultural parks and historic conservation districts that provide for the preservation, interpretation, development, and use by public and private entities of the prehistoric, historic, architectural, cultural, and recreational resources found in definable urban areas throughout the Nation; the study to propose alternatives concerning the management and funding of such system by public and private entities and by various levels of government; and the Secretary to submit a report of his study and recommendations to the President and the Congress within two years after Dec. 12, 1980.

Fire in Historic Properties; Protective Measures; Report to President and Congress

Section 507 of Pub. L. 96-515 directed the Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, to submit a report to the President and the Congress on fire in historic properties, such report to include a review of Federal laws to determine any relationship between these laws and arson or fire by 'suspicious origin', to make recommendations respecting amendments to such laws should a correlation be found to exist, to include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by 'suspicious origin' in historic properties, to include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire, and to be submitted within eighteen months after Dec. 12, 1980.

Section Referred to in Other Sections

This section is referred to in sections 398f, 410cc-22, 410cc-32, 470b, 470c, 470d, 470h-1, 470h-2, 470w of this title; title 40 section 612a; title 43 section 2102.

§ 470a-1. World Heritage Convention

(a) United States participation

The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) Nomination of property to World Heritage Committee

The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) Nomination of non-Federal property to World Heritage Committee

No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

(Pub. L. 96-515, title IV, § 401, Dec. 12, 1980, 94 Stat. 3000.)

Codification

Section was enacted as part of the National Historic Preservation Act Amendments of 1980, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470a-2. Federal undertakings outside United States; mitigation of adverse effects

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

(Pub. L. 96-515, title IV, § 402, Dec. 12, 1980, 94 Stat. 3000.)

Codification

Section was enacted as part of the National Historic Preservation Act Amendments of 1980, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470b. Requirements for awarding of grant funds

(a) Grant applications; amounts; reports; conditions

No grant may be made under this subchapter—

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 460*l*-4 of this title];

(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 470a(d)(1) and (2) of this title in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year.

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost

of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this subchapter shall be treated as taxable income for purposes of title 26.

(b) Waiver

The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this subchapter to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) Repealed. Pub. L. 96–515, title II, § 202(c), Dec. 12, 1980, 94 Stat. 2993

(d) Remaining cost of project

No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the remaining cost of a project for which a grant is made under this subchapter.

(Pub. L. 89-665, title I, § 102, Oct. 15, 1966, 80 Stat. 916; Pub. L. 94-422, title II, § 201(1), Sept. 28, 1976, 90 Stat. 1319; Pub. L. 96-515, title IV, § 202, Dec. 12, 1980, 94 Stat. 2993; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (a)(2), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-4 of this title and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1980—Subsec. (a). Pub. L. 96-515, § 202(a), (b), in par. (3) substituted provision directing that no grant be made for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 470a(d)(1) and (2) of this title in any one fiscal year, except that for costs of State or local historic surveys or inventories the Secretary provide 70 per centum of the aggregate cost involved in any one fiscal year for provision directing that no grant be made for more than 50 per centum of the total cost involved, as determined by the Secretary, which determination was to be final, and inserted provision following cl. (6), that, except as otherwise permitted, the State share of the costs referred to in par. (3) be contributed by non-Federal sources and no grant made be treated as taxable income.

Subsec. (c). Pub. L. 96-515, § 202(c), struck out subsec. (c) which authorized the Secretary in his discretion to waive the requirements of subsec. (a)(3) of this section for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans and restricted any grant made pursuant to this subsection to not to exceed 70 per centum of the cost of the project, with the total cost of grants made pursuant to this subsection in any fiscal year not to exceed one-half of the funds appropriated for that fiscal year pursuant to section 470h of this title.

1976—Pub. L. 94-422 reenacted subsecs. (a) and (b) without change, added subsec. (c), and redesignated former subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470h-1 of this title.

§ 470b–1. Grants to National Trust for Historic Preservation

(a) Authority of Secretary of Housing and Urban Development; renovation or restoration costs; terms and conditions; amounts

The Secretary of Housing and Urban Development is authorized to make grants to the National Trust for Historic Preservation, on such terms and conditions and in such amounts (not exceeding $90,000 with respect to any one structure) as he deems appropriate, to cover the costs incurred by such Trust in renovating or restoring structures which it considers to be of historic or architectural value and which it has accepted and will maintain (after such renovation or restoration) for historic purposes.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for the grants to be made under subsection (a) of this section.

(Pub. L. 89-754, title VI, § 603, Nov. 3, 1966, 80 Stat. 1278.)

CODIFICATION

Section was enacted as part of the Demonstration Cities and Metropolitan Development Act of 1966, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470c. Apportionment of grant funds

(a) Basis for apportionment

The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this subchapter shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

(b) Basis; notification to State; reapportionment

The amounts appropriated and made available for grants to the States for projects and programs under this subchapter for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this subchapter. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

(c) Transfer of funds to local governments

A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this subchapter shall be transferred by the State, pursuant to the requirements of this subchapter, to local governments which are certified under section 470a(c) of this title for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 470a(c) of this title.

(d) Guidelines for use and distribution of funds to local governments

The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

(Pub. L. 89-665, title I, § 103, Oct. 15, 1966, 80 Stat. 916; Pub. L. 94-422, title II, § 201(2), Sept. 28, 1976, 90 Stat. 1319; Pub. L. 96-515, title II, § 203, Dec. 12, 1980, 94 Stat. 2993.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-515, § 203(a), inserted "and programs" after "projects" and substituted provision directing the Secretary to notify each State of its apportionment under this subsection within thirty days following enactment of legislation appropriating funds for provision directing the Secretary to notify each State of its apportionment, with the amounts available thereafter for payment to such State.

Subsecs. (c), (d). Pub. L. 96-515, § 203(b), added subsecs. (c) and (d).

1976—Subsec. (a). Pub. L. 94-422 struck out proviso that amount granted to any one State shall not exceed 50 per centum of total cost of comprehensive statewide historic survey and plan for that State, as determined by Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470a of this title.

§ 470d. Loan insurance program for preservation of property included on National Register

(a) Establishment

The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) Loan qualifications

A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(c) Limitation on amount of unpaid principal balance of loans

The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 470h of this title and subsections (g) and (i) of this section, as in effect on December 12, 1980, but which has not been appropriated for any purpose.

(d) Assignability of insurance contracts; contract as obligation of United States; contestability

Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(e) Conditions and methods of payment as result of loss

The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) Protection of financial interests of Federal Government

In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under sections 470a to 470h-3 of this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

(g) Conveyance to governmental or nongovernmental entity of property acquired by foreclosure

(1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 470h of this title and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this subchapter.

(h) Assessment of fees in connection with loans

The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 470h of this title and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out purposes of this subchapter.

(i) Treatment of loans as non-Federal funds

Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Authorization of appropriations for payment of losses

Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

(k) Eligibility of debt obligation for purchase, etc., by Federal Financing Bank

No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

(Pub. L. 89-665, title I, § 104, Oct. 15, 1966, 80 Stat. 917; Pub. L. 96-515, title II, § 204, Dec. 12, 1980, 94 Stat. 2994.)

CODIFICATION

In subsec. (c), "December 12, 1980" was substituted for "the date of enactment of this Act". "This Act" probably meant the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515) rather than the National Historic Preservation Act of 1966 (Pub. L. 89-665).

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515 substituted provision authorizing the Secretary to establish and maintain a program by which he, upon application of a private lender, insure loans made by such lender to finance any project for the preservation of a property included on the National Register for provision prohibiting grants to surveys or projects receiving assistance from any other Federal program or activity.

Subsec. (b). Pub. L. 96-515 substituted provision prescribing loan qualifications for provision authorizing the President, in order to assure consistency in policies and actions and coordination of planning, acquisition, and development assistance to States with other related Federal programs, to issue regulations as deemed desirable.

Subsecs. (c) to (k). Pub. L. 96-515 added subsecs. (c) to (k).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with historic preservation under sections 470 to 470a, 470b, and 470c to 470w-6 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470a of this title.

§ 470e. Recordkeeping; recipients of assistance; audit

The beneficiary of assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(Pub. L. 89-665, title I, § 105, Oct. 15, 1966, 80 Stat. 917.)

§ 470f. Effect of Federal undertakings upon property listed in National Register; comment by Advisory Council on Historic Preservation

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 470i to 470v of this title a reasonable opportunity to comment with regard to such undertaking.

(Pub. L. 89-665, title I, § 106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94-422, title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.)

AMENDMENTS

1976—Pub. L. 94-422 inserted "or eligible for inclusion in" after "included in".

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with historic preservation under sections 470 to 470a, 470b, and 470c to 470w-6 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407dd, 470d, 470s, 470w of this title; title 42 section 5320.

§ 470g. White House, United States Supreme Court building, and United States Capitol not included in program for preservation of historical properties

Nothing in this subchapter shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

(Pub. L. 89-665, title I, § 107, Oct. 15, 1966, 80 Stat. 917.)

§ 470h. Historic Preservation Fund; establishment; appropriations; source of revenue

To carry out the provisions of this subchapter, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund $24,400,000 for fiscal year 1977, $100,000,000 for fiscal year 1978, $100,000,000 for fiscal year 1979, $150,000,000 for fiscal year 1980, and $150,000,000 for fiscal year 1981, and $150,000,000 for each of fiscal years 1982 through 1992, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338 [1]), and/or under section 7433(b) of title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this subchapter and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

(Pub. L. 89-665, title I, § 108, Oct. 15, 1966, 80 Stat. 917; Pub. L. 91-243, § 1(a), May 9, 1970, 84 Stat. 204; Pub. L. 93-54, § 1(a), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(4), Sept. 28, 1976, 90 Stat. 1320; Pub. L. 96-515, title II, § 205, Dec. 12, 1980, 94 Stat. 2995; Pub. L. 100-127, Oct. 9, 1987, 101 Stat. 800.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in text, is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. Section 9 of the Act (43 U.S.C. 1338) provides for the disposition of revenues. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

"Section 7433(b) of title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191)", which was classified to section 524 of former Title 34, Navy, on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

AMENDMENTS

1987—Pub. L. 100-127 substituted "1992" for "1987".

1980—Pub. L. 96-515 inserted "and $150,000,000 for each of fiscal years 1982 through 1987" after "1981".

1976—Pub. L. 94-422 substituted provisions establishing Historic Preservation Fund which contains appropriations obtained from revenues due and payable to United States pursuant to Outer Continental Shelf Lands Act and Act June 4, 1920 to carry out provisions of sections 470 to 470t of this title for provisions authorizing appropriations to carry out provisions of sections 470a, 470b, and 470c to 470h of this title of not more than $15,600,000 in fiscal year 1974, $20,000,000 in fiscal year 1975, and $24,400,000 in fiscal year 1976 to remain available until expended.

1973—Pub. L. 93-54 substituted appropriations authorization of $15,600,000, $20,000,000 and $24,400,000 for fiscal years 1974 through 1976, respectively, for such authorization of $7,000,000, $10,000,000, and $15,000,000 for fiscal years 1971 through 1973, respectively.

1970—Pub. L. 91-243 substituted provisions authorizing appropriations of not more than $7,000,000 for fiscal year 1971, and $10,000,000 and $15,000,000 for fiscal years 1972 and 1973, respectively, to carry out the provisions of sections 470a, 470b, and 470c, to 470h of this title for provisions authorizing the appropriation of not to exceed $2,000,000 for fiscal year 1967 and not more than $10,000,000 for the three succeeding fiscal years to carry out the provisions of sections 470 to 470b, and 470c to 470n of this title.

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[1] So in original. Should be "1338".

REVIEW OF OPERATION OF HISTORIC PRESERVATION FUND AND NATIONAL HISTORIC PRESERVATION PROGRAM; REPORT TO PRESIDENT AND CONGRESS

Section 504 of Pub. L. 96-515 provided that: "The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act [Dec. 12, 1980] and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470a, 470d, 470h-1 of this title.

§ 470h-1. Acceptance of privately donated funds by Secretary

(a) Authorization; use of funds

In furtherance of the purposes of this subchapter, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 470a of this title, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) Consideration of factors respecting expenditure of funds

In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 470b of this title but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 470h of this title.

(c) Transfer of unobligated funds

The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for the purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this subchapter.

(Pub. L. 89-665, title I, § 109, as added Pub. L. 96-244, § 1, May 19, 1980, 94 Stat. 346.)

§ 470h-2. Historic properties owned or controlled by Federal agencies

(a) Responsibilities of Federal agencies; program for location, inventory and nomination

(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 470a(f) of this title, any preservation, as may be necessary to carry out this section.

(2) With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 470a(a)(2)(A) of this title. Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

(b) Records on historic properties to be altered or demolished; deposit in Library of Congress or other appropriate agency

Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 470a(a) of this title, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) Agency Preservation Officer; responsibilities; qualifications

The head of each Federal agency shall, unless exempted under section 470v of this title, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 470a(g) of this title.

(d) Agency programs and projects

Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this subchapter and, give consideration to programs and projects which will further the purposes of this subchapter.

(e) Review of plans of transferees of surplus federally owned historic properties

The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Costs of preservation as eligible project costs

Each Federal agency may include the costs of preservation activities of such agency under this subchapter as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this subchapter, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Environmental impact statement

Nothing in this subchapter shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this subchapter shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(Pub. L. 89-665, title I, § 110, as added Pub. L. 96-515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.)

References in Text

The National Environmental Policy Act of 1969, referred to in subsec. (i), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Section Referred to in Other Sections

This section is referred to in section 470a of this title.

§ 470h-3. Lease or exchange of historic property

(a) Authorization; consultation with Advisory Council on Historic Preservation

Notwithstanding any other provision of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) Proceeds of lease for administration, etc., of property; deposit of surplus proceeds into Treasury

The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) Contracts for management of historic property

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property.

(Pub. L. 89-665, title I, § 111, as added Pub. L. 96-515, title II, § 207, Dec. 12, 1980, 94 Stat. 2997.)

Section Referred to in Other Sections

This section is referred to in sections 19bb, 470d of this title.

§ 470i. Advisory Council on Historic Preservation

(a) Establishment; membership; Chairman

There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; and

(10) three at-large members from the general public, appointed by the President.

(b) Designation of substitutes

Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

(c) Term of office

Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) Vacancies; term of office of members already appointed

A vacancy in the Council shall not affect its powers, but shall be filled, not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this subchapter as in effect on the day before December 12, 1980, shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980.

(e) Designation of Vice Chairman

The President shall designate a Vice Chairman, from the members appointed under paragraph (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Quorum

Nine members of the Council shall constitute a quorum.

(Pub. L. 89-665, title II, § 201, Oct. 15, 1966, 80 Stat. 917; Pub. L. 91-243, § 1(b)-(e), May 9, 1970, 84 Stat. 204; Pub. L. 93-54, § 1(c), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(5), Sept. 28, 1976, 90 Stat. 1320; Pub. L. 96-515, title III, § 301(a)-(f), Dec. 12, 1980, 94 Stat. 2998, 2999.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515, § 301(a), revised the composition of the Council by reducing the membership from twenty-nine to eighteen members, provided flexibility for Federal agencies who will be represented, ensured that appropriate expertise will be available, and provided representation for State and local governments.

Subsec. (b). Pub. L. 96-515, § 301(b), substituted "(2) through (8) (other than (5) and (6))" and "(1) through (17)" and inserted ", except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide reponsibilities may be so designated" following "in his stead".

Subsec. (c). Pub. L. 96-515, § 301(c), substituted provision that the Chairman appointed by the President from the general public, each of the four experts appointed by the President, and each of the three at-large members appointed by the President from the general public serve a term of four years from the expiration of his predecessor's term, except that the members first appointed serve terms of one to four years in such a manner as to insure that the terms of not more than two of them expire in any one year, the one Governor and the one mayor appointed by the President serve for the term of their elected office but not in excess of four years, an appointed member not serve for more than two terms, and an appointed member whose term expired serve until his successor has been appointed for provision that each of the twelve members appointed by the President from outside the Federal Government serve for a term of five years from expiration of his predecessor's term, except that the members first appointed serve for terms of one to five years in such a manner as to insure that the terms of not less than one nor more than two of them expire in any one year.

Subsec. (d). Pub. L. 96-515, § 301(d), inserted provision that a vacancy be filled not later than sixty days after it commences, members of the Council appointed by the President before Dec. 12, 1980 remain in office until all members of the Council, as specified by this section, have been appointed, and members first appointed be appointed not later than 180 days after Dec. 12, 1980.

Subsec. (e). Pub. L. 96-515, § 301(e), substituted provision authorizing the President to designate a Vice Chairman from among specified members of the Council for provision authorizing the President to designate a Chairman and Vice Chairman.

Subsec. (f). Pub. L. 96-515, § 301(f), substituted "Nine" for "Fifteen".

1976—Subsec. (a)(9) to (18). Pub. L. 94-422 added pars. (9) to (14) and (17), and redesignated former pars. (9), (10), and (11) as (15), (16), and (18), respectively, and in par. (18), as so redesignated, substituted "twelve" for "ten".

Subsec. (b). Pub. L. 94-422 substituted "(17)" for "(10)".

Subsec. (c). Pub. L. 94-422 substituted "(18)" for "(11)".

Subsec. (d). Pub. L. 94-422 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 94-422 enlarged Presidential authority to include designation of Vice Chairman, who shall act in place of Chairman during the absence or disability of Chairman or when the office is vacant.

Subsec. (f). Pub. L. 94-422 substituted "Fifteen" for "Eleven".

Subsec. (g). Pub. L. 94-422 struck out subsec. (g) which provided that the Council shall continue in existence until Dec. 31, 1985.

1973—Subsec. (g). Pub. L. 93-54 added subsec. (g).

1970—Subsec. (a). Pub. L. 91-243, § 1(b), enlarged the Council from seventeen to twenty members, added pars. (7) to (9), and redesignated former pars. (7) and (8) as (10) and (11), respectively.

Subsec. (b). Pub. L. 91-243, § 1(c), substituted "(10)" for "(6)".

Subsec. (c). Pub. L. 91-243, § 1(d), substituted "(11)" for "(8)".

Subsec. (f). Pub. L. 91-243, § 1(e), substituted "Eleven" for "Eight".

CROSS REFERENCES

Exemption from Federal Advisory Committee Act, see section 470q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470f, 470k, 470*l*, 470m, 470t of this title; title 40 section 611.

§ 470j. Functions of Council; annual report to President and Congress; recommendations

(a) Duties

The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) Annual report

The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this subchapter.

(Pub. L. 89-665, title II, § 202, Oct. 15, 1966, 80 Stat. 918; Pub. L. 96-515, title III, § 301(g), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Subsec. (a)(6), (7). Pub. L. 96-515, § 301(g)(1), added pars. (6) and (7).

Subsec. (b). Pub. L. 96-515, § 301(g)(2), inserted provision requiring in the Council's report an assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector.

RELATIONSHIP OF FEDERAL TAX LAWS TO HISTORIC PRESERVATION; REPORT TO PRESIDENT AND CONGRESS

Section 503 of Pub. L. 96-515 directed the Advisory Council on Historic Preservation to submit a report, within one year of Dec. 12, 1980, to the President and the Congress on Federal tax laws relating to historic preservation or affecting in any manner historic preservation.

§ 470k. Cooperation between Council and instrumentalities of executive branch of Federal Government

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of sections 470i to 470v of this title; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

(Pub. L. 89-665, title II, § 203, Oct. 15, 1966, 80 Stat. 918.)

§ 470*l*. Compensation of members of Council

The members of the Council specified in paragraphs (2), (3), and (4) of section 470i(a) of this title shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

(Pub. L. 89-665, title II, § 204, Oct. 15, 1966, 80 Stat. 918; Pub. L. 91-243, § 1(f), May 9, 1970, 84 Stat. 204; Pub. L. 94-422, title II, § 201(6), Sept. 28, 1976, 90 Stat. 1321; Pub. L. 96-515, title III, § 301(h), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 substituted "paragraphs (2), (3), and (4)" for "paragraphs (1) and (17)" and "other members of the Council" for "members of the Council under paragraph (18) of section 470i(a) of this title".

1976—Pub. L. 94-422 substituted "(17)" for "(10)" and "(18)" for "(11)".

1970—Pub. L. 91-243 substituted "(10)" for "(7)" and "(11)" for "(8)".

§ 470m. Administration

(a) Executive Director of Council; appointment; functions and duties

There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) General Counsel; appointment; functions and duties

The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) Appointment and compensation of officers and employees

The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5.

(d) Appointment and compensation of additional personnel

The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(e) Expert and consultant services; procurement

The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5.

(f) Financial and administrative services; Department of the Interior

Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.

(g) Use of funds, personnel, facilities, and services of Council members

The members of the Council specified in paragraphs (2) through (4) of section 470i(a) of this title shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this subchapter.

(Pub. L. 89-665, title II, § 205, Oct. 15, 1966, 80 Stat. 919; Pub. L. 91-243, § 1(g), May 9, 1970, 84 Stat. 204; Pub. L. 94-422, title II, § 201(7), Sept. 28, 1976, 90 Stat. 1321; Pub. L. 96-515, title III, § 301(i), (j), Dec. 12, 1980, 94 Stat. 2999.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsecs. (d) and (f), "chapter 51 and subchapter III of chapter 53 of title 5" and "(5 U.S.C. 5514(b))", were substituted for "the Classification Act of 1949" and "(5 U.S.C. 46e)", respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (f), "(31 U.S.C. 1513(d), 1514)" was substituted for "(31 U.S.C. 665(g))" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-515, § 301(i), inserted ", including enforcement of agreements with Federal agencies to which the Council is a party" after "wherever appropriate".

Subsec. (g). Pub. L. 96-515, § 301(j), substituted "paragraphs (2) through (4)" for "paragraphs (1) through (16)" and inserted provision authorizing the Council to accept donations of moneys and the Executive Director, in his discretion, to accept, hold, use, expend, and administer such moneys.

1976—Subsec. (a). Pub. L. 94-422 substituted provisions authorizing appointment of the Executive Director by the Chairman and that the Executive Director shall report to the Council who shall prescribe his functions and duties for provisions designating the Director of the National Park Service or his designee as the Executive Director of the Council and incorporated provisions relating to furnishing of financial and administrative services by the Department of Interior in subsec. (f).

Subsec. (b). Pub. L. 94-422 substituted provisions authorizing appointment of a General Counsel by the Executive Director and such other attorneys as may be necessary to assist General Counsel for provisions authorizing Council to appoint and fix compensation of additional personnel as may be necessary to carry out its duties.

Subsec. (c). Pub. L. 94-422 substituted provisions authorizing Executive Director to appoint and fix the compensation of officers and employees for provisions authorizing Council to procure temporary and intermittent services to the same extent as is authorized by section 55a of title 5, but at rates not to exceed $50 per diem for individuals.

Subsec. (d). Pub. L. 94-422 substituted provisions authorizing Executive Director to appoint and fix compensation of additional personnel for provisions relating to members of Council furnishing, on a reimbursable basis, such facilities and services under their jurisdiction and control as may be needed by the Council.

Subsec. (e). Pub. L. 94-422 added subsec. (e).

Subsec. (f). Pub. L. 94-422 incorporated provisions of former subsec. (a).

Subsec. (g). Pub. L. 94-422 added subsec. (g).

1970—Subsec. (d). Pub. L. 91-243 substituted "(9)" for "(6)".

§ 470n. International Centre for Study of Preservation and Restoration of Cultural Property

(a) Authorization of participation

The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) Official delegation

The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) Authorization of appropriations and payments

For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessments shall begin in fiscal year 1981, but shall include earlier costs.

(Pub. L. 89-665, title II, § 206, as added Pub. L. 91-243, § 2, May 9, 1970, 84 Stat. 204, and amended Pub. L. 93-54, § 1(b), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(8), Sept. 28, 1976, 90 Stat. 1322; Pub. L. 96-199, title I, § 114, Mar. 5, 1980, 94 Stat. 71.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-199 substituted "there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982" for "there are authorized to be appropriated not more than $175,000 per year for fiscal years 1977, 1978, and 1979" in the existing provisions and inserted provision that the authorization for the payment of assessments should begin in fiscal year 1981 but should include earlier costs.

1976—Subsec. (c). Pub. L. 94-422 substituted provisions authorizing appropriations of not more than $175,000 per year for fiscal years 1977, 1978, and 1979 for provisions authorizing appropriations of not more than $100,000 in fiscal year 1974, $100,000 in fiscal year 1975, and $125,000 in fiscal year 1976 and struck out "effective January 1, 1974," after "*Provided*, That".

1973—Subsec. (c). Pub. L. 93-54 added subsec. (c) and repealed former provisions authorizing appropriation of $100,000 annually for fiscal years 1971 through 1973.

§ 470o. Transfer of personnel, property, etc., by Department of the Interior to Council; time limit

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

(Pub. L. 89-665, title II, § 207, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably means the effective date of Pub. L. 94-422, which was approved on Sept. 28, 1976.

§ 470p. Rights, benefits, and privileges of transferred employees

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(Pub. L. 89-665, title II, § 208, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

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§ 470q. Operations of Council; exemption

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall govern the operations of the Council.

(Pub. L. 89-665, title II, § 209, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

REFERENCES IN TEXT

The Federal Advisory Committee Act (86 Stat. 770), referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is classified to the Appendix of Title 5, Government Organization and Employees.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7 of title 5" was substituted in text for "the Administrative Procedure Act (80 Stat. 381)" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 470r. Transmittal of legislative recommendations, or testimony, or comments, to any officer or agency of the United States prior to submission thereof to Congress; prohibition

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(Pub. L. 89-665, title II, § 210, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322, and amended Pub. L. 96-515, title III, § 301(k), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 struck out provision requiring the Council, whenever it transmits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, to concurrently transmit copies thereof to the House Committee on Interior and Insular Affairs and the Senate Committee on Interior and Insular Affairs.

§ 470s. Rules and regulations; participation by local governments

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 470f of this title. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 470f of this title which affect such local governments.

(Pub. L. 89-665, title II, § 211, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322, and amended Pub. L. 96-515, title III, § 301(*l*), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 inserted provision authorizing the Council to establish procedures as necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 470f of this title which affect such local governments.

§ 470t. Budget; authorization of appropriations

(a) Time of submission; related department; authorized appropriations

The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of sections 470i to 470v of this title, there is authorized to be appropriated not more than $2,500,000 for each of the fiscal years 1985 through 1989.

(b) Transmittal of copies to Congressional committees

Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

(Pub. L. 89-665, title II, § 212, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1323, and amended Pub. L. 95-625, title VI, § 614, Nov. 10, 1978, 92 Stat. 3521; Pub. L. 96-205, title VI, § 608(a)(3), Mar. 12, 1980, 94 Stat. 92; Pub. L. 96-244, § 2, May 19, 1980, 94 Stat. 346; Pub. L. 96-515, title III, § 302(b), Dec. 12, 1980, 94 Stat. 3000; Pub. L. 98-483, Oct. 17, 1984, 98 Stat. 2258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-483 substituted appropriations authorization of not more than $2,500,000 for each of the fiscal years 1985 through 1989 for prior appropriations authorizations of not more than $1,500,000 to $2,250,000 in increments of $250,000 for fiscal years 1977 through 1980, and not more than $2,500,000 for each of the fiscal years 1981 through 1983.

1980—Subsec. (a). Pub. L. 96-244 inserted "$2,500,000 in the fiscal year 1981, $2,500,000 in fiscal year 1982, and $2,500,000 in fiscal year 1983" after "in fiscal year 1980".

Subsec. (b). Pub. L. 96-515 substituted "Senate Committee on Energy and Natural Resources" for "Senate Committee on Interior and Insular Affairs", which amendment is identical to the amendment by section 608(a)(3) of Pub. L. 96-205, thereby requiring no change in text.

Pub. L. 96-205 substituted "Energy and Natural Resources" for "Interior and Insular Affairs".

1978—Subsec. (a). Pub. L. 95-625 authorized appropriation of $2,250,000 in fiscal year 1980.

§ 470u. Report by Secretary to Council

To assist the Council in discharging its responsibilities under this subchapter, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

(Pub. L. 89-665, title II, § 213, as added Pub. L. 96-515, title III, § 302(a), Dec. 12, 1980, 94 Stat. 3000.)

§ 470v. Exemption for Federal programs or undertakings; regulations

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of subchapter when such exemption is determined to be consistent with the purposes of subchapter, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

(Pub. L. 89-665, title II, § 214, as added Pub. L. 96-515, title III, § 302(a), Dec. 12, 1980, 94 Stat. 3000.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470f, 470h-2, 470k, 470t, 470w, title 40 section 611.

§ 470w. Definitions

As used in this subchapter, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, except that in the case of any Federal program exempted under section 470v of this title, the agency administering such program shall not be treated as an agency with respect to such program.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 470a of this title.

(7) "Undertaking" means any action as described in section 470f of this title.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities.

(9) "Cultural park" means a definable urban area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an urban area of one or more neighborhoods and which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior except where otherwise specified.

(12) "State historic preservation review board" means a board, council, commission, or other similar collegial body established as provided in section 470a(b)(1)(B) of this title—

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, and architecture, and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer,[3] and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 470a(c)(1)(B) of this title, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, archaeology, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

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[3] So in original. The comma probably should be a semicolon.

(Pub. L. 89-665, title III, § 301, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3001.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (4), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act of the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 470w-1. Authorization for expenditure of appropriated funds

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this subchapter, except to the extent appropriations legislation expressly provides otherwise.

(Pub. L. 89-665, title III, § 302, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-2. Donations and bequests of money, personal property and less than fee interests in historic property

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this subchapter and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this subchapter shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

(Pub. L. 89-665, title III, § 303, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-3. Information relating to location or character of historic resources, disclosure to public

The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

(Pub. L. 89-665, title III, § 304, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-4. Attorneys' fees and costs to prevailing parties in civil actions

In any civil action brought in any United States district court by any interested person to enforce the provisions of this subchapter, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

(Pub. L. 89-665, title III, § 305, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-5. National Museum for the Building Arts

(a) Cooperative agreement between Secretary, Administrator of General Services Administration and Committee for National Museum of the Building Arts; purposes

In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall—

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

(b) Provisions of cooperative agreement

The cooperative agreement referred to in subsection (a) of this section shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) of this section without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this subchapter.

(c) Matching grants-in-aid to Committee; limitation on amounts

The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than $500,000 may be provided to the Committee in any one fiscal year.

(d) Renovation of site

The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

(e) Annual Committee report to Secretary and Administrator

The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

(f) "Building arts" defined

For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

(Pub. L. 89-665, title III, § 306, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w–6. Effective date of regulations

(a) Copy to Congress prior to publication in Federal Register; effective date of final regulations

At least thirty days prior to publishing in the Federal Register any proposed regulation required by this subchapter, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) Effective date of final regulation in case of emergency

In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) of this section if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Disapproval of regulation by resolution of Congress

Except as provided in subsection (b) of this section, the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _______, which regulation was transmitted to Congress on _______.", the blank spaces therein being appropriately filled.

(d) Failure of Congress to adopt resolution of disapproval of regulation

If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) Sessions of Congress

For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction or rejection of resolution of disapproval not deemed approval of regulation

Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

(Pub. L. 89-665, title III, § 307, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3004.)

CHAPTER 1B—ARCHAEOLOGICAL RESOURCES PROTECTION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 410pp-5, 460uu-41, 470a of this title; title 20 section 4424; title 43 section 2102.

§ 470aa. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

(Pub. L. 96-95, § 2, Oct. 31, 1979, 93 Stat. 721.)

SHORT TITLE

Section 1 of Pub. L. 96-95 provided that: "This Act [enacting this chapter] may be cited as the 'Archaeological Resources Protection Act of 1979'."

§ 470bb. Definitions

As used in this chapter—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of

the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this chapter of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system, and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.].

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(Pub. L. 96-95, § 3, Oct. 31, 1979, 93 Stat. 721; Pub. L. 100-588, § 1(a), Nov. 3, 1988, 102 Stat. 2983.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1988—Par. (3). Pub. L. 100-588 substituted a period for semicolon at end.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470ii of this title.

§ 470cc. Excavation and removal

(a) Application for permit

Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this chapter, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) Determinations by Federal land manager prerequisite to issuance of permit

A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this chapter, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance

If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 470hh of this title.

(d) Terms and conditions of permit

Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this chapter, as the Federal land manager concerned deems necessary to carry out the purposes of this chapter.

(e) Identification of individuals responsible for complying with permit terms and conditions and other applicable laws

Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this chapter and other law applicable to the permitted activity.

(f) Suspension or revocation of permits; grounds

Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 470ee of this title. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 470ff of this title against the permittee or upon the permittee's conviction under section 470ee of this title.

(g) Excavation or removal by Indian tribes or tribe members; excavation or removal of resources located on Indian lands

(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaelogical resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) Permits issued under Antiquities Act of 1906

(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 [16 U.S.C. 431-433], shall remain in effect according to its terms and conditions following the enactment of this chapter. No permit under this chapter shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before October 31, 1979, which remains in effect as provided in this paragraph, and nothing in this chapter shall modify or affect any such permit.

(i) Compliance with provisions relating to undertakings on property listed in the National Register not required

Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 470f of this title.

(j) Issuance of permits to State Governors for archaeological activities on behalf of States or their educational institutions

Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this chapter.

(Pub. L. 96-95, § 4, Oct. 31, 1979, 93 Stat. 722.)

REFERENCES IN TEXT

The Act of June 8, 1906, referred to in subsecs. (g)(1) and (h), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which is classified generally to sections 431, 432, and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

Following the enactment of this chapter, referred to in subsec. (h)(2), means following the enactment of Pub. L. 96-95, approved Oct. 31, 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470ee of this title.

§ 470dd. Custody of archaeological resources

The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this chapter, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) [16 U.S.C. 469-469c-1] or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this chapter.

(Pub. L. 96-95, § 5, Oct. 31, 1979, 93 Stat. 724.)

REFERENCES IN TEXT

Act of June 27, 1960 (16 U.S.C. 469-469c), referred to in par. (2), is act June 27, 1960, Pub. L. 86-523, 74 Stat. 220, as amended, which is classified generally to sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

Act of June 8, 1906 (16 U.S.C. 431-433), referred to in par. (2), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which is classified generally to sections 431, 432, and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

§ 470ee. Prohibited acts and criminal penalties

(a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources

No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.

(b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a) of this section, or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Penalties

Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however*, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) Effective date

The prohibitions contained in this section shall take effect on October 31, 1979.

(f) Prospective application

Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

(g) Removal of arrowheads located on ground surface

Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

(Pub. L. 96-95, § 6, Oct. 31, 1979, 93 Stat. 724; Pub. L. 100-588, § 1(b), (c), Nov. 3, 1988, 102 Stat. 2983.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-588, § 1(b), inserted ", or attempt to excavate, remove, damage, or otherwise alter or deface" after "deface".

Subsec. (d). Pub. L. 100-588, § 1(c), substituted "$500" for "$5,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470ee, 470gg of this title.

§ 470ff. Civil penalties

(a) Assessment by Federal land manager

(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this chapter may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b) Judicial review of assessed penalties; collection of unpaid assessments

(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings

Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 96-95, § 7, Oct. 31, 1979, 93 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470cc, 470gg of this title.

§ 470gg. Enforcement

(a) Rewards

Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 470ee and 470ff of this title an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) Forfeitures

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 470ee of this title,

(2) assessment of a civil penalty against such person under section 470ff of this title with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands

In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 470ee of this title involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 470ff of this title and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

(Pub. L. 96-95, § 8, Oct. 31, 1979, 93 Stat. 726.)

§ 470hh. Confidentiality of information concerning nature and location of archaeological resources

(a) Disclosure of information

Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this chapter or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this chapter or the Act of June 27, 1960 (16 U.S.C. 469-469c) [16 U.S.C. 469-469c-1], and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Request for disclosure by Governors

Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

(Pub. L. 96-95, § 9, Oct. 31, 1979, 93 Stat. 727.)

REFERENCES IN TEXT

Act of June 27, 1960 (16 U.S.C. 469-469c), referred to in subsec. (a)(1), is act June 27, 1960, Pub. L. 86-523, 74 Stat. 220, as amended, which is classified generally to sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470cc of this title.

§ 470ii. Rules and regulations; intergovernmental coordination

(a) Promulgation; effective date

The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this chapter. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this chapter shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Federal land managers' rules

Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a) of this section, as may be appropriate for the carrying out of his functions and authorities under this chapter.

(c) Federal land managers' public awareness program of archaeological resources on public lands and Indian lands; report

Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.

(Pub. L. 96-95, § 10, Oct. 31, 1979, 93 Stat. 727; Pub. L. 100-588, § 1(d), Nov. 3, 1988, 102 Stat. 2983.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-588 added subsec. (c).

§ 470jj. Cooperation with private individuals

The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this chapter, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this chapter, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this chapter, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

(Pub. L. 96-95, § 11, Oct. 31, 1979, 93 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470*ll* of this title.

§ 470kk. Savings provisions

(a) Mining, mineral leasing, reclamation, and other multiple uses

Nothing in this chapter shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Private collections

Nothing in this chapter applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 470bb(1) of this title.

(c) Lands within chapter

Nothing in this chapter shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

(Pub. L. 96-95, § 12, Oct. 31, 1979, 93 Stat. 728.)

§ 470*ll*. Annual report to Congress

As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 469a-3(c) of this title, the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this chapter, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this chapter. Such report shall include a brief summary of the actions undertaken by the Secretary under section 470jj of this title, relating to cooperation with private individuals.

(Pub. L. 96-95, § 13, Oct. 31, 1979, 93 Stat. 728.)

§ 470mm. Surveying of lands; reporting of violations

The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

(c) develop documents for the reporting of suspected violations of this chapter and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.

(Pub. L. 96-95, § 14, as added Pub. L. 100-555, Oct. 28, 1988, 102 Stat. 2778.)

CHAPTER 2—NATIONAL FORESTS

SUBCHAPTER I—ESTABLISHMENT AND ADMINISTRATION

Sec.
471. Repealed.
471a. Forest reserves in Nea Mexico and Arizona restricted.
471b. Repealed.
471c. Lands in California set aside as reserved forest lands.
471d. Additional forest reserves in California.
471e. Extension of boundaries of Sequoia National Forest.
471f. Cradle of Forestry in America in Pisgah National Forest; establishment, statement of purposes, publication in Federal Register.
471g. Administration, protection, and development; use of natural resources.
471h. Cooperation with public and private agencies, organizations, and individuals; acceptance of contributions and gifts.
471i. Pine Barrens Area, New Jersey.
  (a) Congressional findings.
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  (c) Pinelands National Reserve and Federal Project Review Area; establishment; map, availability.
  (d) State planning entity for development of comprehensive management plan; membership; representation of interests; assistance and grants to State.
  (e) Planning entity consultations; public hearings.
  (f) Comprehensive management plan; terms and provisions; resource assessment; boundary map, delineations; land use map and policy statement; coordination and consistency, public use, and financial components; programs; water implementation plan.
Sec.
  (g) Comprehensive management plan and revisions; approval by Secretary; submission to Congress; approval considerations; disapproval and revision recommendations, notification; resubmission and consideration; Federal assistance, termination; modifications and revisions; reimbursement.
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  (i) Applications for Federal construction assistance; review by planning entity; notifications; commencement of review process.
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  (k) Authorization of appropriations; sources for appropriations; acquisitions consistent with management plan.
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472. Laws affecting national forest lands.
472a. Timber sales on National Forest System lands.
  (a) Authorization; rules and regulations; appraised value as minimum sale price.
  (b) Designation on map; prospectus.
  (c) Terms and conditions of contract.
  (d) Advertisement of sales; exceptions.
  (e) Bidding methods; purposes; oral auction procedures; monitoring and enforcement for prevention of collusive practices.
  (f) Research and demonstration projects.
  (g) Designation, marking, and supervision of harvesting; personnel.
  (h) Utilization standards, methods of measurement, and harvesting practices; monetary deposits by purchasers of salvage harvests; nature, purposes and availability of designated fund; return of surplus to Treasury.
  (i) Purchaser credit for permanent road construction; right of election of small business concerns; estimated cost; date of completion; use of funds for construction; effective date.
473. Revocation, modification, or vacation of orders or proclamations establishing national forests.
474. Surveys; plats and field notes; maps; effect under Act June 4, 1897.
475. Purposes for which national forests may be established and administered.
476. Repealed.
477. Use of timber and stone by settlers.
478. Egress or ingress of actual settlers; prospecting.
478a. Townsites.
479. Sites for schools and churches.
480. Civil and criminal jurisdiction.
481. Use of waters.

States and Canada shall share equally the costs of developing and the annual cost of operating and maintaining the Roosevelt Campobello International Park.

(Pub. L. 88-363, § 14, July 7, 1964, 78 Stat. 301.)

[redacted]NESS

Sec.
1131. National Wilderness Preservation System.
  (a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas.
  (b) Management of area included in System; appropriations.
  (c) "Wilderness" defined.
1132. Extent of System.
  (a) Designation of wilderness areas; filing of maps and descriptions with Congressional committees; correction of errors; public records; availability of records in regional offices.
  (b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado.
  (c) Review by Secretary of the Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of the Interior to maintain roadless areas in national park system unaffected.
  (d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress.
  (e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress.
1133. Use of wilderness areas.
  (a) Purposes of national forest, national park system, and national wildlife refuge system; other provisions applicable to national forests, Superior National Forest, and national park system.
  (b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas.
  (c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies.
  (d) Special provisions.
1134. State and private lands within wilderness areas.

Sec.
  (a) Access; exchange of lands; mineral interests restriction.
  (b) Customary means for ingress and egress to wilderness areas subject to mining claims or other occupancies.
  (c) Acquisition of lands.
1135. Gifts, bequests, and contributions.
  (a) Acceptance by Secretary of Agriculture of land for preservation as wilderness; regulations.
  (b) Authorization to accept private contributions and gifts.
1136. Annual reports to Congress.

Chapter Referred to in Other Sections

This chapter is referred to in sections 90e, 90e-2, 272d, 273d, 460aa-1, 460dd-8, 460gg-1, 460*ll*, 460*ll*-1, 460oo, 460uu-31, 460uu-32, 460uu-47, 460vv-1, 460vv-3, 1281, 3102, 3150, 3199, 3203 of this title; title 43 sections 1782, 1784.

§ 1131. National Wilderness Preservation System

(a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.

(b) Management of area included in System; appropriations

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) "Wilderness" defined

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of underdeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

(Pub. L. 88-577, § 2, Sept. 3, 1964, 78 Stat. 890.)

SHORT TITLE

Section 1 of Pub. L. 88-577 provided that: "This Act [enacting this chapter] may be cited as the 'Wilderness Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1702.

§ 1132. Extent of System

(a) Designation of wilderness areas; filing of maps and descriptions with Congressional committees; correction of errors; public records; availability of records in regional offices

All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this chapter: *Provided, however*, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

(b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado

The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this chapter, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Review by Secretary of the Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of the Interior to maintain roadless areas in national park system unaffected

Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964 and the remainder within ten years of September 3, 1964. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress

(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided*, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress

Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

(Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.)

CHANGE OF NAME

The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

WILDERNESS AREAS

Absaroka-Beartooth Wilderness, Custer and Gallatin National Forests, Montana.—Pub. L. 95-249, Mar. 27, 1978, 92 Stat. 162; Pub. L. 98-550, title II, § 201(a)(13), Oct. 30, 1984, 98 Stat. 2809.

Admiralty Island National Monument Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(1), Dec. 2, 1980, 94 Stat. 2418.

Agassiz Wilderness, Agassiz National Wildlife Refuge, Minnesota.—Pub. L. 94-557, § 1(h), Oct. 19, 1976, 90 Stat. 2633.

Agua Tibia Wilderness, Cleveland National Forest, California.—Pub, L. 93-632, § 2(a), Jan. 3, 1975, 88 Stat. 2154.

Aldo Leopold Wilderness, Gila National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(1), Dec. 19, 1980, 94 Stat. 3221.

Aleutian Islands Wilderness, Alaska Maritime National Wildlife Refuge, Aleutian Islands Unit, Alaska.—Pub. L. 96-487, title VII, § 702(1), Dec. 2, 1980, 94 Stat. 2417.

Alexander Springs Wilderness, Ocala National Forest, Florida.—Pub. L. 98-430, § 1(4), Sept. 28, 1984, 98 Stat. 1665.

Allegheny Islands Wilderness, Allegheny National Forest, Pennsylvania.—Pub. L. 98-585, § 4(1), Oct. 30, 1984, 98 Stat. 3100.

Alpine Lakes Wilderness, Mount Baker-Snoqualmie and Wenatchee National Forests, Washington.—Pub. L. 94-357, July 12, 1976, 90 Stat. 905.

Anaconda-Pintler Wilderness, Beaverhead, Bitterroot, and Deerlodge National Forests, Montana.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Andreafsky Wilderness, Yukon Delta National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(2), Dec. 2, 1980, 94 Stat. 2418.

Ansel Adams Wilderness, Sierra and Inyo National Forests, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(15), (25), Sept. 28, 1984, 98 Stat. 1621, 1622.

Apache Creek Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(1), Aug. 28, 1984, 98 Stat. 1485.

WILDERNESS AREAS—Continued

Apache Kid Wilderness, Cibola National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(2), Dec. 19, 1980, 94 Stat. 3221.

Aravaipa Canyon Wilderness, Graham and Pinal Counties, Arizona.—Pub. L. 98-406, title II, § 201-206, Aug. 28, 1984, 98 Stat. 1491, 1492.

Arctic Wildlife Refuge Wilderness, Arctic National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(3), Dec. 2, 1980, 94 Stat. 2418.

Ashdown Gorge Wilderness, Dixie National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(9), Sept. 28, 1984, 98 Stat. 1658.

Badger Creek Wilderness, Mount Hood National Forest, Oregon.—Pub. L. 98-328, § 3(3), June 26, 1984, 98 Stat. 273.

Badlands Wilderness, Badlands National Monument, South Dakota.—Pub. L. 94-567, § 1(*l*), Oct. 20, 1976, 90 Stat. 2693.

Bald River Gorge Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 98-578, § 2(3), Oct. 30, 1984, 98 Stat. 3088.

Bandelier Wilderness, Bandelier National Monument, New Mexico.—Pub. L. 94-567, § 1(a), Oct. 20, 1976, 90 Stat. 2692.

Barbours Creek Wilderness Area, Jefferson and George Washington National Forests, Virgina.—Pub. L. 100-326, § 1(3), June 7, 1988, 102 Stat. 584.

Bear Wallow Wilderness, Apache-Sitgreaves National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(3), Aug. 28, 1984, 98 Stat. 1488.

Beartown Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(1), Oct. 30, 1984, 98 Stat. 3105.

Beaver Creek Wilderness, Daniel Boone National Forest, Kentucky.—Pub. L. 93-622, § 3(a)(5), Jan. 3, 1975, 88 Stat. 2097.

Beaver Dam Mountains Wilderness, Arizona Strip District, Arizona, and Cedar City District, Utah, of Bureau of Land Management.—Pub. L. 98-406, title III, § 301(a)(9), Aug. 28, 1984, 98 Stat. 1493.

Becharof Wilderness, Becharof National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(4), Dec. 2, 1980, 94 Stat. 2418.

Bell Mountain Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 96-560, title II, § 201(a), Dec. 22, 1980, 94 Stat. 3273.

Bering Sea Wilderness, Bering Sea National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

Big Blue Wilderness, Uncompahgre National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(1), Dec. 22, 1980, 94 Stat. 3266.

Big Branch Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 98-322, title I, § 102(2), June 19, 1984, 98 Stat. 254.

Big Frog Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 98-578, § 2(1), Oct. 30, 1984, 98 Stat. 3088; Pub. L. 99-490, § 2(6), Oct. 16, 1986, 100 Stat. 1235.

Big Gum Swamp Wilderness, Osceola National Forest, Florida.—Pub. L. 98-430, § 1(3), Sept. 28, 1984, 98 Stat. 1665.

Big Island Lake Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(e), Dec. 8, 1987, 101 Stat. 1275.

Big Lake Wilderness, Big Lake National Wildlife Refuge, Arkansas.—Pub. L. 94-557, § 1(b), Oct. 19, 1976, 90 Stat. 2633.

Big Laurel Branch Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 99-490, § 2(2), Oct. 16, 1986, 100 Stat. 1235.

Big Slough Wilderness, Davy Crockett National Forest, Texas.—Pub. L. 98-574, § 2(3), Oct. 30, 1984, 98 Stat. 3051.

Billies Bay Wilderness, Ocala National Forest, Florida.—Pub. L. 98-430, § 1(7), Sept. 28, 1984, 98 Stat. 1665.

Birkhead Mountains Wilderness, Uwharrie National Forest, North Carolina.—Pub. L. 98-324, § 2(1), June 19, 1984, 98 Stat. 263.

Bisti Wilderness, Albuquerque District of Bureau of Land Management, New Mexico.—Pub. L. 98-603, title I, § 102(1), Oct. 30, 1984, 98 Stat. 3155.

Black Canyon of the Gunnison Wilderness, Black Canyon of the Gunnison National Monument, Colorado.—Pub. L. 94-567, § 1(b), Oct. 20, 1976, 90 Stat. 2692.

Black Canyon Wilderness, Ochoco National Forest, Oregon.—Pub. L. 98-328, § 3(18), June 26, 1984, 98 Stat. 274.

Black Creek Wilderness, De Soto National Forest, Mississippi.—Pub. L. 98-515, § 2(1), Oct. 19, 1984, 98 Stat. 2420.

Black Elk Wilderness, Black Hills National Forest, South Dakota.—Pub. L. 96-560, title I, § 103, Dec. 22, 1980, 94 Stat. 3268.

Black Fork Mountain Wilderness, Ouachita National Forest, Arkansas and Oklahoma.—Pub. L. 98-508, § 3(a), Oct. 19, 1984, 98 Stat. 2349; Pub. L. 100-499, § 3(1), Oct. 18, 1988, 102 Stat. 2492.

Blackbeard Island Wilderness, Blackbeard Island National Wildlife Refuge, Georgia.—Pub. L. 93-632, § 1(d), Jan. 3, 1975, 88 Stat. 2153.

Blackjack Springs Wilderness, Nicolet National Forest, Wisconsin.—Pub. L. 95-494, § 1(1), Oct. 21, 1978, 92 Stat. 1648.

Blue Range Wilderness, Apache and Gila National Forests, New Mexico.—Pub. L. 96-550, title I, § 102(a)(3), Dec. 19, 1980, 94 Stat. 3221.

Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests, Montana.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Bogoslof Wilderness, Bogoslof National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

Bosque del Apache Wilderness, Bosque del Apache National Wildlife Refuge, New Mexico.—Pub. L. 93-632, § 1(i), Jan. 3, 1975, 88 Stat. 2154.

Boulder Creek Wilderness, Umpqua National Forest, Oregon.—Pub. L. 98-328, § 3(8), June 26, 1984, 98 Stat. 273.

Boulder River Wilderness, Mount Baker-Snoqualmie National Forest, Washington.—Pub. L. 98-339, § 3(1), July 3, 1984, 98 Stat. 300.

Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.—Pub. L. 95-495, § 3, Oct. 21, 1978, 92 Stat. 1649.

Box-Death Hollow Wilderness, Dixie National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(10), Sept. 28, 1984, 98 Stat. 1658.

Bradwell Bay Wilderness, Appalachicola National Forest, Florida.—Pub. L. 93-622, § 3(a)(4), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-430, § 1(1), Sept. 28, 1984, 98 Stat. 1665.

Brasstown Wilderness, Chattahoochee National Forest, Georgia.—Pub. L. 99-555, § 2(2), Oct. 27, 1986, 100 Stat. 3129.

Breadloaf Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 98-322, title I, § 102(1), June 19, 1984, 98 Stat. 254.

Breton Wilderness, Breton National Wildlife Refuge, Louisiana.—Pub. L. 93-632, § 1(f), Jan. 3, 1975, 88 Stat. 2154.

Bridge Creek Wilderness, Ochoco National Forest, Oregon.—Pub. L. 98-328, § 3(16), June 26, 1984, 98 Stat. 274.

Bridger Wilderness, Bridger National Forest, Wyoming.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-550, title II, § 201(a)(10), Oct. 30, 1984, 98 Stat. 2809.

Brigantine Wilderness, Edwin B. Forsythe National Wildlife Refuge, New Jersey.—Pub. L. 93-632, § 1(h), Jan. 3, 1975, 88 Stat. 2154; Pub. L. 98-293, May 22, 1984, 98 Stat. 207.

WILDERNESS AREAS—Continued

Bristol Cliffs Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 93-622, § 3(a)(10), Jan. 3, 1975, 88 Stat. 2097.

Buckhorn Wilderness, Olympic National Forest, Washington.—Pub. L. 98-339, § 3(2), July 3, 1984, 98 Stat. 300.

Bucks Lake Wilderness, Plumas National Forest, California.—Pub. L. 98-425, title I, § 101(a)(37), Sept. 28, 1984, 98 Stat. 1621.

Buffalo National River Wilderness, Buffalo National River, Arkansas.—Pub. L. 95-625, title IV, § 401(1), Nov. 10, 1978, 92 Stat. 3489.

Bull of the Woods Wilderness, Mount Hood and Willamette National Forests, Oregon.—Pub. L. 98-328, § 3(4), June 26, 1984, 98 Stat. 273.

Cabinet Mountains Wilderness, Kaniksu and Kootenai National Forests, Montana.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Cache La Poudre Wilderness, Roosevelt National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(2), Dec. 22, 1980, 94 Stat. 3266.

Caney Creek Wilderness, Ouachita National Forest, Arkansas.—Pub. L. 93-622, § 3(a)(2), Jan. 3, 1975, 88 Stat. 2097.

Cape Romain Wilderness, Cape Romain National Wildlife Refuge, South Carolina.—Pub. L. 93-632, § 1(m), Jan. 3, 1975, 88 Stat. 2154.

Capitan Mountains Wilderness, Lincoln National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(4), Dec. 19, 1980, 94 Stat. 3221.

Caribou Wilderness, Lassen National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(1), Sept. 28, 1984, 98 Stat. 1619.

Carlsbad Caverns Wilderness, Carlsbad Caverns National Park, New Mexico.—Pub. L. 95-625, title IV, § 401(2), Nov. 10, 1978, 92 Stat. 3489.

Carson-Iceberg Wilderness, Stanislaus and Toiyabe National Forests, California.—Pub. L. 98-425, title I, § 101(a)(2), Sept. 28, 1984, 98 Stat. 1619.

Castle Crags Wilderness, Shasta-Trinity National Forest, California.—Pub. L. 98-425, title I, § 101(a)(3), Sept. 28, 1984, 98 Stat. 1619.

Castle Creek Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(4), Aug. 28, 1984, 98 Stat. 1488.

Catfish Lake South Wilderness, Croatan National Forest, North Carolina.—Pub. L. 98-324, § 2(2), June 19, 1984, 98 Stat. 263.

Cebolla Wilderness, El Malpais National Monument and National Conservation Area, New Mexico.—Pub. L. 100-225, title IV, § 401(a), Dec. 31, 1987, 101 Stat. 1542.

Cedar Bench Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(2), Aug. 28, 1984, 98 Stat. 1485.

Cedar Keys Wilderness, Cedar Keys National Wildlife Refuge, Florida.—Pub. L. 92-364, Aug. 7, 1972, 86 Stat. 505.

Chama River Canyon Wilderness, Santa Fe and Carson National Forests, New Mexico.—Pub. L. 95-237, § 2(h), Feb. 24, 1978, 92 Stat. 42.

Chamisso Wilderness, Chamisso National Wildlife Refuge, Alaska.—Pub. L. 93-632, § 1(a), Jan. 3, 1975, 88 Stat. 2153.

Chanchelulla Wilderness, Shasta-Trinity National Forest, California.—Pub. L. 98-425, title I, § 101(a)(4), Sept. 28, 1984, 98 Stat. 1619.

Charles C. Deam Wilderness, Hoosier National Forest, Indiana.—Pub. L. 97-384, Dec. 22, 1982, 96 Stat. 1942.

Chase Lake Wilderness, Chase Lake National Wildlife Refuge, North Dakota.—Pub. L. 93-632, § 1(j), Jan. 3, 1975, 88 Stat. 2154.

Chassahowitzka Wilderness, Chassahowitzka National Wildlife Refuge, Florida.—Pub. L. 94-557, § 1(c), Oct. 19, 1976, 90 Stat. 2633.

WILDERNESS AREAS—Continued

Cheaha Wilderness, Talladega National Forest, Alabama.—Pub. L. 97-411, Jan. 3, 1983, 96 Stat. 2046; Pub. L. 100-547, title II, § 201(a)(2), Oct. 28, 1988, 102 Stat. 2737.

Chiricahua National Monument Wilderness, Chiricahua National Monument, Arizona.—Pub. L. 94-567, § 1(c), Oct. 20, 1976, 90 Stat. 2692.

Chiricahua Wilderness, Coronado National Forest, Arizona.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-406, title I, § 101(a)(5), Aug. 28, 1984, 98 Stat. 1485.

Citico Creek Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 98-578, § 2(2), Oct. 30, 1984, 98 Stat. 3088.

Clearwater Wilderness, Mount Baker-Snoqualmie National Forest, Washington.—Pub. L. 98-339, § 3(3), July 3, 1984, 98 Stat. 300.

Clifty Wilderness, Daniel Boone National Forest, Kentucky.—Pub. L. 99-197, § 2, Dec. 23, 1985, 99 Stat. 1351.

Cloud Peak Wilderness, Bighorn National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(1), Oct. 30, 1984, 98 Stat. 2808.

Cohutta Wilderness, Chattahoochee and Cherokee National Forests, Georgia and Tennessee.—Pub. L. 93-622, § 3(b), Jan. 3, 1975, 88 Stat. 2098; Pub. L. 99-555, § 2(5), Oct. 27, 1986, 100 Stat. 3129.

Collegiate Peaks Wilderness, Gunnison, San Isabel, and White River National Forests, Colorado.—Pub. L. 96-560, title I, § 102(a)(3), Dec. 22, 1980, 94 Stat. 3266.

Colonel Bob Wilderness, Olympic National Forest, Washington.—Pub. L. 98-339, § 3(4), July 3, 1984, 98 Stat. 300.

Columbia Wilderness, Mount Hood National Forest, Oregon.—Pub. L. 98-328, § 3(1), June 26, 1984, 98 Stat. 273.

Comanche Peak Wilderness, Roosevelt National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(4), Dec. 22, 1980, 94 Stat. 3266.

Congaree Swamp National Monument Wilderness, Congaree Swamp National Monument, South Carolina.—Pub. L. 100-524, § 2, Oct. 24, 1988, 102 Stat. 2606.

Coronation Island Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(2), Dec. 2, 1980, 94 Stat. 2418.

Cottonwood Point Wilderness, Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(1), Aug. 28, 1984, 98 Stat. 1492.

Crab Orchard Wilderness, Crab Orchard National Wildlife Refuge, Illinois.—Pub. L. 94-557, § 1(f), Oct. 19, 1976, 90 Stat. 2633.

Cranberry Wilderness, Monogahela National Forest, West Virginia.—Pub. L. 97-466, § 1(1), Jan. 13, 1983, 96 Stat. 2538.

Craters of the Moon National Wilderness, Craters of the Moon National Monument, Idaho.—Pub. L. 91-504, § 2(a), Oct. 23, 1970, 84 Stat. 1105.

Cruces Basin Wilderness, Carson National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(5), Dec. 19, 1980, 94 Stat. 3222.

Cucamonga Wilderness, San Bernardino National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(5), Sept. 28, 1984, 98 Stat. 1619.

Cumberland Island Wilderness, Cumberland Island National Seashore, Georgia.—Pub. L. 97-250, § 2, Sept. 8, 1982, 96 Stat. 709.

Cummins Creek Wilderness, Siuslaw National Forest, Oregon.—Pub. L. 98-328, § 3(7), June 26, 1984, 98 Stat. 273.

Dark Canyon Wilderness, Manti-LaSal National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(8), Sept. 28, 1984, 98 Stat. 1658.

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WILDERNESS AREAS—Continued

Delirium Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(j), Dec. 8, 1987, 101 Stat. 1275.

Denali Wilderness, Denali National Park and Preserve, Alaska.—Pub. L. 96-487, title VII, § 701(1), Dec. 2, 1980, 94 Stat. 2417.

De-na-zin Wilderness, Albuquerque District of Bureau of Land Management, New Mexico.—Pub. L. 98-603, title I, § 102(2), Oct. 30, 1984, 98 Stat. 3155.

Deseret Peak Wilderness, Wasatch National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(12), Sept. 28, 1984, 98 Stat. 1658.

Desolation Wilderness, Eldorado National Forest, California.—Pub. L. 91-82, Oct. 10, 1969, 83 Stat. 131.

Devils Backbone Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 96-560, title II, § 201(d), Dec. 22, 1980, 94 Stat. 3273.

Diamond Peak Wilderness, Deschutes and Willamette National Forests, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Dick Smith Wilderness, Los Padres National Forest, California.—Pub. L. 98-425, title I, § 101(a)(6), Sept. 28, 1984, 98 Stat. 1620.

Dinkey Lakes Wilderness, Sierra National Forest, California.—Pub. L. 98-425, title I, § 101(a)(7), (13), Sept. 28, 1984, 98 Stat. 1620.

Dolly Sods Wilderness, Monongahela National Forest, West Virginia.—Pub. L. 93-622, § 3(a)(13), Jan. 3, 1975, 88 Stat. 2098.

Dome Wilderness, Santa Fe National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(6), Dec. 19, 1980, 94 Stat. 3222.

Domeland Wilderness, Sequoia National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(8), Sept. 28, 1984, 98 Stat. 1620.

Drift Creek Wilderness, Siuslaw National Forest, Oregon.—Pub. L. 98-328, § 3(5), June 26, 1984, 98 Stat. 273.

Dry Creek Wilderness, Ouachita National Forest, Arkansas.—Pub. L. 98-508, § 3(b), Oct. 19, 1984, 98 Stat. 2350.

Eagle Cap Wilderness, Wallowa and Whitman National Forests, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 92-521, Oct. 21, 1972, 86 Stat. 1026; Pub. L. 98-328, § 3(28), June 26, 1984, 98 Stat. 275.

Eagles Nest Wilderness, Arapaho and White River National Forests, Colorado.—Pub. L. 94-352, July 12, 1976, 90 Stat. 870.

East Fork Wilderness, Ozark-Saint Francis National Forests, Arkansas.—Pub. L. 98-508, § 3(h), Oct. 19, 1984, 98 Stat. 2350.

Ellicott Rock Wilderness, Sumter, Nantahala, and Chattahoochee National Forests, South Carolina, North Carolina, and Georgia.—Pub. L. 93-622, § 3(a)(8), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-324, § 2(3), June 19, 1984, 98 Stat. 263; Pub. L. 98-514, § 2(1), Oct. 19, 1984, 98 Stat. 2416.

Emigrant Wilderness, Stanislaus National Forest, California.—Pub. L. 93-632, § 2(b), Jan. 3, 1975, 88 Stat. 2154; Pub. L. 98-425, title I, § 101(a)(9), Sept. 28, 1984, 98 Stat. 1620.

Encampment River Wilderness, Medicine Bow National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(7), Oct. 30, 1984, 98 Stat. 2808.

Endicott River Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(3), Dec. 2, 1980, 94 Stat. 2418.

Escudilla Wilderness, Apache-Sitgreaves National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(30), Aug. 28, 1984, 98 Stat. 1488.

Everglades Wilderness, Everglades National Park, Florida.—Pub. L. 95-625, title IV, § 401(3), Nov. 10, 1978, 92 Stat. 3490.

Farallon Wilderness, Farallon National Wildlife Refuge, California.—Pub. L. 93-550, title I, §§ 101, 102, Dec. 26, 1974, 88 Stat. 1744.

Fire Island Wilderness, Fire Island National Seashore, New York.—Pub. L. 96-585, § 1(a)-(d), Dec. 23, 1980, 94 Stat. 3379.

Fitzpatrick Wilderness, Shoshone National Forest, Wyoming.—Pub. L. 94-557, § 2(a), Oct. 19, 1976, 90 Stat. 2635; Pub. L. 94-567, § 8, Oct. 20, 1976, 90 Stat. 2695; Pub. L. 98-550, title II, § 201(a)(11), Oct. 30, 1984, 98 Stat. 2809.

Flat Tops Wilderness, Routt and White River National Forest, Colorado.—Pub. L. 94-146, Dec. 12, 1975, 89 Stat. 802.

Flatside Wilderness, Ouachita National Forest, Arkansas.—Pub. L. 98-508, § 3(d), Oct. 19, 1984, 98 Stat. 2350.

Florida Keys Wilderness, Key Deer, Great White Heron and Key West National Wildlife Refuges, Florida.—Pub. L. 93-632, § 1(b), Jan. 3, 1975, 88 Stat. 2153.

Forrester Island Wilderness, Forrester Island National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

Fort Niobrara Wilderness, Fort Niobrara National Wildlife Refuge, Nebraska.—Pub. L. 94-557, § 1(n), Oct. 19, 1976, 90 Stat. 2634.

Fossil Springs Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(6), Aug. 28, 1984, 98 Stat. 1485.

Four Peaks Wilderness, Tonto National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(7), Aug. 28, 1984, 98 Stat. 1485.

Frank Church—River of No Return Wilderness, Boise, Challis, Payette, Salmon, Bitterroot, and Nezperce National Forests, Idaho.—Pub. L. 96-312, § 3, July 23, 1980, 94 Stat. 948; Pub. L. 98-231, § 1, Mar. 14, 1984, 98 Stat. 60.

Galiuro Wilderness, Coronado National Forest, Arizona.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-406, title I, § 101(a)(8), Aug. 28, 1984, 98 Stat. 1486.

Gates of the Arctic Wilderness, Gates of the Arctic National Park, Alaska.—Pub. L. 96-487, title VII, § 701(2), Dec. 2, 1980, 94 Stat. 2417.

Gates of the Mountains Wilderness, Helena National Forest, Montana.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Gearheart Mountain Wilderness, Fremont National Forest, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-328, § 3(26), June 26, 1984, 98 Stat. 275.

Gee Creek Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 93-622, § 3(a)(9), Jan. 3, 1975, 88 Stat. 2097.

George D. Aiken Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 98-322, title I, § 102(5), June 19, 1984, 98 Stat. 254.

Gila Wilderness, Gila National Forest, New Mexico.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-550, title I, § 102(a)(7), Dec. 19, 1980, 94 Stat. 3222.

Glacier Bay Wilderness, Glacier Bay National Park, Alaska.—Pub. L. 96-487, title VII, § 701(3), Dec. 2, 1980, 94 Stat. 2417.

Glacier Peak Wilderness, Mount Baker and Wenatchee National Forest, Washington [see section 90e-1 of this title].—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 90-544, title VI, § 602, Oct. 2, 1968, 82 Stat. 930; Pub. L. 98-339, § 3(5), July 3, 1984, 98 Stat. 300.

Glacier View Wilderness, Gifford Pinchot National Forest, Washington.—Pub. L. 98-339, § 3(6), July 3, 1984, 98 Stat. 300.

WILDERNESS AREAS—Continued

Goat Rocks Wilderness, Gifford Pinchot and Snoqualmie National Forests, Washington.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-339, § 3(7), July 3, 1984, 98 Stat. 300.

Golden Trout Wilderness, Inyo and Sequoia National Forests, California.—Pub. L. 95-237, § 2(b), Feb. 24, 1978, 92 Stat. 41.

Gospel-Hump Wilderness, Nezperce National Forest, Idaho.—Pub. L. 95-237, § 4(a), Feb. 24, 1978, 92 Stat. 42.

Grand Wash Cliffs Wilderness, Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(2), Aug. 28, 1984, 98 Stat. 1492.

Granite Chief Wilderness, Tahoe National Forest, California.—Pub. L. 98-425, title I, § 101(a)(10), Sept. 28, 1984, 98 Stat. 1620.

Granite Mountain Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(9), Aug. 28, 1984, 98 Stat. 1486.

Grassy Knob Wilderness, Siskiyou National Forest, Oregon.—Pub. L. 98-328, § 3(13), June 26, 1984, 98 Stat. 274.

Great Bear Wilderness, Flathead National Forest, Montana.—Pub. L. 95-546, Oct. 28, 1978, 92 Stat. 2062.

Great Gulf Wilderness, White Mountain National Forest, New Hampshire.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Great Sand Dunes Wilderness, Great Sand Dunes National Monument, Colorado.—Pub. L. 94-567, § 1(d), Oct. 20, 1976, 90 Stat. 2692.

Great Swamp National Wildlife Refuge Wilderness, Morris County, New Jersey.—Pub. L. 90-532, Sept. 28, 1968, 82 Stat. 883.

Gros Ventre Wilderness, Bridger-Teton National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(3), Oct. 30, 1984, 98 Stat. 2808.

Guadalupe Mountains Wilderness, Guadalupe Mountains National Park, Texas.—Pub. L. 95-625, title IV, § 401(4), Nov. 10, 1978, 92 Stat. 3490.

Gulf Islands Wilderness, Gulf Islands National Seashore, Florida and Mississippi.—Pub. L. 95-625, title IV, § 401(5), Nov. 10, 1978, 92 Stat. 3490.

Haleakala Wilderness, Haleakala National Park, Hawaii.—Pub. L. 94-567, § 1(e), Oct. 20, 1976, 90 Stat. 2692.

Hauser Wilderness, Cleveland National Forest, California.—Pub. L. 98-425, title I, § 101(a)(11), Sept. 28, 1984, 98 Stat. 1620.

Hawaii Volcanoes Wilderness, Hawaii Volcanoes National Park, Hawaii.—Pub. L. 95-625, title IV, § 401(6), Nov. 10, 1978, 92 Stat. 3490.

Hazy Islands Wilderness, Hazy Island National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

Headwaters of the Pine Wilderness, Nicolet National Forest, Wisconsin.—Pub. L. 98-321, § 2(2)(B), June 19, 1984, 98 Stat. 250.

Hell Hole Bay Wilderness, Francis Marion National Forest, South Carolina.—Pub. L. 96-560, title II, § 201(f), Dec. 22, 1980, 94 Stat. 3273.

Hells Canyon Wilderness.—Pub. L. 94-199, § 2, Dec. 31, 1975, 89 Stat. 1117; Pub. L. 98-328, § 3(29), June 26, 1984, 98 Stat. 275.

Hellsgate Wilderness, Tonto National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(10), Aug. 28, 1984, 98 Stat. 1486.

Henry M. Jackson Wilderness, Wenatchee and Mount Baker-Snoqualmie National Forests, Washington.—Pub. L. 98-339, § 3(8), July 3, 1984, 98 Stat. 300.

Hercules-Glades Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 94-557, § 2(b)(2), Oct. 19, 1976, 90 Stat. 2635.

Hickory Creek Wilderness, Allegheny National Forest, Pennsylvania.—Pub. L. 98-585, § 4(2), Oct. 30, 1984, 98 Stat. 3100.

High Uintas Wilderness, Wasatch-Cache and Ashley National Forests, Utah.—Pub. L. 98-428, title I, § 102(a)(5), Sept. 28, 1984, 98 Stat. 1658.

Holy Cross Wilderness, San Isabel and White River National Forests, Colorado.—Pub. L. 96-560, title I, § 102(a)(5), Dec. 22, 1980, 94 Stat. 3266.

Hoover Wilderness, Inyo and Toiyabe National Forests, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Horseshoe Bay Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(g), Dec. 8, 1987, 101 Stat. 1275.

Hunter-Fryingpan Wilderness, White River National Forest, Colorado.—Pub. L. 95-237, § 2(e), Feb. 24, 1978, 92 Stat. 41.

Huron Islands Wilderness, Huron Islands National Wildlife Refuge, Michigan.—Pub. L. 91-504, § 1(e), Oct. 23, 1970, 84 Stat. 1105.

Hurricane Creek Wilderness, Ozark-Saint Francis National Forests, Arkansas.—Pub. L. 98-508, § 3(f), Oct. 19, 1984, 98 Stat. 2350.

Huston Park Wilderness, Medicine Bow National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(6), Oct. 30, 1984, 98 Stat. 2808.

Indian Heaven Wilderness, Gifford Pinchot National Forest, Washington.—Pub. L. 98-339, § 3(9), July 3, 1984, 98 Stat. 300.

Indian Mounds Wilderness, Sabine National Forest, Texas.—Pub. L. 98-574, § 2(4), Oct. 30, 1984, 98 Stat. 3051.

Indian Peaks Wilderness, Arapaho and Roosevelt National Forests, Colorado.—Pub. L. 95-450, § 3, Oct. 11, 1978, 92 Stat. 1095.

Innoko Wilderness, Innoko National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(5), Dec. 2, 1980, 94 Stat. 2418.

Irish Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 98-289, § 2, May 21, 1984, 98 Stat. 199.

Ishi Wilderness, Lassen National Forest, California.—Pub. L. 98-425, title I, § 101(a)(12), Sept. 28, 1984, 98 Stat. 1620.

Island Bay Wilderness, Island Bay National Wildlife Refuge, Florida.—Pub. L. 91-504, § 1(d), Oct. 23, 1970, 84 Stat. 1105.

Isle Royale Wilderness, Isle Royale National Park, Michigan.—Pub. L. 94-567, § 1(f), Oct. 20, 1976, 90 Stat. 2692.

Izembek Wilderness, Izembek National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(6), Dec. 2, 1980, 94 Stat. 2418.

James River Face Wilderness, Jefferson National Forest, Virginia.—Pub. L. 93-622, § 3(a)(12), Jan. 3, 1975, 88 Stat. 2098; Pub. L. 98-586, § 2(9), Oct. 30, 1984, 98 Stat. 3106.

Jarbidge Wilderness, Humboldt National Forest, Nevada.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Jedediah Smith Wilderness, Targhee National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(5), Oct. 30, 1984, 98 Stat. 2808.

Jennie Lakes Wilderness, Sequoia National Forest, California.—Pub. L. 98-425, title I, § 101(a)(39), Sept. 28, 1984, 98 Stat. 1624.

J. N. "Ding" Darling Wilderness, J. N. "Ding" Darling National Wildlife Refuge, Florida.—Pub. L. 94-557, § 1(d), Oct. 19, 1976, 90 Stat. 2633.

John Muir Wilderness, Inyo and Sierra National Forests, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(13), Sept. 28, 1984, 98 Stat. 1620.

Joshua Tree Wilderness, Joshua Tree National Monument, California.—Pub. L. 94-567, § 1(g), Oct. 20, 1976, 90 Stat. 2692.

WILDERNESS AREAS—Continued

Joyce Kilmer-Slickrock Wilderness, Nantahala and Cherokee National Forests, North Carolina and Tennessee.—Pub. L. 93-622, § 3(a)(7), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-324, § 2(4), June 19, 1984, 98 Stat. 263.

Juniper Dunes Wilderness, Franklin County, Washington.—Pub. L. 98-339, § 6, July 3, 1984, 98 Stat. 304.

Juniper Mesa Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(11), Aug. 28, 1984, 98 Stat. 1486.

Juniper Prairie Wilderness, Ocala National Forest, Florida.—Pub. L. 98-430, § 1(5), Sept. 28, 1984, 98 Stat. 1665.

Kachina Peaks Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(22), Aug. 28, 1984, 98 Stat. 1487.

Kaiser Wilderness, Sierra National Forest, California.—Pub. L. 94-557, § 2(b)(1), Oct. 19, 1976, 90 Stat. 2635.

Kalmiopsis Wilderness, Siskiyou National Forest, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 95-237, § 3(a), Feb. 24, 1978, 92 Stat. 43.

Kanab Creek Wilderness, Kaibab National Forest and Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(3), Aug. 28, 1984, 98 Stat. 1492.

Katmai Wilderness, Katmai National Park, Alaska.—Pub. L. 96-487, title VII, § 701(4), Dec. 2, 1980, 94 Stat. 2417.

Kenai Wilderness, Kenai National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(7), Dec. 2, 1980, 94 Stat. 2418.

Kendrick Mountain Wilderness, Kaibab and Coconino National Forests, Arizona.—Pub. L. 98-406, title I, § 101(a)(12), Aug. 28, 1984, 98 Stat. 1486.

Kimball Creek Wilderness, Nicolet National Forest, Wisconsin.—Pub. L. 98-321, § 2(2)(A), June 19, 1984, 98 Stat. 250.

Kimberling Creek Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(2), Oct. 30, 1984, 98 Stat. 3105.

Kisatchie Hills Wilderness, Kisatchie National Forest, Louisiana.—Pub. L. 96-560, title II, § 201(1), Dec. 22, 1980, 94 Stat. 3273.

Kobuk Valley Wilderness, Kobuk Valley National Park, Alaska.—Pub. L. 96-487, title VII, § 701(5), Dec. 2, 1980, 94 Stat. 2417.

Koyukuk Wilderness, Koyukuk National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(8), Dec. 2, 1980, 94 Stat. 2418.

Lacassine Wilderness, Lacassine National Wildlife Refuge, Louisiana.—Pub. L. 94-557, § 1(g), Oct. 19, 1976, 90 Stat. 2633.

LaGarita Wilderness, Gunnison and Rio Grande National Forests, Colorado.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-560, title I, § 102(a)(6), Dec. 22, 1980, 94 Stat. 3266.

Lake Chelan-Sawtooth Wilderness, Okanogan and Wenatchee National Forests, Washington.—Pub. L. 98-339, § 3(10), July 3, 1984, 98 Stat. 301.

Lake Clark Wilderness, Lake Clark National Park, Alaska.—Pub. L. 96-487, title VII, § 701(6), Dec. 2, 1980, 94 Stat. 2417.

Lake Woodruff Wilderness, Lake Woodruff National Wildlife Refuge, Florida.—Pub. L. 94-557, § 1(e), Oct. 19, 1976, 90 Stat. 2633.

Lassen Volcanic Wilderness, Lassen Volcanic National Park, California.—Pub. L. 92-510, §§ 1-3, Oct. 19, 1972, 86 Stat. 918.

Latir Peak Wilderness, Carson National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(8), Dec. 19, 1980, 94 Stat. 3222.

Laurel Fork North Wilderness, Monongahela National Forest, West Virginia.—Pub. L. 97-466, § 1(2), Jan. 13, 1983, 96 Stat. 2538.

Laurel Fork South Wilderness, Monongahela National Forest, West Virginia.—Pub. L. 97-466, § 1(3), Jan. 13, 1983, 96 Stat. 2538.

Lava Beds Wilderness, Lava Beds National Monument, California.—Pub. L. 92-493, Oct. 13, 1972, 86 Stat. 811.

Leaf Wilderness, De Soto National Forest, Mississippi.—Pub. L. 98-515, § 2(2), Oct. 19, 1984, 98 Stat. 2420.

Leatherwood Wilderness, Ozark-Saint Francis National Forests, Arkansas.—Pub. L. 98-508, § 3(1), Oct. 19, 1984, 98 Stat. 2350.

Lee Metcalf Wilderness, Beaverhead and Gallatin National Forests and Dillon Resource Area, Montana.—Pub. L. 98-140, § 2, Oct. 31, 1983, 97 Stat. 901.

Lewis Fork Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(3), Oct. 30, 1984, 98 Stat. 3105; Pub. L. 100-326, § 1(5), June 7, 1988, 102 Stat. 584.

Linville Gorge Wilderness, Pisgah National Forest, North Carolina.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-324, § 2(5), June 19, 1984, 98 Stat. 263.

Little Dry Run Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, [illegible](4), Oct. 30, 1984, 98 Stat. 3105.

Little Frog Mountain Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 99-490, § 2(5), Oct. 16, 1986, 100 Stat. 1235.

Little Lake Creek Wilderness, Sam Houston National Forest, Texas.—Pub. L. 98-574, § 2(5), Oct. 30, 1984, 98 Stat. 3051.

Little Lake George Wilderness, Ocala National Forest, Florida.—Pub. L. 98-430, § 1(6), Sept. 28, 1984, 98 Stat. 1665.

Little Wilson Creek Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(5), Oct. 30, 1984, 98 Stat. 3105.

Lizard Head Wilderness, San Juan and Umcompahgre National Forests, Colorado.—Pub. L. 96-560, title I, § 102(a)(7), Dec. 22, 1980, 94 Stat. 3266.

Lone Peak Wilderness, Wasatch and Unita National Forests, Utah.—Pub. L. 95-237, § 2(1), Feb. 24, 1978, 92 Stat. 42.

Lost Creek Wilderness, Pike National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(8), Dec. 22, 1980, 94 Stat. 3266.

Lostwood Wilderness, Lostwood National Wildlife Refuge, North Dakota.—Pub. L. 93-632, § 1(k), Jan. 3, 1975, 88 Stat. 2154.

Lye Brook Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 93-622, § 3(a)(11), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-322, title I, § 102(4), June 19, 1984, 98 Stat. 254.

Machesna Mountain Wilderness, Los Padres National Forest, California.—Pub. L. 98-425, title I, § 101(a)(38), Sept. 28, 1984, 98 Stat. 1624.

Mackinac Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(f), Dec. 8, 1987, 101 Stat. 1275.

Manzano Mountain Wilderness, Cibola National Forest, New Mexico.—Pub. L. 95-237, § 2(f), Feb. 24, 1978, 92 Stat. 42.

Marble Mountain Wilderness, Klamath National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(14), Sept. 28, 1984, 98 Stat. 1621.

Maroon Bells-Snowmass Wilderness, White River National Forest, Colorado.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-560, title I, § 102(a)(9), Dec. 22, 1980, 94 Stat. 3266.

Maurille Islands Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(4), Dec. 2, 1980, 94 Stat. 2419.

WILDERNESS AREAS—Continued

Mazatzal Wilderness, Tonto National Forest, Arizona.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-406, title I, § 101(a)(13), Aug. 28, 1984, 98 Stat. 1486.

McCormick Wilderness, Ottawa National Forest, Michigan.—Pub. L. 100-184, § 3(1), Dec. 8, 1987, 101 Stat. 1275.

Medicine Lake Wilderness, Medicine Lake National Wildlife Refuge, Montana.—Pub. L. 94-557, § 1(l), Oct. 19, 1976, 90 Stat. 2634.

Menagerie Wilderness, Willamette National Forest, Oregon.—Pub. L. 98-328, § 3(11), June 26, 1984, 98 Stat. 273.

Mesa Verde Wilderness, Mesa Verde National Park, Colorado.—Pub. L. 94-567, § 1(h), Oct. 20, 1976, 90 Stat. 2693.

Michigan Islands Wilderness, Michigan Islands National Wildlife Refuge, Michigan.—Pub. L. 91-504, § 1(e), Oct. 23, 1970, 84 Stat. 1105.

Middle Prong Wilderness, Pisgah National Forest, North Carolina.—Pub. L. 98-324, § 2(6), June 19, 1984, 98 Stat. 263.

Middle Santiam Wilderness, Willamette National Forest, Oregon.—Pub. L. 98-328, § 3(12), June 26, 1984, 98 Stat. 273.

Mill Creek Wilderness, Ochoco National Forest, Oregon.—Pub. L. 98-328, § 3(17), June 26, 1984, 98 Stat. 274.

Miller Peak Wilderness, Coronado National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(14), Aug. 28, 1984, 98 Stat. 1486.

Mingo Wilderness, Mingo National Wildlife Refuge, Missouri.—Pub. L. 94-557, § 1(j), Oct. 19, 1976, 90 Stat. 2634.

Mission Mountains Wilderness, Flathead National Forest, Montana.—Pub. L. 93-632, § 2(d), Jan. 3, 1975, 88 Stat. 2155.

Misty Fjords National Monument Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(5), Dec. 2, 1980, 94 Stat. 2419.

Mokelumne Wilderness, Eldorado and Stanislaus National Forests, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(16), Sept. 28, 1984, 98 Stat. 1620.

Monarch Wilderness, Sierra and Sequoia National Forests, California.—Pub. L. 98-425, title I, § 101(a)(17), Sept. 28, 1984, 98 Stat. 1621.

Monomoy Wilderness, Monomoy National Wildlife Refuge, Massachusetts.—Pub. L. 91-504, § 1(g), Oct. 23, 1970, 84 Stat. 1105.

Monument Rock Wilderness, Malheru and Wallowa-Whitman National Forests, Oregon.—Pub. L. 98-328, § 3(21), June 26, 1984, 98 Stat. 274.

Moosehorn Wilderness, Moosehorn National Wildlife Refuge, Maine.—Pub. L. 91-504, § 1(e), Oct. 23, 1970, 84 Stat. 1105.

Moosehorn Wilderness (Baring Unit), Moosehorn National Wildlife Refuge, Maine.—Pub. L. 93-632, § 1(g), Jan. 3, 1975, 88 Stat. 2154.

Mount Adams Wilderness, Gifford Pinchot National Forest, Washington.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-339, § 3(11), July 3, 1984, 98 Stat. 301.

Mount Baker Wilderness, Mount Baker-Snoqualmie National Forest, Washington.—Pub. L. 98-339, § 3(12), July 3, 1984, 98 Stat. 301.

Mount Baldy Wilderness, Apache National Forest, Arizona.—Pub. L. 91-504, § 3, Oct. 23, 1970, 84 Stat. 1106.

Mount Evans Wilderness, Arapaho and Pike National Forests, Colorado.—Pub. L. 96-560, title I, § 102(a)(10), Dec. 22, 1980, 94 Stat. 3267.

Mount Hood Wilderness, Mount Hood National Forest, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 95-237, § 3(d), Feb. 24, 1978, 92 Stat. 43.

Mount Jefferson Wilderness, Willamette, Deschutes, and Mount Hood National Forests, Oregon.—Pub. L. 90-548, Oct. 2, 1968, 82 Stat. 936; Pub. L. 98-328, § 3(23), June 26, 1984, 98 Stat. 274.

Mount Logan Wilderness, Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(4), Aug. 28, 1984, 98 Stat. 1493.

Mount Massive Wilderness, San Isabel National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(11), Dec. 22, 1980, 94 Stat. 3267.

Mount Naomi Wilderness, Wasatch-Cache National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(1), Sept. 28, 1984, 98 Stat. 1657.

Mount Nebo Wilderness, Uinta National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(7), Sept. 28, 1984, 98 Stat. 1658.

Mount Olympus Wilderness, Wasatch-Cache National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(3), Sept. 28, 1984, 98 Stat. 1658.

Mount Rainier Wilderness, Mount Rainier National Park, Washington.—Pub. L. 100-668, title III, § 301, Nov. 16, 1988, 102 Stat. 3965.

Mt. Shasta Wilderness, Shasta-Trinity National Forest, California.—Pub. L. 98-425, title I, § 101(a)(18), Sept. 28, 1984, 98 Stat. 1621.

Mount Skokomish Wilderness, Olympic National Forest, Washington.—Pub. L. 98-339, § 3(13), July 3, 1984, 98 Stat. 301.

Mount Sneffels Wilderness, Uncompahgre National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(12), Dec. 22, 1980, 94 Stat. 3267.

Mount Thielsen Wilderness, Umpqua, Willamette, and Winema National Forests, Oregon.—Pub. L. 98-328, § 4(f), June 26, 1984, 98 Stat. 277.

Mount Timpanogos Wilderness, Uinta National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(6), Sept. 28, 1984, 98 Stat. 1658.

Mount Trumbull Wilderness, Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(5), Aug. 28, 1984, 98 Stat. 1493.

Mount Washington Wilderness, Deschutes and Willamette National Forests, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-328, § 3(24), June 26, 1984, 98 Stat. 275.

Mt. Wrightson Wilderness, Coronado National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(15), Aug. 28, 1984, 98 Stat. 1486.

Mount Zirkel Wilderness, Routt National Forest, Colorado.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-560, title I, § 102(a)(13), Dec. 22, 1980, 94 Stat. 3267.

Mountain Lake Wilderness, Jefferson National Forest, Virginia and West Virginia.—Pub. L. 98-586, § 2(6), Oct. 30, 1984, 98 Stat. 3105; Pub. L. 100-326, § 1(6), June 7, 1988, 102 Stat. 584.

Mountain Lakes Wilderness, Winema National Forest, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Mud Swamp/New River Wilderness, Apalachicola National Forest, Florida.—Pub. L. 98-430, § 1(2), Sept. 28, 1984, 98 Stat. 1665.

Munds Mountain Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(16), Aug. 28, 1984, 98 Stat. 1486.

Neota Wilderness, Roosevelt National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(14), Dec. 22, 1980, 94 Stat. 3267.

Never Summer Wilderness, Arapaho National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(15), Dec. 22, 1980, 94 Stat. 3267.

Noatak Wilderness, Noatak National Preserve, Alaska.—Pub. L. 96-487, title VII, § 701(7), Dec. 2, 1980, 94 Stat. 2417.

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Wilderness Areas—Continued

Noisy-Diobsbud Wilderness, Mount Baker-Snoqualmie National Forest, Washington.—Pub. L. 98-339, § 3(14), July 3, 1984, 98 Stat. 301.

Nordhouse Dunes Wilderness, Manistee National Forest, Michigan.—Pub. L. 100-184, § 3(a), Dec. 8, 1987, 101 Stat. 1274.

Norse Peak Wilderness, Mount Baker-Snoqualmie and Wenatchee National Forests, Washington.—Pub. L. 98-339, § 3(15), July 3, 1984, 98 Stat. 301.

North Absaroka Wilderness, Shoshone National Forest, Wyoming.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

North Fork John Day Wilderness, Wallowa-Whitman and Umatilla National Forests, Oregon.—Pub. L. 98-328, § 3(19), June 26, 1984, 98 Stat. 274.

North Fork Umatilla Wilderness, Umatilla National Forest, Oregon.—Pub. L. 98-328, § 3(20), June 26, 1984, 98 Stat. 274.

North Fork Wilderness, Six Rivers National Forest, California.—Pub. L. 98-425, title I, § 101(a)(19), Sept. 28, 1984, 98 Stat. 1621.

Nunivak Wilderness, Yukon Delta National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(9), Dec. 2, 1980, 94 Stat. 2418.

Okefenokee Wilderness, Okefenokee National Wildlife Refuge, Georgia.—Pub. L. 93-429, Oct. 1, 1974, 88 Stat. 1179.

Olympic Wilderness, Olympic National Park, Washington.—Pub. L. 100-668, title I, § 101, Nov. 16, 1988, 102 Stat. 3961.

Oregon Islands Wilderness, Oregon Islands National Wildlife Refuge, Oregon.—Pub. L. 91-504, § 1(b), Oct. 23, 1970, 84 Stat. 1104.

Organ Pipe Cactus Wilderness, Organ Pipe Cactus National Monument, Arizona.—Pub. L. 95-625, title IV, § 401(7), Nov. 10, 1978, 92 Stat. 3490.

Otter Creek Wilderness, Monongahela National Forest, West Virginia.—Pub. L. 93-622, § 3(a)(14), Jan. 3, 1975, 88 Stat. 2098.

Paddy Creek Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 97-407, Jan. 3, 1983, 96 Stat. 2033.

Paiute Wilderness, Arizona Strip District of Bureau of Land Management, Arizona.—Pub. L. 98-406, title III, § 301(a)(6), Aug. 28, 1984, 98 Stat. 1493.

Pajarita Wilderness, Coronado National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(17), Aug. 28, 1984, 98 Stat. 1487.

Paria Canyon-Vermilion Cliffs Wilderness, Arizona Strip District, Arizona, and Cedar City District, Utah, of Bureau of Land Management.—Pub. L. 98-406, title III, § 301(a)(7), Aug. 28, 1984, 98 Stat. 1493.

Pasayten Wilderness, Okangogan and Mount Baker National Forests, Washington [see section 90e of this title].—Pub. L. 90-544, title VI, § 601, Oct. 2, 1968, 82 Stat. 930; Pub. L. 98-339, § 3(16), July 3, 1984, 98 Stat. 301.

Passage Key Wilderness, Passage Key National Wildlife Refuge, Florida.—Pub. L. 91-504, § 1(d), Oct. 23, 1970, 84 Stat. 1105.

Pecos Wilderness, Carson and Sante Fe National Forests, New Mexico.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-550, title I, § 102(a)(9), Dec. 19, 1980, 94 Stat. 3222.

Pelican Island Wilderness, Pelican Island National Wildlife Refuge, Florida.—Pub. L. 91-504, § 1(f), Oct. 23, 1970, 84 Stat. 1105.

Pemigewasset Wilderness, White Mountain National Forest, New Hampshire.—Pub. L. 98-323, title I, § 101(1), June 19, 1984, 98 Stat. 259.

Peru Peak Wilderness, Green Mountain National Forest, Vermont.—Pub. L. 98-322, title I, § 102(3), June 19, 1984, 98 Stat. 254.

Peters Mountain Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(7), Oct. 30, 1984, 98 Stat. 3105.

Wilderness Areas—Continued

Petersburg Creek-Duncan Salt Chuck Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(6), Dec. 2, 1980, 94 Stat. 2419.

Petrified Forest National Wilderness, Petrified Forest National Park, Arizona.—Pub. L. 91-504, § 2(b), Oct. 23, 1970, 84 Stat. 1106.

Philip Burton Wilderness, Point Reyes National Seashore, California.—Pub. L. 94-544, §§ 1-3, Oct. 18, 1976, 90 Stat. 2515; Pub. L. 94-567, § 1(k), Oct. 20, 1976, 90 Stat. 2693; Pub. L. 99-68, § 1, July 19, 1985, 99 Stat. 166.

Pine Creek Wilderness, Cleveland National Forest, California.—Pub. L. 98-425, title I, § 101(a)(20), Sept. 28, 1984, 98 Stat. 1621.

Pine Mountain Wilderness, Prescott and Tonto National Forests, Arizona.—Pub. L. 92-230, Feb. 15, 1972, 86 Stat. 38.

Pine Valley Mountain Wilderness, Dixie National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(11), Sept. 28, 1984, 98 Stat. 1658.

Piney Creek Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 96-560, title II, § 201(c), Dec. 22, 1980, 94 Stat. 3273.

Pinnacles Wilderness, Pinnacles National Monument, California.—Pub. L. 94-567, § 1(i), Oct. 20, 1976, 90 Stat. 2693.

Platte River Wilderness, Medicine Bow and Routt National Forests, Wyoming and Colorado.—Pub. L. 98-550, title II, § 201(a)(8), Oct. 30, 1984, 98 Stat. 2808.

Pocosin Wilderness, Croatan National Forest, North Carolina.—Pub. L. 98-324, § 2(7), June 19, 1984, 98 Stat. 264.

Pond Mountain Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 99-490, § 2(1), Oct. 16, 1986, 100 Stat. 1235.

Pond Pine Wilderness, Croatan National Forest, North Carolina.—Pub. L. 98-324, § 2(8), June 19, 1984, 98 Stat. 264.

Popo Agie Wilderness, Shoshone National Forests, Wyoming.—Pub. L. 98-550, title II, § 201(a)(2), Oct. 30, 1984, 98 Stat. 2808.

Porcupine Lake Wilderness, Chequamegon National Forest, Wisconsin.—Pub. L. 98-321, § 2(1), June 19, 1984, 98 Stat. 250.

Poteau Mountain Wilderness, Ouachita National Forest, Arkansas.—Pub. L. 98-508, § 3(c), Oct. 19, 1984, 98 Stat. 2350.

Presidential Range-Dry River Wilderness, White Mountain National Forest, New Hampshire.—Pub. L. 93-622, § 3(a)(6), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-323, title I, § 101(3), June 19, 1984, 98 Stat. 259.

Pusch Ridge Wilderness, Coronado National Forest, Arizona.—Pub. L. 95-237, § 2(a), Feb. 24, 1978, 92 Stat. 40.

Raggeds Wilderness, Gunnison and White River National Forests, Colorado.—Pub. L. 96-560, title I, § 102(a)(16), Dec. 22, 1980, 94 Stat. 3267.

Rainbow Lake Wilderness, Chequamegon National Forest, Wisconsin.—Pub. L. 93-622, § 3(a)(15), Jan. 3, 1975, 88 Stat. 2098.

Ramseys Draft Wilderness, George Washington National Forest, Virginia.—Pub. L. 98-586, § 2(10), Oct. 30, 1984, 98 Stat. 3106.

Rattlesnake Wilderness, Rattlesnake National Recreation Area, Montana.—Pub. L. 96-476, § 2, Oct. 19, 1980, 94 Stat. 2271.

Raven Cliffs Wilderness, Chattahoochee National Forest, Georgia.—Pub. L. 99-555, § 2(1), Oct. 27, 1986, 100 Stat. 3129.

Rawah Wilderness, Roosevelt National Forest, Colorado.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-560, title I, § 102(a)(17), Dec. 22, 1980, 94 Stat. 3267.

WILDERNESS AREAS—Continued

Red Buttes Wilderness, Siskiyou National Forest, Oregon.—Pub. L. 98-328, § 3(14), June 26, 1984, 98 Stat. 274; Pub. L. 98-425, title I, § 101(a)(21), Sept. 28, 1984, 98 Stat. 1621.

Red Rock Lakes Wilderness, Red Rock Lakes National Wildlife Refuge, Montana.—Pub. L. 94-557, § 1(k), Oct. 19, 1976, 90 Stat. 2634.

Red Rock-Secret Mountain Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(18), Aug. 28, 1984, 98 Stat. 1487.

Rich Hole Wilderness Area, George Washington National Forest, Virginia.—Pub. L. 100-326, § 1(2), June 7, 1988, 102 Stat. 584.

Rich Mountain Wilderness, Chattahoochee National Forest, Georgia.—Pub. L. 99-555, § 2(4), Oct. 27, 1986, 100 Stat. 3129.

Richland Creek Wilderness, Ozark-Saint Francis National Forests, Arkansas.—Pub. L. 98-508, § 3(g), Oct. 19, 1984, 98 Stat. 2350.

Rincon Mountain Wilderness, Coronado National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(19), Aug. 28, 1984, 98 Stat. 1487.

Rock Creek Wilderness, Siuslaw National Forest, Oregon.—Pub. L. 98-328, § 3(6), June 26, 1984, 98 Stat. 273.

Rock River Canyon Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(d), Dec. 8, 1987, 101 Stat. 1275.

Rockpile Mountain Wilderness, Mark Twain National Forest, Missouri.—Pub. L. 96-560, title II, § 201(b), Dec. 22, 1980, 94 Stat. 3273.

Rogue-Umpqua Divide Wilderness, Umpqua and Rogue River National Forests, Oregon.—Pub. L. 98-328, § 3(9), June 26, 1984, 98 Stat. 273.

Rough Mountain Wilderness Area, George Washington National Forest, Virginia.—Pub. L. 100-326, § 1(1), June 7, 1988, 102 Stat. 584.

Round Island Wilderness, Hiawatha National Forest, Michigan.—Pub. L. 100-184, § 3(h), Dec. 8, 1987, 101 Stat. 1275.

Russel Fjord Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(7), Dec. 2, 1980, 94 Stat. 2419.

Russian Wilderness, Klamath National Forest, California.—Pub. L. 98-425, title I, § 101(a)(22), Sept. 28, 1984, 98 Stat. 1622.

Saddle Mountain Wilderness, Kaibab National Forest, Arizona.—Pub. L. 98-406, title III, § 301(a)(8), Aug. 28, 1984, 98 Stat. 1493.

Saguaro Wilderness, Saguaro National Monument, Arizona.—Pub. L. 94-567, § 1(j), Oct. 20, 1976, 90 Stat. 2693.

Saint Lazaria Wilderness, Saint Lazaria National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

St. Marks Wilderness, St. Marks Wildlife Refuge, Florida.—Pub. L. 93-632, § 1(c), Jan. 3, 1975, 88 Stat. 2153.

Saint Mary's Wilderness, George Washington National Forest, Virginia.—Pub. L. 98-586, § 2(11), Oct. 30, 1984, 98 Stat. 3106.

Salmo-Priest Wilderness, Kaniksu and Colville National Forests, Washington.—Pub. L. 98-339, § 3(17), July 3, 1984, 98 Stat. 301.

Salmon-Huckleberry Wilderness, Mount Hood National Forest, Oregon.—Pub. L. 98-328, § 3(2), June 26, 1984, 98 Stat. 273.

Salome Wilderness, Tonto National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(20), Aug. 28, 1984, 98 Stat. 1487.

Salt Creek Wilderness, Bitter Lake National Wildlife Refuge, New Mexico.—Pub. L. 91-504, § 1(c), Oct. 23, 1970, 84 Stat. 1104.

Salt River Canyon Wilderness, Tonto National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(21), Aug. 28, 1984, 98 Stat. 1487.

Sampson Mountain Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 99-490, § 2(4), Oct. 16, 1986, 100 Stat. 1235.

San Gabriel Wilderness, Angeles National Forest, California.—Pub. L. 90-318, May 24, 1968, 82 Stat. 131.

San Gorgonio Wilderness, San Bernardino National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(23), Sept. 28, 1984, 98 Stat. 1622.

San Jacinto Wilderness, San Bernardino National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(24), Sept. 28, 1984, 98 Stat. 1622.

San Joaquin Wilderness, Sierra and Inyo National Forests, California.—Pub. L. 98-425, title I, § 101(a)(25), Sept. 28, 1984, 98 Stat. 1622.

San Juan Wilderness, San Juan Islands National Wildlife Refuge, Washington.—Pub. L. 94-557, § 1(p), Oct. 19, 1976, 90 Stat. 2634.

San Mateo Canyon Wilderness, Cleveland National Forest, California.—Pub. L. 98-425, title I, § 101(a)(26), Sept. 28, 1984, 98 Stat. 1622.

San Pedro Parks Wilderness, Sante Fe National Forest, New Mexico.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

San Rafael Wilderness, Los Padres National Forest, California.—Pub. L. 90-271, Mar. 21, 1968, 82 Stat. 51; Pub. L. 98-425, title I, § 101(a)(6), (27), Sept. 28, 1984, 98 Stat. 1620, 1623.

Sandia Mountain Wilderness, Cibola National Forest, New Mexico.—Pub. L. 95-237, § 2(g), Feb. 24, 1978, 92 Stat. 42.

Sandwich Range Wilderness, White Mountain National Forest, New Hampshire.—Pub. L. 98-323, title I, § 101(2), June 19, 1984, 98 Stat. 259.

Santa Lucia Wilderness, Los Padres National Forest, California.—Pub. L. 95-237, § 2(c), Feb. 24, 1978, 92 Stat. 41.

Santa Rosa Wilderness, San Bernardino National Forest, California.—Pub. L. 98-425, title I, § 101(a)(28), Sept. 28, 1984, 98 Stat. 1623.

Santa Teresa Wilderness, Coronado National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(23), Aug. 28, 1984, 98 Stat. 1487.

Savage Run Wilderness, Medicine Bow National Forest, Wyoming.—Pub. L. 95-237, § 2(j), Feb. 24, 1978, 92 Stat. 42.

Scapegoat Wilderness, Helena, Lolo, and Lewis and Clark National Forests, Montana.—Pub. L. 92-395, Aug. 20, 1972, 86 Stat. 578.

Selawik Wilderness, Selawik Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(12), Dec. 2, 1980, 94 Stat. 2418.

Selway-Bitterroot Wilderness, Bitterroot, Clearwater, Nezperce, and Lolo National Forests, Idaho and Montana.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Semidi Wilderness, Alaska Maritime National Wildlife Refuge, Alaska Peninsula Unit, Alaska.—Pub. L. 96-487, title VII, § 702(11), Dec. 2, 1980, 94 Stat. 2418.

Seney Wilderness, Seney National Wildlife Refuge, Michigan.—Pub. L. 91-504, § 1(e), Oct. 23, 1970, 84 Stat. 1105.

Sequoia-Kings Canyon Wilderness, Sequoia and Kings Canyon National Parks, California.—Pub. L. 98-425, title I, § 106(a)(2), Sept. 28, 1984, 98 Stat. 1627.

Shawvers Run Wilderness Area, Jefferson and George Washington National Forests, Virginia.—Pub. L. 100-326, § 1(4), June 7, 1988, 102 Stat. 584.

Sheep Mountain Wilderness, Angeles and San Bernardino National Forests, California.—Pub. L. 98-425, title I, § 101(a)(29), Sept. 28, 1984, 98 Stat. 1623.

Sheep Ridge Wilderness, Croatan National Forest, North Carolina.—Pub. L. 98-324, § 2(9), June 19, 1984, 98 Stat. 264.

WILDERNESS AREAS—Continued

Shelp Lake Wilderness, Nicolet National Forest, Wisconsin.—Pub. L. 98-321, § 2(2)(C), June 19, 1984, 98 Stat. 250.

Shenandoah Wilderness, Shenandoah National Park, Virginia.—Pub. L. 94-567, § 1(m), Oct. 20, 1976, 90 Stat. 2693.

Shining Rock Wilderness, Pisgah National Forest, North Carolina.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-324, § 2(10), June 19, 1984, 98 Stat. 264.

Sierra Ancha Wilderness, Tonto National Forest, Arizona.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Simeonof Wilderness, Simeonof National Wildlife Refuge, Alaska.—Pub. L. 94-557, § 1(a), Oct. 19, 1976, 90 Stat. 2633.

Sipsey Wilderness, Bankhead National Forest, Alabama.—Pub. L. 93-622, § 3(a)(1), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 100-547, title II, § 201(a)(1), Oct. 28, 1988, 102 Stat. 2737.

Siskiyou Wilderness, Six Rivers, Klamath, and Siskiyou National Forests, California.—Pub. L. 98-425, title I, § 101(a)(30), Sept. 28, 1984, 98 Stat. 1623.

Sky Lakes Wilderness, Rogue River and Winema National Forests, Oregon.—Pub. L. 98-328, § 3(15), June 26, 1984, 98 Stat. 274.

Snow Mountain Wilderness, Mendocino National Forest, California.—Pub. L. 98-425, title I, § 101(a)(31), Sept. 28, 1984, 98 Stat. 1623.

Soldier Creek Wilderness, Nebraska National Forest, Nebraska.—Pub. L. 99-504, title I, § 101, Oct. 20, 1986, 100 Stat. 1802.

South Absaroka Wilderness, Shoshone National Forest, Wyoming.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

South Baranof Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(8), Dec. 2, 1980, 94 Stat. 2419.

South Prince of Wales Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(9), Dec. 2, 1980, 94 Stat. 2419.

South San Juan Wilderness, San Juan National Forest, Colorado.—Pub. L. 96-560, title I, § 102(a)(18), Dec. 22, 1980, 94 Stat. 3267.

South Sierra Wilderness, Sequoia and Inyo National Forests, California.—Pub. L. 98-425, title I, § 101(a)(32), Sept. 28, 1984, 98 Stat. 1623.

South Warner Wilderness, Modoc National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(33), Sept. 28, 1984, 98 Stat. 1623.

Southern Nantahala Wilderness, Nantahala National Forest, North Carolina.—Pub. L. 98-324, § 2(11), June 19, 1984, 98 Stat. 264; Pub. L. 98-514, § 2(2), Oct. 19, 1984, 98 Stat. 2416.

Stephen Mather Wilderness, North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area, Washington.—Pub. L. 100-668, title II, § 201, Nov. 16, 1988, 102 Stat. 3963.

Stikine-LeConte Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(10), Dec. 2, 1980, 94 Stat. 2419.

Strawberry Crater Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(29), Aug. 28, 1984, 98 Stat. 1488.

Strawberry Mountain Wilderness, Malheur National Forest, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-328, § 3(27), June 26, 1984, 98 Stat. 275.

Sturgeon River Gorge Wilderness, Ottawa National Forest, Michigan.—Pub. L. 100-184, § 3(c), Dec. 8, 1987, 101 Stat. 1274.

Superstition Wilderness, Tonto National Forest, Arizona.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-406, title I, § 101(a)(24), Aug. 28, 1984, 98 Stat. 1487.

WILDERNESS AREAS—Continued

Swanquarter Wilderness, Swanquarter National Wildlife Refuge, North Carolina.—Pub. L. 94-557, § 1(o), Oct. 19, 1976, 90 Stat. 2634.

Sycamore Canyon Wilderness, Coconino, Kaibab, and Prescott National Forests, Arizona.—Pub. L. 92-241, Mar. 6, 1972, 86 Stat. 48; Pub. L. 98-406, title I, § 101(a)(25), Aug. 28, 1984, 98 Stat. 1487.

Sylvania Wilderness, Ottawa National Forest, Michigan.—Pub. L. 100-184, § 3(b), Dec. 8, 1987, 101 Stat. 1274.

Table Rock Wilderness, Salem District of Bureau of Land Management, Oregon.—Pub. L. 98-328, § 3(22), June 26, 1984, 98 Stat. 274.

Tamarac Wilderness, Tamarac National Wildlife Refuge, Minnesota.—Pub. L. 94-557, § 1(i), Oct. 19, 1976, 90 Stat. 2634.

Tatoosh Wilderness, Gifford Pinchot National Forest, Washington.—Pub. L. 98-339, § 3(18), July 3, 1984, 98 Stat. 301.

Tebenkof Bay Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(11), Dec. 2, 1980, 94 Stat. 2419.

Teton Wilderness, Teton National Forest, Wyoming.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-550, title II, § 201(a)(9), Oct. 30, 1984, 98 Stat. 2809.

The Brothers Wilderness, Olympic National Forest, Washington.—Pub. L. 98-339, § 3(19), July 3, 1984, 98 Stat. 301.

Theodore Roosevelt Wilderness, Theodore Roosevelt National Park, North Dakota.—Pub. L. 95-625, title IV, § 401(8), Nov. 10, 1978, 92 Stat. 3490.

Thousand Lakes Wilderness, Lassen National Forest, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891.

Three Arch Rocks Wilderness, Three Arch Rocks National Wildlife Refuge, Oregon.—Pub. L. 91-504, § 1(b), Oct. 23, 1970, 84 Stat. 1104.

Three Sisters Wilderness, Deschutes and Willamette National Forests, Oregon.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 95-237, § 3(e), Feb. 24, 1978, 92 Stat. 43; Pub. L. 98-328, § 3(25), June 26, 1984, 98 Stat. 275.

Thunder Ridge Wilderness, Jefferson National Forest, Virginia.—Pub. L. 98-586, § 2(8), Oct. 30, 1984, 98 Stat. 3106.

Togiak Wilderness, Togiak National Wildlife Refuge, Alaska.—Pub. L. 96-487, title VII, § 702(10), Dec. 2, 1980, 94 Stat. 2418.

Tracy Arm-Fords Terror Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(12), Dec. 2, 1980, 94 Stat. 2419.

Trapper Creek Wilderness, Gifford Pinchot National Forest, Washington.—Pub. L. 98-339, § 3(20), July 3, 1984, 98 Stat. 302.

Tray Mountain Wilderness, Chattahoochee National Forest, Georgia.—Pub. L. 99-555, § 2(3), Oct. 27, 1986, 100 Stat. 3129.

Trinity Alps Wilderness, Klamath, Shasta-Trinity, and Six Rivers National Forests, California.—Pub. L. 98-425, title I, § 101(a)(34), Sept. 28, 1984, 98 Stat. 1623.

Turkey Hill Wilderness, Angelina National Forest, Texas.—Pub. L. 98-574, § 2(1), Oct. 30, 1984, 98 Stat. 3051.

Tuxedni Wilderness, Tuxedni National Wildlife Refuge, Alaska.—Pub. L. 91-504, § 1(a), Oct. 23, 1970, 84 Stat. 1104.

Twin Peaks Wilderness, Wasatch-Cache National Forest, Utah.—Pub. L. 98-428, title I, § 102(a)(4), Sept. 28, 1984, 98 Stat. 1658.

UL Bend Wilderness, UL Bend National Wildlife Refuge, Montana.—Pub. L. 94-557, § 1(m), Oct. 19, 1976, 90 Stat. 2634.

Unaka Mountain Wilderness, Cherokee National Forest, Tennessee.—Pub. L. 99-490, § 2(3), Oct. 16, 1986, 100 Stat. 1235.

WILDERNESS AREAS—Continued

Unimak Wilderness, Alaska Maritime National Wildlife Refuge, Aleutian Islands Unit, Alaska.—Pub. L. 96-487, title VII, § 702(13), Dec. 2, 1980, 94 Stat. 2418.

Upland Island Wilderness, Angelina National Forest, Texas.—Pub. L. 98-574, § 2(2), Oct. 30, 1984, 98 Stat. 3051.

Upper Buffalo Wilderness, Ozark-Saint Francis National Forest, Arkansas.—Pub. L. 93-622, § 3(a)(3), Jan. 3, 1975, 88 Stat. 2097; Pub. L. 98-508, § 3(e), Oct. 19, 1984, 98 Stat. 2350.

Upper Kiamichi River Wilderness, Ouachita National Forest, Oklahoma.—Pub. L. 100-499, § 3(2), Oct. 18, 1988, 102 Stat. 2492.

Ventana Wilderness, Los Padres National Forest, California.—Pub. L. 91-58, Aug. 18, 1969, 83 Stat. 101; Pub. L. 95-237, § 2(d), Feb. 24, 1978, 92 Stat. 41; Pub. L. 98-425, title I, § 101(a)(35), Sept. 28, 1984, 98 Stat. 1623.

Waldo Lake Wilderness, Willamette National Forest, Oregon.—Pub. L. 98-328, § 3(10), June 26, 1984, 98 Stat. 273.

Wambaw Creek Wilderness, Francis Marion National Forest, South Carolina.—Pub. L. 96-560, title II, § 201(h), Dec. 22, 1980, 94 Stat. 3273.

Wambaw Swamp Wilderness, Francis Marion National Forest, South Carolina.—Pub. L. 96-550, title II, § 201(e), (g), Dec. 22, 1980, 94 Stat. 3273.

Warren Island Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(13), Dec. 2, 1980, 94 Stat. 2419.

Washakie Wilderness (former South Absaroka Wilderness and Stratified Primitive Area), Shoshone National Forest, Wyoming.—Pub. L. 92-476, Oct. 9, 1972, 86 Stat. 792; Pub. L. 98-550, title II, § 201(a)(12), Oct. 30, 1984, 98 Stat. 2809.

Washington Islands Wilderness, Copalis, Flattery Rocks, and Quillayute Needles National Wildlife Refuges, Washington.—Pub. L. 91-504, § 1(b), Oct. 23, 1970, 84 Stat. 1104.

Welcome Creek Wilderness, Lolo National Forest, Montana.—Pub. L. 95-237, § 2(k), Feb. 24, 1978, 92 Stat. 43.

Wellsville Mountain Wilderness, Wasatch-Cache National Forest, Utah.—Pub. L. 98-425, title I, § 102(a)(2), Sept. 28, 1984, 98 Stat. 1658.

Weminuche Wilderness (former San Juan and Upper Rio Grande Primitive Area), Rio Grande and San Juan National Forests.—Pub. L. 93-632, § 2(c), Jan. 3, 1975, 88 Stat. 2155; Pub. L. 96-560, title I, § 102(a)(19), Dec. 22, 1980, 94 Stat. 3267.

Wenaha-Tucannon Wilderness, Umatilla National Forest, Oregon and Washington.—Pub. L. 95-237, § 3(c), Feb. 24, 1978, 92 Stat. 43.

West Chicagof-Yakobi Wilderness, Tongass National Forest, Alaska.—Pub. L. 96-487, title VII, § 703(a)(14), Dec. 2, 1980, 94 Stat. 2419.

West Clear Creek Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(26), Aug. 28, 1984, 98 Stat. 1487.

West Elk Wilderness, Gunnison National Forest, Colorado.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-560, title I, § 102(a)(20), Dec. 22, 1980, 94 Stat. 3268.

West Malpais Wilderness, El Malpais National Monument and National Conservation Area, New Mexico.—Pub. L. 100-225, title IV, § 401(a), Dec. 31, 1987, 101 Stat. 1542.

West Sister Island Wilderness, West Sister Island National Wildlife Refuge, Ohio.—Pub. L. 93-632, § 1(*l*), Jan. 3, 1975, 88 Stat. 2154.

Wet Beaver Wilderness, Coconino National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(27), Aug. 28, 1984, 98 Stat. 1488.

Wheeler Peak Wilderness, Carson National Forest, New Mexico.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-550, title I, § 102(a)(10), Dec. 19, 1980, 94 Stat. 3222.

Whisker Lake Wilderness, Nicolet National Forest, Wisconsin.—Pub. L. 95-494, § 1(2), Oct. 21, 1978, 92 Stat. 1648.

White Mountain Wilderness, Lincoln National Forest, New Mexico.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 96-550, title I, § 102(a)(11), Dec. 19, 1980, 94 Stat. 3222.

Wichita Mountains Wilderness, Wichita Mountains National Wildlife Refuge, Oklahoma.—Pub. L. 91-504, § 1(d), Oct. 23, 1970, 84 Stat. 1105.

Wild Rogue Wilderness, Siskiyou National Forest, Oregon.—Pub. L. 95-237, § 3(b), Feb. 24, 1978, 92 Stat. 43.

William O. Douglas Wilderness, Wenatchee and Gifford Pinchot National Forests, Washington.—Pub. L. 98-339, § 3(21), July 3, 1984, 98 Stat. 302.

Winegar Hole Wilderness, Bridger-Teton National Forest, Wyoming.—Pub. L. 98-550, title II, § 201(a)(4), Oct. 30, 1984, 98 Stat. 2808.

Wisconsin Islands Wilderness, Gravel Island and Green Bay National Wilderness Refuges, Wisconsin.—Pub. L. 91-504, § 1(e), Oct. 23, 1970, 84 Stat. 1105.

Withington Wilderness, Cibola National Forest, New Mexico.—Pub. L. 96-550, title I, § 102(a)(12), Dec. 19, 1980, 94 Stat. 3222.

Wolf Island Wilderness, Wolf Island National Wildlife Refuge, Georgia.—Pub. L. 93-632, § 1(e), Jan. 3, 1975, 88 Stat. 2153.

Wonder Mountain Wilderness, Olympic National Forest, Washington.—Pub. L. 98-339, § 3(22), July 3, 1984, 98 Stat. 302.

Woodchute Wilderness, Prescott National Forest, Arizona.—Pub. L. 98-406, title I, § 101(a)(28), Aug. 28, 1984, 98 Stat. 1488.

Wrangell-Saint Elias Wilderness, Wrangell-Saint Elias National Park, Alaska.—Pub. L. 96-487, title VII, § 701(8), Dec. 2, 1980, 94 Stat. 2417.

Yolla Bolly-Middle Eel Wilderness, Mendocino and Shasta-Trinity National Forests, California.—Pub. L. 88-577, § 3, Sept. 3, 1964, 78 Stat. 891; Pub. L. 98-425, title I, § 101(a)(36), Sept. 28, 1984, 98 Stat. 1623.

Yosemite Wilderness, Yosemite National Park Wilderness, California.—Pub. L. 98-425, title I, § 106(a)(1), Sept. 28, 1984, 98 Stat. 1626.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 90e-3, 228i-1, 271e, 272d, 273d, 410ff-5, 410gg-3, 459g-6, 459h-7, 459i-8, 459j-7, 460m-13, 460x-5, 460x-15, 460z-11, 460aa-4, 460dd-8, 460gg-5, 698d, 698*l*, 3205 of this title; title 43 section 1782.

§ 1133. Use of wilderness areas

(a) Purposes of national forests, national park system, and national wildlife refuge system; other provisions applicable to national forests, Superior National Forest, and national park system

The purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and—

(1) Nothing in this chapter shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of

June 12, 1960 (74 Stat. 215) [16 U.S.C. 528-531].

(2) Nothing in this chapter shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-Fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this chapter shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1 and 2 to 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas

Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

(d) Special provisions

The following special provisions are hereby made:

(1) Aircraft or motorboats; fire, insects, and diseases

Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Mineral activities, surveys for mineral value

Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Mining and mineral leasing laws; leases, permits, and licenses; withdrawal of minerals from appropriation and disposition

Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: *Provided*, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Water resources, reservoirs, and other facilities; grazing

Within wilderness areas in the national forests designated by this chapter, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Commercial services

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) State water laws exemption

Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) State jurisdiction of wildlife and fish in national forests

Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

(Pub. L. 88-577, § 4, Sept. 3, 1964, 78 Stat. 893; Pub. L. 95-495, § 4(b), Oct. 21, 1978, 92 Stat. 1650.)

REFERENCES IN TEXT

Act of June 4, 1897, referred to in subsec. (a)(1), is act June 4, 1897, ch. 2, 30 Stat. 11, the Sundry Civil Appropriation Act for Fiscal Year 1898. For classification of that part of this Act classified to the Code, see Tables.

The Multiple-Use Sustained-Yield Act of 1960, referred to in subsec. (a)(1), is Pub. L. 86-517, June 12, 1960, 74 Stat. 215, as amended, which is classified to sections 528 to 531 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 528 of this title and Tables.

The Shipstead-Nolan Act, referred to in subsec. (a)(2), is act July 10, 1930, ch. 881, 46 Stat. 1020, which is classified to sections 577 to 577b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 577 of this title and Tables.

The Thye-Blatnik Act, referred to in subsec. (a)(2), is act June 22, 1948, ch. 593, 62 Stat. 568, as amended, which is classified to sections 577c, 577d and 577e to 577h of this title. For complete classification of this Act to the Code, see Short Title note set out under section 577 of this title and Tables.

The Humphrey-Thye-Blatnik-Andresen Act, referred to in subsec. (a)(2), is act June 22, 1956, ch. 425, 70 Stat. 326, as amended, which is classified to sections 577d-1, 577g-1, and 577h of this title. For complete classification of this Act to the Code, see Tables.

Act of June 8, 1906, referred to in subsec. (a)(3), is act June 8, 1906, ch. 3060, 34 Stat. 225, as amended, known as the "Antiquities Act of 1906", which is classified to sections 431, 432, and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

Act of August 21, 1935, referred to in subsec. (a)(3), is act Aug. 21, 1935, ch. 593, 49 Stat. 666, as amended, known as the "Historic Sites, Buildings and Antiquities Act", which is classified to sections 461 to 467 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The United States mining laws and all laws pertaining to mineral leasing, referred to in subsec. (d)(3), are classified generally to Title 30, Mineral Lands and Mining.

AMENDMENTS

1978—Subsec. (d)(5) to (8). Pub. L. 95-495 redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5), which related to the management of the Boundary Waters Canoe Area, Superior National Forest, Minnesota, was struck out.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under this chapter and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, [illegible]666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

LIVESTOCK GRAZING IN NATIONAL FOREST WILDERNESS AREAS

Pub. L. 96-560, title I, § 108, Dec. 22, 1980, 94 Stat. 3271, provided that: "The Congress hereby declares that, without amending the Wilderness Act of 1964 [this chapter], with respect to livestock grazing in National Forest wilderness areas, the provisions of the Wilderness Act relating to grazing shall be interpreted and administered in accordance with the guidelines contained under the heading 'Grazing in National Forest Wilderness' in the House Committee Report (H. Report 96-617) accompanying this Act [Pub. L. 96-560]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460vv-14 of this title; title 43 section 1782.

§ 1134. State and private lands within wilderness areas

(a) Access; exchange of lands; mineral interests restriction

In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: *Provided, however*, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) Customary means for ingress and egress to wilderness areas subject to mining claims or other occupancies

In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

(c) Acquisition of lands

Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this chapter as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

(Pub. L. 88-577, § 5, Sept. 3, 1964, 78 Stat. 896.)

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1135. Gifts, bequests, and contributions

(a) Acceptance by Secretary of Agriculture of land for preservation as wilderness; regulations

The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this chapter for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this chapter for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this chapter, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) Authorization to accept private contributions and gifts

The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this chapter.

(Pub. L. 88-577, § 6, Sept. 3, 1964, 78 Stat. 896.)

§ 1136. Annual reports to Congress

At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

(Pub. L. 88-577, § 7, Sept. 3, 1964, 78 Stat. 896.)

CHAPTER 24—CONSERVATION AND PROTECTION OF NORTH PACIFIC FUR SEALS

SUBCHAPTER I—FUR SEAL MANAGEMENT

Sec.
1151. Definitions.
1152. Prohibitions.
1153. Sealing permitted by Aleuts, Eskimos, and Indians.
1154. Scientific research on fur seal resources; use of fur seals for educational, scientific, or exhibition purposes.

Public Law 96-191
96th Congress

An Act

To establish an independent personnel system for employees of the General Accounting Office.

Feb. 15, 1980
[H.R. 5176]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "General Accounting Office Personnel Act of 1980".

General Accounting Office Personnel Act of 1980.
31 USC 1 note.

GENERAL PERSONNEL AUTHORITY

31 USC 52-1.

SEC. 2. The Comptroller General of the United States (hereinafter referred to as the "Comptroller General") may appoint, pay, assign, and direct such personnel as the Comptroller General determines necessary to discharge the duties and functions of the General Accounting Office.

ESTABLISHMENT OF PERSONNEL MANAGEMENT SYSTEM

31 USC 52-2.

SEC. 3. (a) The Comptroller General shall, not later than the effective date established by section 9(a), establish by regulation a personnel management system for the General Accounting Office (hereinafter referred to as the "personnel system") which shall meet the requirements of subsections (b) through (h). Before promulgating any regulation or any amendment thereto under this section, the Comptroller General shall provide notice and an opportunity for public comment. No reprisal or threat of reprisal shall be made against any employee of the General Accounting Office as a result of comments provided with respect to any proposed regulation or amendment under this section.

Notice and public comment.
Reprisal.
Functions.

(b)(1) The personnel system shall—

(A) embody the merit system principles described in section 2301(b) of title 5, United States Code;

(B) prohibit the personnel practices prohibited in section 2302(b) of such title;

5 USC 2302.

(C) prohibit the political activities prohibited under subchapter III of chapter 73 of title 5, United States Code;

5 USC 7321.

(D) assure that all employees of the General Accounting Office are appointed, promoted, and assigned solely on the basis of merit and fitness, but without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service; and

(E) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

(2) Nothing in this section prohibits or restricts any lawful effort to achieve equal employment opportunity through affirmative action.

Employee pay.

(c) The personnel system shall provide that the pay of the employees of the General Accounting Office shall be fixed by the Comptroller General consistent with the principles of section 5301(a) of title 5, United States Code. Under the personnel system—

Rates, publication.

(1) the Comptroller General shall publish a schedule of pay rates which shall apply to employees of the General Accounting Office and, except as provided in paragraph (3) of this subsection or section 5, the highest rate under such schedule shall not exceed the highest rate of basic pay payable for GS-15 under the General Schedule;

5 USC 5332 note.

(2) except as provided in section 5, the pay of the employees of the General Accounting Office shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule;

5 USC 5332 note.

5 USC 5332 note.

(3) such schedule may provide for rates which do not exceed the maximum rate payable for grade GS-18 of the General Schedule for up to one hundred employees, reduced by the number of employees who are in the General Accounting Office Senior Executive Service established under section 5, except for employees in such service pursuant to section 5(a)(4); and

(4) employees of the General Accounting Office shall be entitled to grade and pay retention, consistent with the principles of subchapter VI of chapter 53 of title 5, United States Code.

5 USC 5361.
Employee performance appraisals.

(d) The personnel system shall include a system for performance appraisals of employees of the General Accounting Office which meets the requirements of section 4302 of title 5, United States Code. The personnel system shall provide that the Comptroller General has the same responsibility with respect to the performance appraisal system under this subsection as the Office of Personnel Management has with respect to the performance appraisal systems under such section. The Comptroller General shall implement the performance system required by this subsection as soon as practicable, but not later than October 1, 1981.

Labor-management relations program.

(e) The personnel system shall provide for procedures to ensure that each employee of the General Accounting Office has the right, freely and without fear of penalty or reprisal, to form, join, and assist an employee organization, or to refrain from such activity, and shall provide for a labor-management relations program, consistent with chapter 71 of title 5, United States Code.

5 USC 7101 *et seq.*

(f) The personnel system shall provide for the reduction in grade or removal of employees based on unacceptable performance consistent with section 4303 of title 5, United States Code, and the taking of other personnel actions consistent with chapter 75 of such title.

5 USC 7501 *et seq.*
Discrimination, prohibitions.

(g)(1) The personnel system shall provide that all personnel actions affecting employees or applicants for employment in the General Accounting Office shall be taken without regard to race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition.

Minority recruitment program.

(2) The personnel system shall include a minority recruitment program consistent with section 7201 of title 5, United States Code.

(3) Nothing in this Act shall be construed to abolish or diminish any right or remedy granted to employees of or applicants for employment in the General Accounting Office by section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), by sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), by section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), by sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), or by any other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; except that, with respect to employees and applicants for employment in the General Accounting Office, authorities granted thereunder to the Equal Employment Opportunity Commission,

Office of Personnel Management, the Merit Systems Protection Board, or any other agency in the executive branch—

(A) involving oversight and appeals, shall be exercised by the General Accounting Office Personnel Appeals Board established by section 4; and

(B) involving other responsibilities, shall be exercised by the Comptroller General.

Complaints and grievances.

(h) The personnel system shall provide procedures for the processing of complaints and grievances which are not otherwise provided for under subsections (e), (f), and (g).

GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD

31 USC 52-3.

SEC. 4. (a)(1) There is established within the General Accounting Office a board to be known as the General Accounting Office Personnel Appeals Board (hereinafter referred to as the "Board"). The Board shall be composed of five members appointed by the Comptroller General in accordance with this subsection.

Appointments.

(2) Each appointment made by the Comptroller General under paragraph (1) shall be made—

(A) from a written list of candidates submitted to the Comptroller General by any organization eligible to make such a submission under paragraph (4); and

(B) after consultation with organizations which represent employees of the General Accounting Office and with the member or members of each committee of the Congress having legislative jurisdiction over the personnel system who are designated by the chair of each such committee to consult with the Comptroller General.

Eligibility.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) has a total of three years of full-time or part-time experience in the adjudication or arbitration of personnel matters;

(B) is not a current or former officer or employee of the General Accounting Office;

(C) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(D) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this section in a timely manner.

(4) An organization shall be eligible to submit a list of candidates to the Comptroller General under paragraph (2)(A) if, in the opinion of the Comptroller General, the membership of the organization is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters. The submission of any list under this paragraph shall be made in the form, at the time, and according to the procedures, which the Comptroller General may require.

Terms of office.

(b)(1) Except as provided in paragraph (2), members of the Board shall be appointed for terms of three years.

(2) Of the members first appointed to the Board two shall be appointed for a term of three years, two shall be appointed for a term of two years, and one shall be appointed for a term of one year, as designated by the Comptroller General at the time of appointment.

(3) Members of the Board shall not be eligible for reappointment.

Vacancies.

(4) Any vacancy in the membership of the Board shall be filled in the same manner as the original appointment. Any individual

appointed to fill a vacancy shall serve only for the unexpired portion of the term with respect to which such vacancy has occurred, except that, if the unexpired portion is less than one year, the Comptroller General may appoint the individual for a term which is equal to three years plus that unexpired portion.

(5) A member of the Board may continue to serve after the expiration of the term for which the member was appointed until a successor has taken office, except that the member may not so continue to serve for more than six months after the date on which the term for which the member was appointed otherwise would expire under this subsection.

Removal procedures.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

Notice and hearing.

Waiver.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

Compensation.

5 USC 5332 note.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.

Chairperson.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

General Counsel.

(f)(1) The Chair shall select and the Comptroller General shall appoint an individual to serve as General Counsel of the Board (hereinafter referred to as the "General Counsel"). The General Counsel shall be eligible for reappointment and shall serve at the pleasure of the Chair.

(2) The Chair shall fix the rate of pay of the General Counsel, except that the rate of pay shall not exceed the maximum rate payable for GS-15 of the General Schedule.

5 USC 5332 note.

Duties.

(g) The General Counsel shall—

(1) investigate any allegation concerning prohibited personnel practices referred to in section 3(b)(1)(B) of this Act to the extent necessary to determine whether there are reasonable grounds to believe that any such practice has occurred, exists, or is to be taken by any employee of the General Accounting Office;

(2) investigate any allegation concerning prohibited political activities referred to in section 3(b)(1)(C) of this Act;

(3) investigate matters under the jurisdiction of the Board if so requested by the Board or any member of the Board; and

(4) otherwise assist the Board in carrying out its functions.

Corrective or disciplinary action, Board authority.

(h) The Board may consider, decide, and order corrective or disciplinary action (as appropriate) in cases arising from—

(1) employee appeals concerning any removal, suspension for

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more than fourteen days, reduction in grade, reduction in pay, or furlough of thirty days or less;

(2) prohibited personnel practices referred to in section 3(b)(1)(B);

(3) prohibited political activities referred to in section 3(b)(1)(C) of this Act;

(4) determinations of appropriate units of employees for collective bargaining;

(5) elections and certifications of collective bargaining representatives;

(6) any labor practice prohibited under the labor-management system established under section 3(e) and any other matter appealable to the Board under that system;

(7) actions involving discrimination prohibited under section 3(g); and

(8) any other issue relating to the personnel of the General Accounting Office which the Comptroller General, by regulation, determines is most appropriately resolved by the Board.

(i) The Comptroller General shall promptly implement any corrective action ordered by the Board, in cases in which the Comptroller General has the authority to do so.

(j) The Board shall have authority to designate a panel of its members, or an individual member, to take any action which the Board is authorized to take under subsection (h). Any decision made under subsection (h) by a panel or individual member designated under this subsection shall be considered to be a final decision of the Board unless the decision is reopened and reconsidered by the Board under subsection (k).

Decisions, reconsideration.

(k) The Board may, on the motion of any party or on its own motion, reopen and reconsider any decision under subsection (h) within thirty days after the decision is rendered.

Appeal.

(l)(1) Any final decision of the Board (or of any panel or individual member designated under subsection (j)) under subsections (h) (1), (2), (3), (6) and (7) may be appealed to the United States Court of Appeals for the circuit in which the petitioner resides or to the United States Court of Appeals for the District of Columbia. Any appeal under this subsection shall be in accordance with the procedures of chapter 158 of title 28, United States Code. Notwithstanding any other provision of law, any petition for review of a final decision of the Board shall be filed within thirty days after the date the petitioner receives notice of the final decision of the Board.

28 USC 2341 *et seq.*

Case review.

(2) In any case filed under paragraph (1), the court shall review the record and set aside any agency action, findings, or conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

Regulations.

(m) The Board shall promulgate regulations—

(1) providing for employee appeals, consistent with the principles of sections 7701 and 7702 of title 5, United States Code; and

(2) establishing its operating procedure.

GAO SENIOR EXECUTIVE SERVICE; MERIT PAY SYSTEM

31 USC 52-4.

SEC. 5. (a)(1) The Comptroller General may promulgate regulations establishing a General Accounting Office Senior Executive Service (hereinafter referred to as the GAO Senior Executive Service) which—

(A) meets the requirements set forth in section 3131 of title 5, United States Code, for the Senior Executive Service;

5 USC 3132. (B) provides that positions in the GAO Senior Executive Service meet requirements which are consistent with the provisions of section 3132(a)(2) of such title;

5 USC 5382. (C) provides rates of pay for the GAO Senior Executive Service which are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 of such title, and which are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

5 USC 4311. (D) provides a performance appraisal system for the GAO Senior Executive Service that conforms to the provisions of subchapter II of chapter 43 of such title;

5 USC 4507. (E) permits the Comptroller General to award ranks to members of the GAO Senior Executive Service consistent with the provisions applicable to the Office of Personnel Management and the President under section 4507 of such title;

5 USC 3592. 5 USC 7543. (F) provides for removal consistent with section 3592 of such title, and removal or suspension consistent with section 7543 of such title; and

5 USC 5384. (G) permits the Comptroller General to pay performance awards to members of the GAO Senior Executive Service consistent with the provisions applicable to performance awards under section 5384 of such title.

(2) Except as otherwise provided in paragraph (1), the Comptroller General may make applicable for the GAO Senior Executive Service any of the provisions of title 5, United States Code, applicable to applicants for or members of the Senior Executive Service.

Exception. (3) Employees in the GAO Senior Executive Service shall not be subject to the provisions of the personnel system established under section 3 (c), (d), (e) and (f).

(4) The GAO Senior Executive Service may include positions referred to in—

(A) section 203(c) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 51a);

(B) section 203(i) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 52b); and

(C) section 204(d) of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154(d)).

Merit pay system. (b) The Comptroller General may promulgate regulations establishing a merit pay system for such employees of the General Accounting Office as the Comptroller General considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401(a) of title 5, United States Code.

NONCOMPETITIVE APPOINTMENTS; TECHNICAL ASSISTANCE

31 USC 52-5. Sec. 6. (a) Notwithstanding any other provision of law, any employee of the General Accounting Office who has completed at least one year of continuous service under a nontemporary appointment under the personnel system established pursuant to section 3 acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

(b) The Director of the Office of Personnel Management shall, on request from the Comptroller General, provide technical and consulting services to the Comptroller General in the establishment of the personnel system for the General Accounting Office.

COORDINATION WITH CERTAIN OTHER PROVISIONS OF LAW

SEC. 7. (a) Except as provided under section 5(a)(4), nothing contained in this Act shall be construed as repealing, amending, or otherwise affecting the provisions of— 31 USC 52-6.

(1) sections 302 and 303 of the Budget and Accounting Act, 1921 (31 U.S.C. 42 and 43), or subsections (a) and (b) of section 203 of the Federal Legislative Salary Act of 1964 (31 U.S.C. 42a (a) and (b));

(2) section 203(c) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 51a);

(3) section 203(i) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 52b);

(4) section 204(d) of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154(d)); or

(5) section 401 of the General Accounting Office Act of 1974 (31 U.S.C. 52c).

(b) Except as specifically provided in this Act, nothing contained in this Act shall be construed to repeal, amend, or limit the application of any provision of law applicable to employees of the General Accounting Office.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 8. (a) Section 2108(3) of title 5, United States Code, is amended by inserting "or the General Accounting Office" after "the Senior Executive Service".

(b) Subsection 5102(a)(1) of such title is amended by striking out "or" at the end of clause (vii), by inserting "or" at the end of clause (viii), and by adding at the end thereof the following: 5 USC 5102.

"(ix) the General Accounting Office;".

(c)(1) Paragraph (1) of section 5108(c) of such title is repealed. 5 USC 5108.

(2) Paragraphs (2), (3), and (4) of such section are redesignated paragraphs (1), (2), and (3), respectively.

(d) Section 5342(a)(1) of such title is amended by striking out "or" at the end of subparagraph (H), by inserting "or" at the end of subparagraph (I), and by adding at the end thereof the following: 5 USC 5342.

"(J) the General Accounting Office;".

(e)(1) Subchapter III of chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 7328. General Accounting Office employees 5 USC 7328.

"The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.".

(2) The chapter analysis for chapter 73 of title 5, United States Code, is amended by adding after the item relating to section 7327 the following new item:

"7328. General Accounting Office employees.".

(3) Subsections (a), (b), and (d) of section 311 of the Budget and Accounting Act, 1921 (31 U.S.C. 52) are amended to read as follows: Comptroller General's authority.

"(a) The Comptroller General shall appoint, fix the pay of, and remove employees of the General Accounting Office under the General Accounting Office Personnel Act of 1980. *Ante*, p. 27.

"(b) All officers and employees of the General Accounting Office shall perform such duties as may be assigned to them by the Comptroller General.".

(4) Subsections (e) and (f) of such section are redesignated subsections (c) and (d), respectively.

(f) Section 13 of the Federal Employees Pay Act of 1946 (31 U.S.C. 46a) is repealed. Repeal.

(g) Section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended by striking out "(other than the General Accounting Office)".

AUTHORIZATION

31 USC 52-7.

Sec. 9. There are hereby authorized to be appropriated beginning fiscal year 1981 and for each fiscal year thereafter such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

31 USC 52-1 note.

Sec. 10. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on—

(1) October 1, 1980; or

(2) if later, one hundred and twenty days after the date of the enactment of this Act.

(b) The provisions of section 3 shall take effect on the date of the enactment of this Act, except the personnel system established by the Comptroller General under that section shall take effect on the effective date established by subsection (a).

Approved February 15, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-494 (Comm. on Post Office and Civil Service).
SENATE REPORT No. 96-540 accompanying S. 1879 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD:
Vol. 125 (1979): Oct. 15, considered and passed House.
Vol. 126 (1980): Jan. 25, S. 1879 considered and passed Senate.
Jan. 30, Senate vitiated passage of S. 1879; H.R. 5176, amended, passed in lieu.
Feb. 4, House concurred in Senate amendment.

injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91-172, title IX, § 904(a), Dec. 30, 1969, 83 Stat. 711.)

References in Text

The antitrust laws, referred to in subsecs. (b)(3), (d)(2)(C), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

Effective Date

Section 904(c) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968."

[§ 187. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91-172, title VII, § 707(a), Dec. 30, 1969, 83 Stat. 674, and amended Pub. L. 93-625, § 3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term "certified coal mine safety equipment", and special rules applicable to the amortization deduction.

Effective Date of Repeal

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 188. Amortization of certain expenditures for child care facilities

(a) Allowance of deduction

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, any expenditure chargeable to capital account made by an employer to acquire, construct, reconstruct, or rehabilitate section 188 property (as defined in subsection (b)) shall be allowable as a deduction ratably over a period of 60 months, beginning with the month in which the property is placed in service. The deduction provided by this section with respect to such expenditure shall be in lieu of any depreciation deduction otherwise allowable on account of such expenditure.

(b) Section 188 property

For purposes of this section, the term "section 188 property" means tangible property which qualifies under regulations prescribed by the Secretary as a child care center facility primarily for the children of employees of the taxpayer; except that such term shall not include—

(1) any property which is not of a character subject to depreciation; or

(2) property located outside the United States.

(c) Application of section

This section shall apply only with respect to expenditures made after December 31, 1971, and before January 1, 1982.

(Added Pub. L. 92-178, title III, § 303(a), Dec. 10, 1971, 85 Stat. 521, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-30, title IV, § 402(a)(1)-(3), May 23, 1977, 91 Stat. 155.)

Amendments

1977—Pub. L. 95-30, § 402(a)(3), struck out "on-the-job training and" after "expenditures for" in section catchline.

Subsec. (b). Pub. L. 95-30, § 402(a)(2), struck out "as a facility for on-the-job training of employees (or prospective employees) of the taxpayer, or" after "regulations prescribed by the Secretary".

Subsec. (c). Pub. L. 95-30, § 402(a)(1), substituted "January 1, 1982" for "January 1, 1977".

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

Effective Date of 1977 Amendment

Section 402(b) of Pub. L. 95-30 provided that: "The amendments made by subsection (a) [amending this section and section 57 of this title] shall apply with respect to expenditures made after December 31, 1976."

Effective Date

Section 303(d) of Pub. L. 92-178 provided that: "The amendments made by this section [enacting this section and amending sections 57, 642, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971."

Section Referred to in Other Sections

This section is referred to in sections 48, 642, 1082, 1245, 1250 of this title.

[§ 189. Repealed. Pub. L. 99-514, title VIII, § 803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94-455, title II, § 201(a), Oct. 4, 1976, 90 Stat. 1525, and amended Pub. L. 95-600, title VII, § 701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97-34, title II, § 262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97-248, title II, § 207(a)-(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97-354, § 5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98-369, div. A, title I, § 93(a), title VII, § 712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

Effective Date of Repeal

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

(1) Architectural and transportation barrier removal expenses

The term "architectural and transportation barrier removal expenses" means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expenses

The term "qualified architectural and transportation barrier removal expense" means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term "handicapped individual" means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $35,000.

(d) Application of section

This section shall apply to—

(1) taxable years beginning after December 31, 1976, and before January 1, 1983, and

(2) taxable years beginning after December 31, 1983.

(Added Pub. L. 94-455, title XXI, § 2122(a), Oct. 4, 1976, 90 Stat. 1914, and amended Pub. L. 98-369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99-514, title II, § 244, Oct. 22, 1986, 100 Stat. 2183.)

AMENDMENTS

1986—Subsec. (d)(2). Pub. L. 99-514 substituted "1983" for "1983, and before January 1, 1986".

1984—Subsec. (c). Pub. L. 98-369, § 1062(b), substituted "$35,000" for "$25,000".

Subsec. (d). Pub. L. 98-369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1062(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE

Section 2122(c) of Pub. L. 94-455, as amended by Pub. L. 96-167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98-369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: "The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 67, 263, 1245, 1250 of this title.

[§ 191. Repealed. Pub. L. 97-34, title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94-455, title XXI, § 2124(a)(1), Oct. 4, 1976, 90 Stat. 1916, and amended Pub. L. 95-600, title VII, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900-2902; Pub. L. 96-222, title I, § 107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96-541, § 2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

"(2) Amount of Transfer.—For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

"(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

"(B) the value of such interests immediately after the lapse.

"(3) Similar Rights.—The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

"(b) Certain Restrictions on Liquidation Disregarded.—

"(1) In General.—For purposes of this subtitle, if—

"(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

"(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

"(2) Applicable Restriction.—For purposes of this subsection, the term 'applicable restriction' means any restriction—

"(A) which effectively limits the ability of the corporation or partnership to liquidate, and

"(B) with respect to which either of the following applies:

"(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

"(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

"(3) Exceptions.—The term 'applicable restriction' shall not include—

"(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

"(B) any restriction imposed, or required to be imposed, by any Federal or State law.

"(4) Other Restrictions.—The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

"(c) Definitions and Special Rules.—For purposes of this section—

"(1) Control.—The term 'control' has the meaning given such term by section 2701(b)(2).

"(2) Member of the Family.—The term 'member of the family' means, with respect to any individual—

"(A) such individual's spouse,

"(B) any ancestor or lineal descendant of such individual or such individual's spouse,

"(C) any brother or sister of the individual, and

"(D) any spouse of any individual described in subparagraph (B) or (C).

"(3) Attribution.—The rule of section 2701(e)(3)(A) shall apply for purposes of determining the interests held by any individual."

(b) Extension of Statute of Limitations.—Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(9) Gift Tax on Certain Gifts Not Shown on Return.—If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

(c) Conforming Amendment.—The table of chapters for subtitle B is amended by adding at the end thereof the following item:

"Chapter 14. Special Valuation Rules."

(d) Study.—The Secretary of the Treasury shall conduct a study of—

(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(e) Effective Dates.—

(1) Subsection (a).—

(A) In general.—The amendments made by subsection (a)—

(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

(B) Exception.—For purposes of subparagraph (A)(ii), with respect to property transferred before October 9, 1990—

(i) any failure to exercise a right of conversion,

(ii) any failure to pay dividends, and

(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

(2) Subsection (b).—The amendment made by subsection (b) shall apply to gifts after October 8, 1990.

PART II—DISABLED ACCESS CREDIT

SEC. 11611. CREDIT FOR COST OF PROVIDING ACCESS FOR DISABLED INDIVIDUALS.

(a) General Rule.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by subtitle E, is amended by adding at the end thereof the following new section:

"SEC. 44. EXPENDITURES TO PROVIDE ACCESS TO DISABLED INDIVIDUALS.

"(a) General Rule.—For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

"(b) Eligible Small Business.—For purposes of this section, the term 'eligible small business' means any person if—

"(1) either—

"(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

"(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

"(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

"(c) Eligible Access Expenditures.—For purposes of this section—

"(1) In General.—The term 'eligible access expenditures' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) Certain Expenditures Included.—The term 'eligible access expenditures' includes amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

"(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

"(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

"(D) to acquire or modify equipment or devices for individuals with disabilities, or

"(E) to provide other similar services, modifications, materials, or equipment.

"(3) Expenditures Must Be Reasonable.—Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

"(4) Expenses in Connection With New Construction Are Not Eligible.—The term 'eligible access expenditures' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

"(5) Expenditures Must Meet Standards.—The term 'eligible access expenditures' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

"(d) Definition of Disability; Special Rules.—For purposes of this section—

"(1) Disability.—The term 'disability' has the same meaning as when used in the

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Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(3) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(4) SHORT YEARS.—The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

"(5) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(6) TREATMENT OF PREDECESSORS.—The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

"(7) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

"(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

"(B) no increase in the adjusted basis of any property shall result from such amount.

"(8) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section."

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38, as amended by subtitle E, is amended by striking "plus" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", plus" and by adding at the end thereof the following new paragraph:

"(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF SECTION 44 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44."

(c) DEDUCTION REDUCED FOR ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—Section 190(c) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking "$35,000" and inserting "$15,000".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by subtitle E, is amended by adding at the end thereof the following new item:

"Sec. 44. Expenditures to provide access to disabled individuals."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—OTHER PROVISIONS

SEC. 11621. REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.

(a) GENERAL RULE.—Subsection (i) of section 7805 (relating to review of impact of regulations on small business) is amended to read as follows:

"(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

"(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

"(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

"(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

"(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply, except that—

"(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

"(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act.

SEC. 11622. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7523. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

"(a) GENERAL RULE.—In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

"(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

"(2) a pie-shaped graph showing the relative sizes of the major income categories.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of subsection (a)—

"(1) MAJOR OUTLAY CATEGORIES.—The term 'major outlay categories' means the following:

"(A) Defense, veterans, and foreign affairs.

"(B) Social security, medicare, and other retirement.

"(C) Physical, human, and community development.

"(D) Social programs.

"(E) Law enforcement and general government.

"(F) Interest on the debt.

"(2) MAJOR INCOME CATEGORIES.—The term 'major income categories' means the following:

"(A) Social security, medicare, and unemployment and other retirement taxes.

"(B) Personal income taxes.

"(C) Corporate income taxes.

"(D) Borrowing to cover the deficit.

"(E) Excise, customs, estate, gift, and miscellaneous taxes.

"(3) REQUIRED FOOTNOTES.—The pie-shaped graph showing the major outlay categories shall include the following footnotes:

"(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

"(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

"(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, food stamps, and aid to families with dependent children and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

"(4) DATA ON WHICH GRAPHS ARE BASED.—The graphs required under subsection (a) shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7523. Graphic presentation of major categories of Federal outlays and income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to instructions prepared for taxable years beginning after 1990.

Subtitle G—Tax Technical Corrections

SEC. 11700. COORDINATION WITH OTHER SUBTITLES.

For purposes of applying the amendments made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

SEC. 11701. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1989.

(a) AMENDMENTS RELATED TO SECTION 7108.—

(1)(A) Paragraph (2) of section 42(c) is amended by adding at the end thereof the following new sentence: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

(B) Paragraph (1) of section 42(b) is amended by striking the last sentence.

(2) Subclause (I) of section 42(d)(5)(C)(ii) is amended—

(A) by inserting "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", and

(B) by inserting before the period "for such year".

(3)(A) Clause (i) of section 42(g)(2)(D) is amended by inserting before the period "and such unit continues to be rent-restricted".

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COURT CASES CITED IN THE HOUSE OR SENATE REPORTS

These are an alphabetical listing of the court cases cited in the House reports which accompanied the A.D.A. bill. The numbers in parentheses at the end of each citation refer to the Part of House Report 100-485 in which they were cited: *A.D.A.P.T.* v. *Skinner*, 881 F.2d 1184 (3rd Cir., 1989) (2); *Alexander* v. *Choate*, 469 U.S. 287 (1983) (2); *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974) (3); *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985) (2 and 4); *Bentivenga* v. *U.S. Department of Labor*, 694 F.2d 623 (1982) (2); *Chalk* v. *U.S. District Court*, 840 F.2d 701 (9th Cir., 1988) (2); *Christianberg Garment Co.* v. *E.E.O.C.*, 434 U.S. 412 (1978) (2); *Doe* v. *Centinela Hospital*, 57 U.S.L.W. 2034; *Hall* v. *U.S. Postal Service*, 857 F.2d 1073, (6th Cir., 1988) (2); *International Brotherhood of Teamsters* v. *U.S.*, 431 U.S. 324 (1977) (2); *Mantolete* v. *Bolger*, 757 F.2d 1416, (9th Cir., 1985) (2); *Nelson* v. *Thornburgh*, 567 F. Supp. 369 (E.D.Pa., 1983) (3); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292 (5th Cir., 1981) (3); *Pushkin* v. *Regents of the University of Colorado*, 658 F.2d 1372 (1981) (2); *Rhone* v. *U.S. Department of the Army*, 665 F. Supp. 734 (E.D.Mo., 1987) (3); *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987) (2); *Sieger* v. *State of Missouri*, 673 F.2d 969 (8th Cir., 1982) (3); *Strathie* v. *Department of Transportation*, 716 F.2d 227 (3rd Cir., 1983) (2); *Stutts* v. *Freeman*, 694 F.2d 666 (11th Cir., 1983) (2); *Thornhill* v. *Marsh*, 49 Fed. Cases 6 (Feb. 2, 1989), 866 F.2d 1182 (9th Cir., 1989) (2); and *TWA* v. *Hardison*, 432 U.S. 63 (1977) (2).

TECHNICAL ASSISTANCE DOCUMENT ON EFFECTIVE DATES OF STATUTORY PROVISIONS—PREPARED BY U.S. DEPARTMENT OF JUSTICE

Americans with Disabilities Act
Statutory Deadlines

I. Employment

- The ADA requirements become effective on:
  - July 26, 1992, for employers with 25 or more employees.
  - July 26, 1994, for employers with 15-24 employees.

II. Public Accommodations

- The ADA requirements become effective on:
  - January 26, 1992, generally.
  - August 26, 1990, for purchase or lease of new vehicles that are required to be accessible.
- New facilities designed and constructed for first occupancy later than January 26, 1993, must be accessible.
- Generally, lawsuits may not be filed until January 26, 1992. In addition, except with respect to new construction and alterations, no lawsuit may be filed until:
  - July 26, 1992, against businesses with 25 or fewer employees and gross receipts of $1 million or less.
  - January 26, 1993, against businesses with 10 or fewer employees and gross receipts of $500,000 or less.

III. Transportation

A. Public bus systems

- The ADA requirements become effective on:
  - January 26, 1992, generally.
  - August 26, 1990, for purchase or lease of new buses.

B. Public rail systems -- light, rapid, commuter, and intercity (Amtrak) rail

- The ADA requirements become effective on:
  - January 26, 1992, generally.
  - August 26, 1990, for purchase or lease of new rail vehicles.
- By July 26, 1995, one car per train accessiblity must be achieved.

III. Transportation (cont.)

- By July 26, 1993, existing key stations in rapid, light, and commuter rail systems must be made accessible with extensions of up to 20 years (30 years, in some cases, for rapid and light rail).

C. Privately operated bus and van companies

- The ADA requirements become effective on:
  - January 26, 1992, generally.
  - July 26, 1996 (July 26, 1997, for small providers) for purchase of new over-the-road buses.
  - August 26, 1990, for purchase or lease of certain new vehicles (other than over-the-road buses).

IV. State and local government operations

- The ADA requirements become effective on:
  - January 26, 1992.

V. Telecommunications

- The ADA requirements become effective on:
  - July 26, 1993, for provision of relay services.

Source: P.L. 101-336

MISCELLANEOUS DISABILITY RELATED TAX PROVISIONS APPLICABLE TO BUSINESSES

(1) Section 51, Title 26, Internal Revenue Code (as of date of enactment of A.D.A.) Targeted Jobs Tax Credit.

(2) Section 190, Title 26, Internal Revenue Code (as of date of enactment of A.D.A.) Expenditures to remove architectural and transportation barriers to the handicapped and elderly.

(3) Section 11611 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. Credit for cost of providing access for disabled individuals.

* Subsequent amendments made by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, were not collated for this publication.

[¶50B8.40] **WIN credit** IRC §50B and 50A, repealed by the '84 Tax Reform Act, governed the WIN credit. See ¶508A.40 for unit explanation.

CODE

[[redacted] AMOUNT OF CREDIT.

(a) Determination of Amount.—For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year.

(b) Qualified Wages Defined.—For purposes of this subpart—

(1) In general.—The term "qualified wages" means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) Qualified first-year wages.—The term "qualified first-year wages" means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

(3) Only first $6,000 of wages per year taken into account.—The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $6,000 per year.

(c) Wages Defined.—For purposes of this subpart—

(1) In general.—Except as otherwise provided in this subsection, subsection (d)(8)(D), and subsection (h)(2), the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) On-the-job training and work supplementation payments.—

(A) Exclusion for employers receiving on-the-job training payments.—The term "wages" shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) Reduction for work supplementation payments to employers.—The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under •section 414 of the Social Security Act.

(3) Payments for services during labor disputes.—If—

(A) the principal place of employment of an individual with the employer is at a plant or facility, and

(B) there is a strike or lockout involving employees at such plant or facility,

the term "wages" shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout.

(4) Termination.—The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer after [1]*September 30, 1990.*

[Footnote IRC §51] • **Future amendment** (IRC §202(c)(6), '88 Family Support Act, P.L. 100-485, 10-13-88). IRC §51(c)(2)(B) is amended by striking out "section 414" and inserting in lieu thereof "section 482(e)".

Effective date (Sec. 204(a), '88 Family Support Act)—Takes effect on 10-1-90.

Matter in *italics* in IRC §51(c)(4) added by section 7103(a), '89 OBRA, which struck out:

(d) Members of Targeted Groups.—For purposes of this subpart—

(1) In general.—An individual is a member of a targeted group if such individual is—

(A) a vocational rehabilitation referral,

(B) an economically disadvantaged youth,

(C) an economically disadvantaged Vietnam-era veteran,

(D) an SSI recipient,

(E) a general assistance recipient,

(F) a youth participating in a cooperative education program,

(G) an economically disadvantaged ex-convict,

(H) an eligible work incentive employee,

(I) an involuntarily terminated CETA employee, or

(J) a qualified summer youth employee.

(2) Vocational rehabilitation referral.—The term "vocational rehabilitation referral" means any individual who is certified by the designated local agency as—

(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

(3) Economically disadvantaged youth.—

(A) In general.—The term "economically disadvantaged youth" means any individual who is certified by the designated local agency as—

(i) meeting the age requirements of subparagraph (B), and

(ii) being a member of an economically disadvantaged family (as determined under paragraph (11)).

(B) Age requirements.—An individual meets the age requirements of this subparagraph if such individual has attained age 18 but not age 23 on the hiring date.

(4) Vietnam veteran who is a member of an economically disadvantaged family.—The term "Vietnam veteran who is a member of an economically disadvantaged family" means any individual who is certified by the designated local agency as—

(A)(i) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, any part of which occurred after August 4, 1964, and before May 8, 1975, or

(ii) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability if any part of such active duty was performed after August 4, 1964, and before May 8, 1975,

(B) not having any day during the preemployment period which was a day of extended active duty in the Armed Forces of the United States, and

(C) being a member of an economically disadvantaged family (determined under paragraph (11)).

For purposes of subparagraph (B), the term "extended active duty" means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

(5) SSI recipients.—The term "SSI recipient" means any individual who is certified by the designated local agency as receiving supplemental security income benefits

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[Footnote IRC §51 (1) continued]

(1) "December 31, 1989"

Effective date. [The above amendment is effective on 12-19-89 Ed.]

under title XVI of the Social Security Act (including supplemental security incom benefits of the type described in section 1616 of such Act or section 212 of Publ. Law 93-66) for any month ending in the preemployment period.

(6) General assistance receipts.—

(A) In general.—The term "general assistance recipient" means any individu who is certified by the designated local agency as receiving assistance under a qua ified general assistance program for any period of not less than 30 days endin with the pre-employment period.

(B) Qualified general assistance program.—The term "qualified general assist ance program" means any program of a State or a political subdivision of State—

(i) which provides general assistance or similar assistance which—

(I) is based on need, and

(II) consists of money payments or voucher or scrip, and

(ii) which is designated by the Secretary (after consultation with the Secre tary of Health and Human Services) as meeting the requirements of clause (i).

(7) **Economically disadvantaged ex-convict.**—The term "economically disadvan taged ex-convict" means any individual who is certified by the designated local agen cy—

(A) as having been convicted of a felony under any statute of the United State or any State,

(B) as being a member of an economically disadvantaged family (as determine under paragraph (11)), and

(C) as having a hiring date which is not more than 5 years after the last dat on which such individual was so convicted or was released from prison.

(8) **Youth participating in a qualified cooperative education program—**

(A) In general.—The term "youth participating in a qualified cooperative education program" means any individual who is certified by the school participating in the program as—

(i) having attained age 16 and not having attained age 20,

(ii) not having graduated from a high school or vocational school,

(iii) being enrolled in and actively pursuing a qualified cooperative education program, and

(iv) being a member of an economically disadvantaged family (as determined under paragraph (11)).

(B) Qualified cooperative education program defined.—The term "qualified cooperative education program" means a program of vocational education for individuals who (through written cooperative arrangements between a qualified school and 1 or more employers) receive instruction (including required academic instruction) by alternation of study and school with a job in any occupational field (but only if these 2 experiences are planned by the school and employer so that each contributes to the student's education and employability).

(C) Qualified school defined.—The term "qualified school" means—

(i) a specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market,

(ii) the department of a high school exclusively or principally used for providing vocational education to persons who are available for study in preparation for entering the labor market, or

(iii) a technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

A school which is not a public school shall be treated as a qualified school only if it is exempt from tax under section 501(a).

(D) Wages.—In the case of remuneration attributable to services performed while the individual meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A), wages, and unemployment insurance wages, shall be determined without regard to section 3306(c)(10)(C).

(9) **Eligible work incentive employees.**—The term "eligible work incentive employee" means an individual who has been certified by the designated local agency as—

(A) being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer, or

(B) having been placed in employment under a work incentive program established under section 432(b)(1) or 44D of the Social Security Act.

(10) **Involuntarily terminated CETA employee.**—The term "involuntarily terminated CETA employee" means an individual who is certified by the designated local agency as having been involuntarily terminated after December 31, 1980, from employment financed in whole or in part under a program under part D of title II or title VI of the Comprehensive Employment and Training Act. This paragraph shall not apply to any individual who begins work for the employer after December 31, 1982.

(11) **Members of economically disadvantaged families.**—An individual is a member of an economically disadvantaged family if the designated local agency determines that such individual was a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such determination occurs or the month in which the hiring date occurs which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard. Any such determination shall be valid for the 45-day period beginning on the date such determination is made. Any such determination with respect to an individual who is a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to any employer shall also apply for purposes of determining whether such individual is a member of another targeted group with respect to such employer.

(12) **Qualified summer youth employee.**—

(A) In general.—The term "qualified summer youth employee" means an individual—

(i) who performs services for the employer between May 1 and September 15,

(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(iii), and

(iv) who is certified by the designated local agency as being a member of an economically disadvantaged family (as determined under paragraph (11)).

(B) Special rules for determining amount of credit.—For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

(i) subsection (b)(2) shall be applied by substituting "any 90-day period between May 1 and September 15" for "the 1-year period beginning with the day the individual begins work for the employer", and

(ii) subsection (b)(3) shall be applied by substituting "$3,000" for "$6,000".

(C) Special rule for continued employment for same employer.—In the case of an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee, paragraph (14) shall be applied by substituting "certified" for "hired by the employer."

(13) **Preemployment period.**—The term "preemployment period" means the 60-day period ending on the hiring date.

(14) **Hiring date.**—The term "hiring date" means the day the individual is hired by the employer.

(15) **Designated local agency.**—The term "designated local agency" means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49-49n).

(16) **Special rules for certifications.**—

(A) In general.—An individual shall not be treated as a member of a targeted group unless, on or before the day on which such individual begins work for the employer, the employer—

(i) has received a certification from a designated local agency that such individual is a member of a targeted group, or

(ii) has requested in writing such certification from the designated local agency.

For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then "the fifth day" shall be substituted for "the day" in such sentence.

(B) Incorrect certification.—If—

(i) an individual has been certified as a member of a targeted group, and

(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

(C) Employer request must specify potential basis for eligibility.—In any request for a certification of an individual as a member of a targeted group, the employer shall—

(i) specify each subparagraph (but not more than 2) of paragraph (1) by reason of which the employer believes that such individual is such a member, and

(ii) certify that a good faith effort was made to determine that such individual is such a member.

(e) **[Repealed]**

(f) **Remuneration Must Be for Trade or Business Employment.**—

(1) **In general.**—For purposes of this subpart, remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in a trade or business of the employer.

(2) **Special rule for certain determination.**—Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any taxable year shall be made without regard to subsections (a) and (b) of section 52.

[Footnote IRC §51 continued]

IRC §51(d)(16)(C) in *italics* added by section 7103(c)(1), '89 OBRA.

Effective date (Sec. 7103(c)(2), '89 OBRA).—Applies to individuals who begin work for the employer after 12-31-89

(g) United States Employment Service To Notify Employers of Availability of Credit.—The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the targeted jobs credit determined under this subpart.

(h) Special Rules for Agricultural Labor and Railway Labor.—For purposes of this subpart—

(1) Unemployment insurance wages.—

(A) Agricultural labor.—If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any year constitute agricultural labor (within the meaning of section 3306(k)), the term "unemployment insurance wages" means, with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes "wages" within the meaning of section 3121(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

(B) Railway labor.—If more than one-half of remuneration paid by an employer to an employee during any year is remuneration for service described in section 3306(c)(9), the term "unemployment insurance wages" means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year which would be subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) if the maximum amount subject to such contributions were $500 per month.

(2) **Wages.**—In any case to which subparagraph (A) and (B) of paragraph (1) applies, the term "wages" means unemployment insurance wages (determined without regard to any dollar limitation).

(i) **Certain Individuals Ineligible.**—

(1) **Related individuals.**—No wages shall be taken into account under subsection (a) with respect to an individual who—

(A) bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)),

(B) If the taxpayer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) is a dependent (described in section 152(a)(9)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(2) **Nonqualifying rehires.**—No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time during which he was not a member of a targeted group.

(3) **Individuals not meeting minimum employment period.**—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

(A) is employed by the employer at least 90 days (14 days in the case of an individual described in subsection (d)(12)), or

(B) has completed at least 120 hours (20 hours in the case of an individual described in subsection (d)(12)) of services performed for the employer.

(j) **Treatment of Successor Employers; Treatment of Employees Performing Services for other Persons.**—

(1) **Treatment of successor employers.**—Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit under this section with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

(2) **Treatment of employees performing services for other persons.**—No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

(k) **Election to Have Targeted Jobs Credit Not Apply.**—

(1) **In general.**—A taxpayer may elect to have this section not apply for any taxable year.

(2) **Time for making election.**—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extension).

[redacted]**anner of making election.**—An election under paragraph (1) (or revocation [redacted] be made in such manner as the Secretary may by regulations prescribe.

[redacted]PORTS

[¶511] ('89 OBRA, P.L. 101-239, 12-19-89). Extension of targeted jobs credit.

[Conference Explanation]

House bill

The credit is extended for two years, through December 31, 1991, with one modification. The modification would require that employers: (1) specifically identify the categories (but not to exceed two) for which the individual is believed to be eligible when requesting certification and (2) indicate that a good faith effort was made to determine that the individual is eligible for the credit.

The authorization for appropriations is extended for two years, October 1, 1989—September 30, 1991.

The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1989, and before January 1, 1992. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after December 31, 1991.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the credit is extended for nine months. The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1989, and before October 1, 1990. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after September 30, 1990.

The authorization for appropriations is extended for one year, October 1, 1989—September 30, 1990.

[¶511.005] ('88 Technical and Miscellaneous Revenue Act ('88 TAMRA, P.L. 100-647, 11-10-88). Extension of targeted jobs credit.

[House Explanation]

* * * * * *

Present Law—Tax credit provisions. The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups are: (1) vocational rehabilitation referrals; (2) economically disadvangted youths aged 18 through 24; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvangted cooperative education students aged 16 through 19; (7) economically disadvantaged former convicts; (8) Aid to Families with Dependent Children (AFDC) recipients and Work Incentive (WIN) registrants; and (9) economically disadvaged summer youth employees aged 16 or 17. Targeted group membership must be certified.

The credit generally is equal to 40 percent of the first $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 85 percent of up to $3,000 of wages, for a maximum credit of $2,550.

The credit is not available for wages paid to a targeted group member unless the individual either (1) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees), or (2) has completed at least 120 hours of work performed for the employer (20 hours in the case of economically disadvantaged summer youth employees). Also, the employer's deduction for wages must be reduced by the amount of the credit.

The credit is available with respect to targeted-group individuals who begin work for the employer before January 1, 1989.

Authorization of appropriations. Present law also authorizes appropriations for administrative and publicity expenses relating to the credit through September 30, 1988. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

* * * * * *

Explanation of Provision—The credit and the authorization for appropriations are extended for two years. The category of economically disadvantaged youth is restricted to employees aged 18 through 21.

Effective Date. The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1988 and before January 1, 1991. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after December 31, 1990.

The authorization for appropriations is effective for the period October 1, 1988 through September 30, 1990 (fiscal years 1989-1990).

[Conference Report]

* * * * * *

Senate amendment—Under the Senate amendment, the credit is extended for six months, and the authorization for appropriation is extended one year. Also, the credit for disadvantaged summer youth employees is reduced from 85 percent to 40 percent.

The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1988 and before July 1, 1989. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after June 30, 1989.

The authorization for appropriations is effective for the period October 1, 1988, through September 30, 1989 (fiscal year 1989).

Conference Agreement—The conference agreement follows the House bill and the Senate amendment with modifications. The agreement follows the House bill provision to restrict the category of economically disadvantged youth, except that this category will include employees age 18 to 22 injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91-172, title IX, § 904(a), Dec. 30, 1969, 83 Stat. 711.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (b)(3), (d)(2)(C), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

EFFECTIVE DATE

Section 904(c) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968."

[§ 187. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91-172, title VII, § 707(a), Dec. 30, 1969, 83 Stat. 674, and amended Pub. L. 93-625, § 3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term "certified coal mine safety equipment", and special rules applicable to the amortization deduction.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 188. Amortization of certain expenditures for child care facilities

(a) Allowance of deduction

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, any expenditure chargeable to capital account made by an employer to acquire, construct, reconstruct, or rehabilitate section 188 property (as defined in subsection (b)) shall be allowable as a deduction ratably over a period of 60 months, beginning with the month in which the property is placed in service. The deduction provided by this section with respect to such expenditure shall be in lieu of any depreciation deduction otherwise allowable on account of such expenditure.

(b) Section 188 property

For purposes of this section, the term "section 188 property" means tangible property which qualifies under regulations prescribed by the Secretary as a child care center facility primarily for the children of employees of the taxpayer; except that such term shall not include—

(1) any property which is not of a character subject to depreciation; or

(2) property located outside the United States.

(c) Application of section

This section shall apply only with respect to expenditures made after December 31, 1971, and before January 1, 1982.

(Added Pub. L. 92-178, title III, § 303(a), Dec. 10, 1971, 85 Stat. 521, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-30, title IV, § 402(a)(1)-(3), May 23, 1977, 91 Stat. 155.)

AMENDMENTS

1977—Pub. L. 95-30, § 402(a)(3), struck out "on-the-job training and" after "expenditures for" in section catchline.

Subsec. (b). Pub. L. 95-30, § 402(a)(2), struck out "as a facility for on-the-job training of employees (or prospective employees) of the taxpayer, or" after "regulations prescribed by the Secretary".

Subsec. (c). Pub. L. 95-30, § 402(a)(1), substituted "January 1, 1982" for "January 1, 1977".

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 402(b) of Pub. L. 95-30 provided that: "The amendments made by subsection (a) [amending this section and section 57 of this title] shall apply with respect to expenditures made after December 31, 1976."

EFFECTIVE DATE

Section 303(d) of Pub. L. 92-178 provided that: "The amendments made by this section [enacting this section and amending sections 57, 642, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 642, 1082, 1245, 1250 of this title.

[§ 189. Repealed. Pub. L. 99–514, title VIII, § 803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94-455, title II, § 201(a), Oct. 4, 1976, 90 Stat. 1525, and amended Pub. L. 95-600, title VII, § 701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97-34, title II, § 262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97-248, title II, § 207(a)-(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97-354, § 5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98-369, div. A, title I, § 93(a), title VII, § 712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

EFFECTIVE DATE OF REPEAL

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

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(1) Architectural and transportation barrier removal expenses

The term "architectural and transportation barrier removal expenses" means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expense

The term "qualified architectural and transportation barrier removal expense" means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term "handicapped individual" means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $35,000.

(d) Application of section

This section shall apply to—

(1) taxable years beginning after December 31, 1976, and before January 1, 1983, and

(2) taxable years beginning after December 31, 1983.

(Added Pub. L. 94-455, title XXI, § 2122(a), Oct. 4, 1976, 90 Stat. 1914, and amended Pub. L. 98-369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99-514, title II, § 244, Oct. 22, 1986, 100 Stat. 2183.)

AMENDMENTS

1986—Subsec. (d)(2). Pub. L. 99-514 substituted "1983" for "1983, and before January 1, 1986".

1984—Subsec. (c). Pub. L. 98-369, § 1062(b), substituted "$35,000" for "$25,000".

Subsec. (d). Pub. L. 98-369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1062(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE

Section 2122(c) of Pub. L. 94-455, as amended by Pub. L. 96-167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98-369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: "The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 67, 263, 1245, 1250 of this title.

[§ 191. Repealed. Pub. L. 97-34, title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94-455, title XXI, § 2124(a)(1), Oct. 4, 1976, 90 Stat. 1916, and amended Pub. L. 95-600, title VII, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900-2902; Pub. L. 96-222, title I, § 107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96-541, § 2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

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such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

"(2) AMOUNT OF TRANSFER.—For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

"(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

"(B) the value of such interests immediately after the lapse.

"(3) SIMILAR RIGHTS.—The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

"(b) CERTAIN RESTRICTIONS ON LIQUIDATION DISREGARDED.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

"(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

"(2) APPLICABLE RESTRICTION.—For purposes of this subsection, the term 'applicable restriction' means any restriction—

"(A) which effectively limits the ability of the corporation or partnership to liquidate, and

"(B) with respect to which either of the following applies:

"(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

"(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

"(3) EXCEPTIONS.—The term 'applicable restriction' shall not include—

"(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

"(B) any restriction imposed, or required to be imposed, by any Federal or State law.

"(4) OTHER RESTRICTIONS.—The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONTROL.—The term 'control' has the meaning given such term by section 2701(b)(2).

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any individual—

"(A) such individual's spouse,

"(B) any ancestor or lineal descendant of such individual or such individual's spouse,

"(C) any brother or sister of the individual, and

"(D) any spouse of any individual described in subparagraph (B) or (C).

"(3) ATTRIBUTION.—The rule of section 2701(e)(3)(A) shall apply for purposes of determining the interests held by any individual."

(b) EXTENSION OF STATUTE OF LIMITATIONS.—Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

(c) CONFORMING AMENDMENT.—The table of chapters for subtitle B is amended by adding at the end thereof the following item:

"CHAPTER 14. Special Valuation Rules."

(d) STUDY.—The Secretary of the Treasury shall conduct a study of—

(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(e) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—The amendments made by subsection (a)—

(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

(B) EXCEPTION.—For purposes of subparagraph (A)(ii), with respect to property transferred before October 8, 1990—

(i) any failure to exercise a right of conversion,

(ii) any failure to pay dividends, and

(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts after October 8, 1990.

PART II—DISABLED ACCESS CREDIT

SEC. 11611. CREDIT FOR COST OF PROVIDING ACCESS FOR DISABLED INDIVIDUALS.

(a) GENERAL RULE.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by subtitle E, is amended by adding at the end thereof the following new section:

"SEC. 44. EXPENDITURES TO PROVIDE ACCESS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means any person if—

"(1) either—

"(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

"(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

"(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

"(c) ELIGIBLE ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible access expenditures' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CERTAIN EXPENDITURES INCLUDED.—The term 'eligible access expenditures' includes amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

"(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

"(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

"(D) to acquire or modify equipment or devices for individuals with disabilities, or

"(E) to provide other similar services, modifications, materials, or equipment.

"(3) EXPENDITURES MUST BE REASONABLE.—Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

"(4) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible access expenditures' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

"(5) EXPENDITURES MUST MEET STANDARDS.—The term 'eligible access expenditures' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

"(d) DEFINITION OF DISABILITY; SPECIAL RULES.—For purposes of this section—

"(1) DISABILITY.—The term 'disability' has the same meaning as when used in the

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Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(3) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(4) SHORT YEARS.—The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

"(5) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(6) TREATMENT OF PREDECESSORS.—The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

"(7) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

"(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

"(B) no increase in the adjusted basis of any property shall result from such amount.

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section."

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38, as amended by subtitle E, is amended by striking "plus" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", plus" and by adding at the end thereof the following new paragraph:

"(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF SECTION 44 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44."

(c) DEDUCTION REDUCED FOR ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—Section 190(c) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking "$35,000" and inserting "$15,000".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by subtitle E, is amended by adding at the end thereof the following new item:

"Sec. 44. Expenditures to provide access to disabled individuals."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—OTHER PROVISIONS

SEC. 11621. REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.

(a) GENERAL RULE.—Subsection (f) of section 7805 (relating to review of impact of regulations on small business) is amended to read as follows:

"(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

"(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

"(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

"(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

"(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

"(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

"(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act.

SEC. 11622. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7523. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

"(a) GENERAL RULE.—In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

"(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

"(2) a pie-shaped graph showing the relative sizes of the major income categories.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of subsection (a)—

"(1) MAJOR OUTLAY CATEGORIES.—The term 'major outlay categories' means the following:

"(A) Defense, veterans, and foreign affairs.

"(B) Social security, medicare, and other retirement.

"(C) Physical, human, and community development.

"(D) Social programs.

"(E) Law enforcement and general government.

"(F) Interest on the debt.

"(2) MAJOR INCOME CATEGORIES.—The term 'major income categories' means the following:

"(A) Social security, medicare, and unemployment and other retirement taxes.

"(B) Personal income taxes.

"(C) Corporate income taxes.

"(D) Borrowing to cover the deficit.

"(E) Excise, customs, estate, gift, and miscellaneous taxes.

"(3) REQUIRED FOOTNOTES.—The pie-shaped graph showing the major outlay categories shall include the following footnotes:

"(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

"(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

"(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, food stamps, and aid to families with dependent children and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

"(4) DATA ON WHICH GRAPHS ARE BASED.—The graphs required under subsection (a) shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7523. Graphic presentation of major categories of Federal outlays and income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to instructions prepared for taxable years beginning after 1990.

Subtitle G—Tax Technical Corrections

SEC. 11700. COORDINATION WITH OTHER SUBTITLES.

For purposes of applying the amendments made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

SEC. 11701. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1989.

(a) AMENDMENTS RELATED TO SECTION 7108.—

(1)(A) Paragraph (2) of section 42(c) is amended by adding at the end thereof the following new sentence: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

(B) Paragraph (1) of section 42(b) is amended by striking the last sentence.

(2) Subclause (I) of section 42(d)(5)(C)(ii) is amended—

(A) by inserting "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", and

(B) by inserting before the period "for such year".

(3)(A) Clause (i) of section 42(g)(2)(D) is amended by inserting before the period "and such unit continues to be rent-restricted".

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LEGISLATIVE HISTORY

OF

Public Law 101-336

THE AMERICANS WITH DISABILITIES ACT

VOLUME 2 OF 3

PREPARED FOR THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS
SECOND SESSION

DECEMBER 1990

Serial No. 102-B

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AUGUSTUS F. HAWKINS, *Chairman*

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AMERICANS WITH DISABILITIES ACT OF 1988

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2345

TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF
DISCRIMINATION ON THE BASIS OF HANDICAP

SEPTEMBER 27, 1988

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AMERICANS WITH DISABILITIES ACT OF 1988

TUESDAY, SEPTEMBER 27, 1988

U.S. Senate, Subcommittee on the Handicapped, of
the Committee on Labor and Human Resources,
U.S. House of Representatives, Subcommittee on
Select Education, of the Committee on Education
and Labor,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SH-216, Hart Senate Office Building, Senator Tom Harkin (chairman of the subcommittee) presiding.

Present: Senators Harkin, Kennedy, and Weicker, Representatives Owens, Coelho, Martinez, and Jeffords.

OPENING STATEMENT OF SENATOR WEICKER

Senator Weicker [presiding]. The joint committee hearing of the U.S. Senate and the U.S. House of Representatives on the Americans With Disabilities Act will come to order.

It is a great pleasure to welcome my colleagues from the House, to welcome all those in attendance, whether as observers or as witnesses. This is a historic occasion.

I have a prepared statement, which will be submitted in its entirety for the record. I would just like to make the following comments.

I, like you, have lived through weeks, indeed months, of those earth shattering, heartstopping issues such as patriotism and Pledges of Allegiance and all those things which are of deep concern to America. Somehow, I have heard absolutely nothing about 36 million Americans with disabilities.

I think it is to the credit of both candidates, both the Governor and the Vice President, that they support the legislation that is the subject matter of this hearing. Yet, I think the time has come for the Nation, never mind the candidates, to insist that we start to discuss the realities of the world around us. Those realities include 36 million of our neighbors who have particular problems with discrimination.

As is well known I have spoken in the past, not only as a U.S. Senator, but as the father of a disabled child. Within the last several weeks, I find I have another disabled child, this time a learning disabled child. As we grow older, the discrimination that takes place against the ailments of infirmity become more obvious and more frequent.

As new situations confront us, such as AIDS, discrimination once again raises its head, a discrimination which so many of you in this room know all too well, insofar as your particular disabilities are concerned.

Now, the agenda of the Nation is going to be set in the next several weeks, not after the election is over. If both parties and their candidates can tiptoe off the stage without mentioning the Americans With Disabilities Act and its passage immediately, in the next Congress, if they can do that then there will be no Americans with Disabilities Act enacted by the next Congress. If there is silence now, there will be silence later. If there is indifference to discrimination now, there will be indifference later.

This is the moment in the time of all Americans when they set the priorities and the goals of this Nation. Foremost among them should be the fact that for 36 million, and growing in number, Americans, the time has come to end all discrimination, in whatever form. If we do that, that is a patriotism of which we can all be proud.

[The prepared statement of Senator Weicker follows:]

Opening Statement
Senator Lowell Weicker, Jr.
September 27, 1988

I am very pleased to join my colleagues this morning in convening a joint hearing on a subject of deep concern to me: discrimination on the basis of disability.

In its 1986 report, Toward Independence, the National Council on the Handicapped noted: "People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily." That report went on to recommend that "Congress... enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

Earlier this year, in direct response to the Council's recommendation, Senator Harkin and I introduced S.2345, the Americans with Disabilities Act. Drafted principally by the Council, this legislation would prohibit discrimination against people with disabilities in employment, public accommodations, transportation, communciation and public services. And it goes a step further in describing specific methods by which such discrimination is to be eliminated.

The bill has strong, bipartisan backing in both houses of Congress, including 25 cosponsors in the Senate and 114 in the House. It has been endorsed by more than 50 national organizations representing people with a wide variety of disabilities. It is also supported by the Leadership Conference on Civil Rights, an umbrella group of 185 organizations active in the area of civil rights.

As a prelude to further Congressional action on S.2345, we look forward this morning to hearing expert testimony on the types of discrimination experienced by people with disabilities. Most of our witnesses came by their expertise the hard way. They know first-hand what it is like to be shunned in the mainstream and shunted off into the margins of American life. They know first-hand that a disease like AIDS or a condition such as cerebral palsy can not only rob individuals of their health but also be used to deny them a table in a restaurant, a job, a home, and -- finally -- any shred of human dignity.

This hearing is also about fighting back and the rewards reaped as a consequence. We will learn of the difference early intervention has made in the life of a mentally retarded youth. We will revisit the triumph experienced by the students at Gallaudet when they succeeded in their battle for a deaf university president.

Their stories offer us a glimpse of a nation changing for the better. But the transformation has been much too long in coming and is proceeding at too slow a pace. It took the Civil Rights Act of 1964 and subsequent statutues to make plain this nation's opposition to racism, sexism and discrimination based on a person's age. It will take the Americans with Disabilities Act to set the record straight as to where we stand on discrimination based on disability.

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Senator Weicker. I understand that Senator Harkin, who is the chairman of the subcommittee and cosponsor of the legislation, is here.

But first, however, we will let Congressman Owens proceed, and then we will get to Senator Harkin.

STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Owens. Thank you, Senator.

On behalf of the Subcommittee on Select Education of the Education and Labor Committee, I want to thank Senator Harkin and his colleagues for hosting this very important hearing. I have a brief opening statement.

For some of us, the Americans With Disabilities Act of 1988 represents the next giant step in the American civil rights movement. This legislation grants full rights to Americans with disabilities and moves our great Nation from a respectable position of official compassion for those with impairments to a more laudable position of empowering disabled Americans.

This legislation grows out of a vast movement for disability rights and empowerment, a movement made highly visible this spring when the students and faculty of Gallaudet University successfully campaigned for the installation of the first ever deaf president, and more deaf board of directors members of the university. One of the campaign student leaders is a witness in this morning's hearing, and he will testify as a participant on the third panel.

During the Gallaudet campaign, a faculty member characterized that historic effort as "our Selma." As of 1965 the Voting Rights Act was the legislative outgrowth of the 1965 civil rights march from Selma to Montgomery, AL, the Americans with Disabilities Act is part of a journey toward full empowerment for Americans with disabilities.

The measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. To guide the journey toward full empowerment of disabled Americans, I have, in my capacity as chairman of the House Subcommittee on Select Education, created a task force on the rights and empowerment of Americans with disabilities.

I have appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the task force. Mr. Dart is one of the most committed advocates for disabled Americans in this country, and he has made several unique contributions to the field of disability rights.

The task force and the selection of its membership was designed to be broadly representative of people with various disabilities. It has convened forums of public meetings of disabled consumers, rehabilitation professionals, parents, advocates, and Government officials in 44 States. Since May 23 of this year, over 500 people have been present at the forums and 10,000 people have attended the public meetings. Many of them have presented publicly aspects of the discrimination that they have faced on the basis of disability.

The task force is preparing an interim report documenting evidence of discrimination on the basis of disability in America, which will be ready by late October. An executive summary of the interim report is currently available for distribution. The final report of the task force is scheduled for release next year.

The task force is also recommending options for short and long term actions related to Congress, the executive branch, and the public. The information collected by the task force will be invaluable to my subcommittee and to Congress as a whole, as we consider the Americans with Disabilities Act and subsequent legislation to implement the integration of disabled Americans into the production mainstream of our society.

In the America of 1988, people with disabilities understand that democracy and self-help are synonymous. Americans with disabilities are mobilizing to help themselves. Power is their greatest need. With empowerment, all problems can be resolved, all public officials and programs can be held accountable.

Passage of the Americans with Disabilities Act of 1988 will greatly help in the empowerment of disabled Americans. With the power and authority of their Government fully behind them, combined with their own energies, Americans of disabilities can become the masters of their own fates.

[The prepared statement of Congressman Owens follows:]

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Congressman
MAJOR OWENS
NEWS RELEASE

FOR IMMEDIATE RELEASE

Contact: Margaret Summers
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OWENS SAYS DISABILITY RIGHTS ACT WILL HELP "EMPOWER" DISABLED AMERICANS

"The Americans with Disabilities Act of 1988 represents the next giant step in the American civil rights movement," says Congressman Major Owens (D-NY), Chairman of the House Subcommittee on Select Education. The Subcommittee, along with the Senate Subcommittee on the Handicapped, will hold a hearing on the legislation Tuesday, September 27, 10 a.m., Room 216 in the Hart Senate Office Building. Among the scheduled witnesses are Gregory Hlibok, a student leader of Gallaudet University demonstrations for a deaf president and deaf board members earlier this year, and Jade Calgory, a star of the film "Mac and Me" and the first disabled child to be featured in a commercial movie.

The disability rights measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. It covers employers engaged in commerce who have 15 or more employees; housing providers covered by federal fair housing laws; transportation companies; those engaged in broadcasting or communications; and state and local governments. Congressman Owens notes that the Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and affect. Enforcement procedure for the Act includes administrative remedies, a private right of action in federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of federal funds.

The measure is being sponsored in the House by Congressmembers Owens, Tony Coelho (D-Calif.), and Silvio Conte (R-Mass.). Its Senate sponsors are Tom Harkin (D-Iowa) and Lowell Weicker (R-Conn.).

(MORE)

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In addition to the measure, Congressman Owens, in his capacity as the House Select Education Subcommittee Chairman, has created a Task Force on the Rights and Empowerment of Americans with Disabilities "to guide the journey toward full empowerment of disabled Americans." He appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the Task Force. "Mr. Dart is one of the most committed advocates for disabled Americans in this country," says Congressman Owens, "and he has made several unique contributions to the field of disability rights."

The Task Force is gathering evidence of discrimination against disabled Americans, and is seeking examples of successful local, state, national and international efforts to overcome barriers to self-realization of disabled people. It is also recommending options for short and long-term actions relating to Congress, the Executive Branch, and the public. "The information collected by the Task Force will be invaluable to my Subcommittee and to Congress as a whole, as we consider this and subsequent legislation to implement the integration of disabled Americans into the productive mainstream of society," says Congressman Owens.

# # #

OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN [presiding]. Thank you very much, Congressman Owens.

Again, I want to welcome all of you here. I want to also welcome my colleagues here. I would say without hesitation that you see in front of you really the vanguard in the Congress of those who care about and fight for Americans with disabilities. Senator Kennedy, Congressman Coelho, Congressman Owens, Senator Weicker, and Congressman Jeffords. I am really proud that you are all here.

We are holding this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. This hearing will go down, I believe, in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and free from polices that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

Almost a quarter of a century ago, Congress took the historic step of passing the Civil Rights Act of 1964 which, among other things, bars discrimination against persons on the basis of race, color, and national origin by recipients of Federal aid, and in such areas as employment and public accommodations. Americans with disabilities were not protected by this landmark legislation.

In 1968, the Congress and the President took another historic step when it passed the fair housing legislation barring discrimination in housing. Once again, people with disabilities were not extended protections by this legislation.

In 1973, some 15 years ago, the Congress finally adopted section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicaps. However, this legislation only prohibits discrimination by recipients of Federal aid. It does not cover discrimination by private employers; nor does it prohibit discrimination in public accommodations.

Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you are a woman, or because you are Jewish." If they did, a person could march over to the courthouse, file a law suit, win, and collect damages and attorney's fees.

Yet, to this day, nothing prevents an employer or an owner of a hotel or restaurant from excluding Americans with disabilities. The courthouse door is still closed to Americans with disabilities.

On April 28 of this year, several Senators and Representatives introduced the Americans With Disabilities Act of 1988 and took the first step in opening up the courthouse door to Americans with disabilities. The Americans With Disabilities Act prohibits discrimination against persons with disabilities in areas of employment, public accommodations, transportation, communications, and public services.

It is my expectation that this legislation will become the law of the land during the 101st Congress. However, the road to enactment will be filled with potholes and roadblocks. But if we stick together as a community, and we work with the groups representing employers and the hotel, restaurant, communications, and transportation industries, I believe we can succeed.

We have momentum on our side. When this Administration vetoes the Civil Rights Restoration Act, this Congress overrode it overwhelmingly. When the Fair Housing Act Amendments came before the Congress, we worked closely with the realtors and the homebuilders. We put together a broadbased coalition to get this passed. Again, overwhelmingly, we did it.

We can do the same with the Americans With Disabilities Act. It is good legislation, important legislation, needed legislation, and it is the right thing to do. Almost a quarter century after the passage of the Civil Rights Act of 1964, it is long overdue.

[The prepared statement of Senator Harkin follows:]

OPENING STATEMENT OF TOM HARKIN (D. Iowa), CO-CHAIRMAN
JOINT HEARING ON DISCRIMINATION ON THE BASIS OF HANDICAP
SENATE SUBCOMMITTEE ON THE HANDICAPPED
HOUSE SUBCOMMITTEE ON SELECT EDUCATION
SEPTEMBER 27, 1988

The Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education are proud to hold this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. I would like to extend a warm welcome to the witnesses and to the hundreds of persons in the audience. This hearing will go down in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

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Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you're a woman or Jewish." If they did, a person could march over to the court house, file a law suit, win, collect damages and attorneys fees.

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We have momentum on our side. When the Administration vetoed the Civil Rights Restoration Act, this Congress overrode that veto overwhelmingly. And, when the Fair Housing Act Amendments came before this Congress, we worked closely with the realtors and the homebuilders and we put together a broad-based coalition to get this landmark legislation passed, again overwhelmingly.

We can do the same with the Americans With Disabilities Act. It's good legislation, important, needed, it's the right thing to do—and almost a quarter-century after the passage of the Civil Rights Act of 1964, it is long overdue.

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For further information, contact Pam McKinney at 202-224-3254, or Bobby Silverstein at 202-224-6265.

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Senator HARKIN. I would like to recognize Congressman Coelho now and welcome him to this hearing.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman.

First off, Mr. Chairman, I would like to thank you and Chairman Owens for holding this hearing. As you and the chairman have both indicated, this is a historic hearing. I think it starts us down a path that has been needed for years.

As you have all indicated, there are approximately 36 million, some people say 43 million, Americans with disabilities that basically do not have their basic civil rights.

As one with a hidden disability, as one who openly discusses my epilepsy, I know what discrimination is. I am not going to go into detail of what is in this bill, because that has already been discussed and will be discussed more. I am only going to discuss briefly with my colleagues, and with those of you in this room, as to why I feel so strongly that this legislation is needed.

I have said repeatedly over the years, please do not dwell on the things that I cannot do, help me do the things that I can do. I can be a wonderfully productive American citizen if you will help me do that. Every American citizen, regardless of their ability or disability cannot do certain things. Just because those of us who are disabled are limited in our ability of doing certain things, does not mean that we are unable of being productive citizens.

It is time that our Government recognizes our abilities and gives us the dignity to do what we can do.

As a young man, I developed seizures, later diagnosed as epilepsy. For many years, for 5 years, as I had my seizures on a regular basis, I did not know what they were. I went to every doctor that you could think of. I also went to three witch doctors because I was supposedly possessed by the devil. My Republican colleagues think I am, but others believed I was. [Laughter.]

As I went to college, I was an achiever. I got outstanding grades in high school and outstanding grades in college. I was student body president in high school and student body president in college. I was outstanding senior in college. I was sought after by different businesses and groups, to be involved in their activities and be employed by them. I had decided that I wanted to be an attorney.

In my senior year, I changed my mind. I decided I wanted to become a Catholic priest. As I graduated with honors, I then had a physical exam in order to enter the seminary. The physical exam pointed out that these seizures that I had been having for 5 years meant that I had epilepsy.

I always remember very well what happened, in that I walked to the doctor's office from my car, sat in the doctor's office, was told about my epilepsy, walked back to my car, got back in my car and drove back to my fraternity house and I was the same exact person. But only in my own mind because the world around me changed.

My doctor had to notify the legal authorities of my epilepsy. My church was notified and immediately I was not able to become a Catholic priest, because my church did not, at the time, permit epileptics to be priests. My driver's license was taken away, my insurance was taken away. Every job application has the word epilepsy on it and I marked it, because I was not going to lie. I could not get a job.

My parents refused to accept my epilepsy. I became suicidal and drunk by noon. The only reason is because I had not changed as a person. The only reason is that world around me had changed. The light had been turned off, the light of opportunity, the light of hope. Not until a priest friend of mine turned me over to a man of hope by the name of Bob Hope did the light get lit again.

I am here today, serving in the capacity that I serve, because some people believe not because my Government protected me, not because my Government protected my basic civil rights.

I am a major advocate of this bill because I want to make sure that other young people, as their looking for hope, as they believe that the system should work for them, have that hope, have that opportunity.

What happened at Gallaudet University was not only an inspiration, I am sure, to the hearing impaired. What happened at Gallaudet University was an inspiration to all of us with disabilities, in that if we ourselves believe in ourselves and are willing to stand up we can make a difference.

That is what this bill is all about; 36 million Americans deciding it is time for us to stand up for ourselves, to make a difference, to say that we want our basic civil rights also. We deserve it.

Give us an opportunity to do what we can do, do not keep telling us what we cannot do.

I thank my colleagues.

[The prepared statement of Congressman Coelho follows:]

TONY COELHO
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Congress of the United States
House of Representatives
Office of the Majority Whip

THE AMERICANS WITH DISABILITIES ACT OF 1988
Statement by Rep. Tony Coelho
September 27, 1988

The joint hearing we are participating in today represents another important step in the struggle to secure civil rights protections for Americans with disabilities, our nation's largest minority. The time has come to send a message across America that people with disabilities can no longer be locked out, stigmatized or ignored. The time has finally come to end the discrimination 43 million Americans with disabilities face as they strive to take their rightful place in every aspect of our society.

I am honored to co-chair today's hearing because I belong to this minority. We are a diverse group -- we use wheelchairs, we are blind, we are deaf, many of us have hidden disabilities - epilepsy, cancer, HIV infection, diabetes, mental illness. We have lived in the White House. We live in institutions and nursing homes. We live in large cities and in rural communities. We work in Congress and we work at McDonald's. Many of us aren't permitted to work at all.

No matter our what our disability is, where we live, or what we do, we all share the common experience of discrimination. And we all share a common dream: to live wherever we choose, to work and achieve whatever career goals we strive toward, to communicate with our neighbors, to travel where we choose, and, like all other Americans, to freely use and enjoy public accommodations in our communities.

The Americans with Disabilities Act is a major step towards achieving our dream of equality. This act was developed by the National Council on the Handicapped, an independent federal agency appointed by President Reagan to investigate the status of disabled Americans. Over the past five years, the Council conducted innumerable hearings and forums across this country and reached the same inescapable conclusions again and again: barriers and discrimination, rather than the inherent physical or mental characteristics of persons with disabilities themselves, are to blame for the staggering unemployment and isolation of these citizens, our nation's largest minority.

The Americans with Disabilities Act proposes a series of protections against discrimination which parallel existing civil rights statutes. In drafting this bill, the Council has drawn also on the successful model used by the federal government in eliminating discrimination on the basis of handicap in federally-funded activities. This vision of the National Council on the Handicapped, that existing civil rights could and should be extended to protect the disabled, has been shaped by the input of hundreds of disabled Americans and parents of disabled children.

As the Council found, unfair discrimination is the daily experience of many of the 43 million Americans with disabilities. Every sphere of life is affected: housing, employment, recreation, transportation; even the ability to operate independently in the commercial sphere, or to vote, or to raise children. Our entire society has been inadvertently structured in a way that unnecessarily denies innumerable opportunities, great and small, to people with disabilities, in ways that are never even noticed by most Americans.

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Simple daily tasks, like visiting the grocery store or the bank, going to a restaurant or a movie, using the telephone to report an emergency, taking the bus to the doctor, or even getting in and out of one's own home, can become monumental tasks or impossible barriers to overcome -- not due to the actual physical and mental conditions of disabled Americans, but due to prejudice, fears, and unnecessary obstacles which have been placed in their path.

Countless numbers of our fellow citizens who are veterans of foreign conflicts, have acquired a disability while defending their country, only to come home to a society that subjects them to discrimination and injustice, a society that shuns them merely because they are disabled. The architectural, communication and transportation barriers they face do not affect them and their families alone. Our entire society bears the economic burdens of this prejudice: dependency is expensive. It increases benefit entitlements and decreases productive capacity sorely needed by the American economy.

As I can tell you from my own experience with epilepsy, employment discrimination is one of the most pervasive problems affecting Americans with disabilities. Jobs are unfairly denied every day to thousands of capable people with epilepsy and other disabilities due to prejudice, stereotypes and groundless myths about our lack of abilities or because we are erroneously perceived to pose dangers to ourselves and others.

For example, I know one woman with epilepsy who was employed for nearly eight years as a secretary for a company. One day she had a seizure at work and was fired, simply because her employer felt that her co-workers should not have to work with someone like her.

Similarly, a young man with multiple sclerosis was fired from his job because he was unable to handwrite his reports even though he was perfectly capable of dictating them. Or, what of the veteran who lost a leg in Vietnam and was denied a job in a factory line even though he was totally able to perform the job?

These stories, sadly, are all true. Yet these individuals, like many other American citizens, have no remedy to challenge the denial of employment. They want to be productive, self-supporting and tax-paying participants in society, but they have been told that they cannot do so, for reasons that are irrational, illogical, and unjust. This bill gives these persons a remedy.

People with disabilities want to work. This has been confirmed by numerous studies, including the 1986 Lou Harris survey which found that two-thirds of the disabled people polled who are not employed said that they wanted to work. One-quarter of these Americans attributed their unemployment to employer discrimination and an additional 28 percent attributed it to transportation barriers.

The full and dramatic reality of this problem has been largely hidden, denied, and explained away. When a program, or a job, or a school, has excluded disabled people, or segregated them in a separate facility, this has been justified through the unchallenged myth of equating disability with inability. When taking stock of the status of unemployment in our society, the staggering level of disabled employment - 66 percent - is not viewed as a solvable problem, it's viewed as an inevitability. You hear things like, "Of course they can't work. They're disabled." This alleged self-truth has gone substantially unchallenged and is one of the most fundamental errors our society has ever made.

Equating disability with inability is false. In employment, for example, numerous studies have shown that employment for the disabled is restricted more by misconceptions, stereotypes, and generalizations about handicaps, unfounded fears about increased costs and decreased productivity, and outright prejudice, than by people's disabilities themselves. Overwhelmingly, the documentation shows that disabled workers equal or outperform non-disabled workers, without increasing insurance benefits or worker's compensation costs. We have allowed our discomfort with the handicapped, and our feelings of hostility toward them to create this gigantic and wasteful injustice.

Society has neglected to challenge itself and its misconceptions about people with disabilities. When people don't see the disabled among our co-workers, or on the bus, or at the sports field, or in a movie theater, most Americans think it's because they can't. It's time to break this myth. The real reason people don't see the disabled among their co-workers, or on the bus, or at the sports field, or in a movie theater is because of barriers and discrimination. Nothing more.

It is barriers and discrimination that have caused an "out of sight, out of mind" situation with disabled people. When housing is inaccessible and unavailable, the disabled have to stay at home, under the care of their families, or live in nursing homes and other institutions, rather than establishing and controlling their own households next door to you and me. When regular transportation is inaccessible, and transit services for the disabled are segregated, you won't see them on your bus or commuter train. When prejudice dictates that the handicapped can be productively employed only in separate sheltered workshops, you won't see too many in your workplace.

The exclusion and segregation of people with disabilities has had an insidious partner: the gloss of good intentions. An atmosphere of charity and concern has cloaked our ill-treatment of disabled people and permeated our excuses for denying them access to the full benefits of the complex fabric of modern American society. The institutions and the token van rides and the overprotective denials of employment have all been provided with the noblest intent.

While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason: they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

It is time to stop the excuses and the veneer of good intentions. We must stop the cycle of separateness which hides the people with disabilities, and creates prejudice, which creates more separateness.

In the past, concerns about cost have been raised as an obstacle to our addressing this problem. Estimates of these costs are inflated. For example, when the implications of Section 504 of the Rehabilitation Act of 1973 were debated, universities and hospitals claimed that non-discrimination was absolutely beyond their financial means. We have now had regulations implementing Section 504 over 10 years. During that time, these institutions have not complained of financial difficulties due to accommodating the disabled.

I believe we will find that in the long run, ending discrimination will actually lower costs to our society as a whole. Maintaining discrimination is

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expensive because discriminatory barriers keep people out of work, lowers our gross national product and our tax revenue and, what's more, swell benefits payments. Government studies have estimated that eliminating employment discrimination in even a narrow spectrum of jobs would add $58 million to annual government revenues. A Department of Transportation study indicated that, with accessible transportation, SSI benefit savings due to increased employment would account for $276 million a year. Statistics indicated that funds generated by eliminating handicap discrimination would return more than three dollars for every dollar spent. We as a nation stand to cash in quite a bit on the integration, and subsequent enhanced productivity, of people with disabilities.

The Americans with Disabilities Act addresses these basic areas: employment, transportation, public accommodations, public services and communication barriers.

In employment, this Act will make it illegal to deny job opportunities to qualified applicants on the basis of handicap. The Act will cover the same range of employment activities as those covered by Title VII of the Civil Rights Act of 1964.

In transportation, the Act will eliminate barriers by requiring new transportation equipment to be accessible to the disabled. This follows a national trend, in which the current federal mandate to provide useable public transportation for the disabled is being done through lift-fitted and otherwise-accessible equipment. The next step, barriers in existing equipment, will be dealt with by allowing phase-in periods. This way, transit systems will slowly become more and more accessible to the disabled without creating a burdensome cost to the transit districts. The bill provides that para-transit (separate, subsidized door-to-door van systems) can and should still be used, but not as a substitute for regular fixed-route service.

In mandating this particular configuration of transportation services, Congress will be affirming the consensus which is being reached in both the disability community and the transit community after a decade of much experimentation in how best to eliminate transportation barriers. An increasing number of cities large and small, including New York, Denver, Seattle, San Francisco, Tacoma, Johnstown, and Champagne-Urbana, have successfully integrated large numbers of disabled people into their entire transit systems. These cities serve as models to the rest of the country, illustrating how to maximize disabled ridership, minimize costs, and work harmoniously with the disability community.

The Act will prohibit discrimination in public accommodations covered by Title II of the 1964 Civil Rights Act. Also, it will prohibit discriminatory activities of state and local governments resulting from ordinances, laws, regulations, or rules. It includes the continued phase-in of closed captioning in television broadcasts, viewable by deaf and hearing-impaired watchers upon purchase of decoder. Such measures will begin to bring down the many barriers that are so debilitating to the disabled on a day-to-day basis.

The Americans with Disabilities Act of 1988 provides the vehicle through which we can address the critical problem of discrimination on the basis of handicap in our country. We must provide disabled citizens the same equality of opportunity which our nation values so highly. We must all work together toward the day when disabled people face no discrimination. I urge all my colleagues to join us in this fight.

Senator **Harkin**. Congressman Coelho just again showed what we know around here to be true, that that testimony that comes from the heart is always the best testimony.

I would like to recognize our distinguished chairman of the Labor and Human Resources Committee, the Senator from Massachusetts, Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

Senator **Kennedy**. Mr. Chairman, just for a moment, because we all want to hear the witnesses, I too want to commend you, Senator Weicker, Major Owens, Congressman Coelho, Congressman Jeffords, for holding these hearings.

I think, as you listen to those who have spoken today, you realize that there probably has not been a family in the country that has not been touched by some form of physical or mental challenge. You have heard some statements today, very moving statements of members of the family. That has been true in the Kennedy family, as well, a sister who is retarded, my own son who has lost a limb to cancer. I bet if you go across this country, there really is not a member of a family or an extended family that has not been touched.

This legislation will become law. I think those that have physical or mental challenge has to take heart by the actions that have been taken very recently in the Congress, with the Fair Housing Act and the Civil Rights Restoration Act. There is a movement and it is alive and it is growing. And it should grow.

This legislation will become law. It will become law not because of the people up here, although all of us want it to become law, but because of you all across this Nation, in the small towns and communities, in the plants and factories all across this Nation, that are really challenging our country to ensure that we are basically going to have an even playing field and we are going to eliminate the barriers that keep people out, so that people can become a real part of the American dream.

I just want to give the assurance to both Senator Harkin, who is the chairman of the Subcommittee on the Handicapped, and Senator Weicker, who has done such a great job in this area as well, that this will be the first order of business when the next Congress meets, assuming that we are all here.

Senator **Harkin**. That is great news, the first order of business next year.

[The prepared statement of Senator Kennedy follows:]

STATEMENT OF SENATOR EDWARD M. KENNEDY
ON S. 2345, THE AMERICANS WITH DISABILITIES ACT

For Immediate Release:
September 27, 1988
CONTACT: Paul Donovan
Robin Buckley
(202) 224-4781

Today marks the first day of hearings by the Senate Subcommittee on the Handicapped on the Americans with Disabilities Act. At the outset, I want to commend Senator Harkin and Senator Weicker for their leadership on this issue, and for their tireless support in working toward a more just society for the disabled and for all Americans.

The 100th Congress has already adopted two landmark bills to protect the rights of the disabled. The Civil Rights Restoration Act, enacted over the veto of the President, provides substantial protections for the handicapped against discrimination. And the Fair Housing Act of 1988 includes for the first time a series of provisions to bring the disabled within its far-reaching protections.

The Americans with Disabilities Act is the essential next step in our ongoing effort to guarantee that the 36 million physically and mentally challenged citizens of our nation enjoy the same fundamental rights as all other Americans. We recognize that enactment of a law does not necessarily end discrimination or prejudice in our society, but it is often the indispensable means of advancing toward that goal.

With the help of medical science and the commitment of growing numbers of concerned citizens in public and private life throughout the country, we are poised on the threshold of a new era of opportunity in our society for millions of fellow citizens who have been unfairly left out. We are beginning to learn that disabled people are not unable. The old barriers of fear and prejudice and ignorance are crumbling, and the Americans with Disabilities Act will speed the day when those ancient attitudes are finally and fully overcome, and disabled Americans enjoy the right to realize their full potential.

In 1973, Congress took the first step in ensuring that the civil rights of millions of Americans with disabilities are protected. Section 504 of the Rehabilitation Act has served as a symbol of equal citizenship for disabled Americans, an incentive for self-advocacy and community education -- and when necessary, a basis for court action. The legislation we are discussing today builds on what we started in 1973 -- it will provide disabled Americans with the same rights already accorded to women and minorities -- the right to be free from discrimination in all its insidious forms.

Finally, the Americans with Disabilities Act will also halt discrimination against individuals suffering from AIDS or who are infected with the AIDS virus. I am delighted that Admiral Watkins is with us today. The report of his Presidential Commission makes clear that discrimination against victims of AIDS is seriously impairing our ability to halt the spread of the AIDS epidemic, and action by Congress is overdue.

I look forward to this hearing, and I commend all those who have worked so hard to develop this legislation. The Americans with Disabilities Act deserves our high priority in Congress, and I intend to do all I can as chairman of the Labor and Human Resources Committee to expedite its enactment.

Senator **Harkin**. I want to recognize my former colleague from the House, an individual I worked very closely with for many years during the House, again an eloquent spokesman for the right of Americans with disabilities, Congressman Jeffords from Vermont.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. **Jeffords**. Thank you very much, Mr. Chairman.

As has been pointed out, individuals with disabilities have been denied for so long, services, jobs, housing, transportation, hotel rooms, a means to communicate, access to Government officials, voting polls, and yes, even restrooms. Such denials have been sustained, systematic and yes, tolerated. No more.

With the introduction of the Americans With Disabilities Act of 1988 and this hearing, we begin in earnest to undo the remaining forms of discrimination against individuals with disabilities.

I wish to commend the National Council on the Handicapped, my esteemed colleagues especially those here today, Mr. Justin Dart, and others for their untiring efforts to document the full range of discrimination experienced by persons with disabilities, thus creating a moral and practical foundation for the expectations reflected in the ADA.

I am looking forward to the testimony of the witnesses here today. They represent a source of guidance and energy, a reflection of potential and determination, and the spirit of cooperation and partnership. They know what discrimination is and how to overcome it. They know what patience is and how to show it. They know what credibility is and how to judge it.

Our family members, our friends and our neighbors with disabilities ask for one simple right, the right to control their own lives, to make choices and to choose. This will not happen until we eliminate all forms of discrimination.

We continue the process of transforming the ADA into law. Its effects should not be judged in terms of cost, but rather realized potential; not be measured in terms of effort, but in increased productivity; and not be characterized as preferential treatment, but as reaffirmed human dignity. Starting today, we must work together to make the ADA a fact, not a gesture; reflected in practice, not promises; and grounded in commitment, not hope.

I was elected in Congress in 1974 and I worked with my colleagues on many acts along these lines, the Education of all Handicapped Children Act, the Rehabilitation Act, especially to extend the protections under section 504 to people seeking services and jobs directly with the Federal Government, the Civil Rights Restoration Act, the Technology Related Assistance Act or Individuals with Disability Act of 1988, and now the ADA.

Although our efforts reflect progress, we know from experience that comprehensive legislation takes great effort. As two of my distinguished figures have recently said, read my lips, the ADA will be enacted.

Thank you. [Applause.]

Senator **Harkin**. I recognize our colleague from California, Congressman Martinez.

STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. **MARTINEZ**. Senator Harkin, thank you very much.

Let me start off by commending you and Congressman Owens for holding this hearing today on discrimination against disabled Americans.

For too long, these 32 million Americans have been ignored and their civil rights have been denied. They represent the largest minority group in this Nation and it is time that the Congress listened and acted on their concerns.

As chairman of the House Subcommittee on Employment Opportunities, I am proud of the great strides that the Rehabilitation Act has made in fighting employment discrimination, but it is not enough. While the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by most employers, no similar protection is provided for disabled workers in the private sector.

I believe the Americans With Disabilities Act would be a giant step in providing that protection. Each and every qualified American should have the right to work to the best of his or her ability and this legislation will ensure that right. Americans willing and capable of work should no longer be judged on their disability but rather on their abilities.

Society and our Nation could benefit greatly from the integration of these individuals, not only into the work force but society as a whole. The ADA will give disabled Americans the right to have a full and productive life, a right which, in today's society, is often denied them.

During the past two Congresses, the Subcommittee on Employment Opportunities has also held hearings on discrimination against disabled Americans. In fact, we had a very eloquent testimony given by the son of Senator Kennedy.

It became evident during those hearings, and I am sure it will become evident today that society and Congress have begun a process of integration, but more needs to be done. I look forward to the testimony of the witnesses today. Senator Harkin, these are the individuals that know firsthand what it is like not to be given a fair and equal chance in the world based not on their ability, but on their disability.

Thank you.

[The prepared statement of Congressman Martinez follows:]

OPENING STATEMENT OF CONGRESSMAN MATTHEW G. MARTINEZ
BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED
AND THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY
SEPTEMBER 27, 1988
216 HART, 10:00 A.M.

SENATOR HARKIN AND CONGRESSMAN OWENS, I WANT TO COMMEND YOU FOR HOLDING THIS HEARING TODAY ON DISCRIMINATION AGAINST DISABLED AMERICANS. FOR TOO LONG, THESE 32 MILLION AMERICANS HAVE BEEN IGNORED AND THEIR CIVIL RIGHTS DENIED. THEY REPRESENT THE LARGEST MINORITY GROUP IN THIS NATION AND IT IS TIME THAT CONGRESS LISTENED AND ACTED ON THEIR CONCERNS.

AS CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, I AM PROUD OF THE GREAT STRIDES THE REHABILITATION ACT HAS MADE IN FIGHTING EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED AMONGST FEDERAL AGENCIES AND CONTRACTORS. HOWEVER, IT HAS NOT BEEN ENOUGH. WHILE THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN BY MOST EMPLOYERS, NO SIMILAR PROTECTION IS PROVIDED FOR DISABLED WORKERS IN THE PRIVATE SECTOR. I BELIEVE THE "AMERICANS WITH DISABILITIES ACT" WOULD BE A GIANT STEP IN PROVIDING THAT PROTECTION.

EACH AND EVERY QUALIFIED AMERICAN SHOULD HAVE THE RIGHT TO WORK TO THE BEST OF HIS OR HER ABILITY AND THIS LEGISLATION WILL ENSURE THAT RIGHT. AMERICANS WILLING AND CAPABLE OF WORK SHOULD NO LONGER BE JUDGED ON THEIR DISABILITY BUT ON THEIR ABILITIES. SOCIETY AND OUR NATION COULD BENEFIT GREATLY FROM INTERGRATING THESE INDIVIDUALS, NOT ONLY INTO THE WORKFORCE, BUT SOCIETY AS A WHOLE. THE ADA WILL GIVE DISABLED AMERICANS THE RIGHT TO HAVE A FULL AND PRODUCTIVE LIFE, A RIGHT WHICH IN TODAY'S SOCIETY IS OFTEN DENIED TO THEM.

DURING THE PAST TWO CONGRESSES, THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES HAS ALSO HELD HEARINGS ON DISCRIMINATION AGAINST DISABLED AMERICANS. WHAT HAS BECOME EVIDENT DURING THOSE HEARINGS, AND I AM SURE WILL BECOME EVIDENT TODAY, IS THAT SOCIETY AND CONGRESS HAVE BEGUN THE PROCESS OF INTERGRATION BUT MORE NEEDS TO BE DONE.

I LOOK FORWARD TO THE TESTIMONY OF THE WITNESSES. THESE ARE THE INDIVIDUALS THAT KNOW FIRST HAND WHAT IT IS LIKE NOT TO BE GIVEN A FAIR AND EQUAL CHANCE IN THE WORLD, BASED NOT ON THEIR ABILITY, BUT ON THEIR DISABILITY.

Senator **Weicker** [presiding]. Congressman, thank you very much. I ask unanimous consent that a statement by Senator Simon of Illinois be included in the record in its entirety.

[The prepared statement of Senator Simon follows:]

PAUL SIMON
ILLINOIS

COMMITTEES
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET

United States Senate
WASHINGTON, DC 20510

STATEMENT OF SENATOR PAUL SIMON
HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY
September 26, 1988

Mr. Chairman, I deeply regret that I will not be able to attend this very important hearing. I would like to welcome the witnesses in person, and particularly welcome Mary Linden, from Morton Grove, Illinois. I will be looking forward to reading the testimony of all of the witnesses.

The topic of this hearing is important not only to the millions of Americans who continue to suffer directly the effects of discrimination, but also to our nation. We all feel the effects and are clearly lessened as a nation when we fail to guarantee the rights and use the abilities of all of our citizens.

A recent article in the magazine Business Week called Americans with disabilities the "last minority." We know from experience that civil rights legislation does not automatically end unfair and unequal treatment of people who have historically been left out of the mainstream. But we have also seen the enormous difference that comprehensive civil rights laws have made in the lives of other American "minorities." We know we can do better -- much better -- in bringing Americans with disabilities into the mainstream of our society -- into the workplace, our communities, our lives. We need the Americans with Disabilities Act to complete the civil rights agenda in this country and to bring equality of opportunity to our "last minority."

I sense we are ready to take the final steps to bring about full equality for Americans with disabilities -- and we will be a far richer nation when we do.

Mr. **Coelho**. Mr. Chairman, can I have unanimous consent that a statement by me be put in the record at the end of my remarks?

Senator **Weicker**. Indeed, a statement by Congressman Coelho will be included in the record at this point in its entirety, or at the conclusion of his statement.

We now go to the first witness, Sandy Parrino of the National Council on the Handicapped. I would like to say that this is a courageous lady. I might add, she represents a courageous group, the entire council, because indeed theirs has not been an easy road in bringing this legislation before us.

They have resisted the importunings of those that were dedicated either to partisanship or philosophy or special interest, and have tried to bring forth a work product that will do the job for the disabled, period. That was the only thing they had in mind.

I want to thank you, Sandy, by way of this introduction. The floor is yours.

STATEMENT OF SANDRA PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON THE HANDICAPPED, WASHINGTON, DC

Ms. **Parrino**. Thank you. Good morning.

My name is Sandra Swift Parrino. I am very honored to lead off testimony about a piece of legislation that is very close to my heart—the Americans With Disabilities Act of 1988.

I am, in private life, a mother with an involvement and commitment to two children born with serious disabilities. I am, in public life, the Chairperson of the National Council on the Handicapped, an independent Federal agency whose Board is comprised of 15 knowledgeable persons with disabilities—and experts on disability service programs. All of us, appointed by the President and confirmed by the Senate.

We are the only Federal agency mandated to address, analyze, and make recommendations on issues of public policy affecting Americans with disabilities. The main thrust of our efforts is toward eliminating barriers which prevent disabled persons from full participation in the mainstream of American life. Barriers, as you will see, that will topple upon passage of the Americans with Disabilities Act which you will hear referred to as ADA.

The National Council on the Handicapped has not been timid in its efforts in both originating and spearheading this legislation. Legislation we first recommended in a report titled "Toward Independence" that was sent to both the President and Congress in 1986.

Legislation we desighed after indepth analysis and study. Legislation that is of clear importance to persons with disabilities and to Federal policy regarding disability programs. Legislation that offers constructive, realistic, and fiscally sound solutions to enhance independence and productivity of people with disabilities. Landmark legislation that is a civil rights, equal opportunity bill for 36 million disabled Americans. Legislation that will, in essence, no longer allow 36 million Americans to be left out of the American dream scenario.

The Americans with Disabilities Act of 1988 is not only important to 36 million citizens with disabilities—it is also—as I will illustrate a bit later—of the highest importance to our Nation. From the quadriplegic as the result of a football injury . . . to the child in a hospital crib from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans—the basic nugget of truth is that—due to discriminatory practices—persons with disabilities continue to suffer from the highest rates of unemployment and poverty than any other group of Americans. Less access to decent schooling—housing—work and transportation than anyone in this country—including noncitizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the Americans With Disabilities Act. On behalf of 36 million citizens, I ask you to keep in mind that for decades disabled people have been waiting. For decades disabled people have seen laws enacted by their elected Representatives that prohibit discrimination for other categories of individuals. For decades, disabled Americans have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group consciousness on the part of disabled Americans, their families, friends and advocates. A consciousness toward mounting political activism.

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities; 36 million Americans, our Nation's largest and no longer silent minority. Ladies and gentlemen, American cannot afford to discard her disabled brothers and sisters.

In "Toward Independence", our 1986 report to Congress, our vision has been to shape responsible legislation by which Federal disincentives and barriers to employment are removed so that disabled Americans can go to work.

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every $1 spent to return a disabled person to work, $18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

ADA seeks to protect disabled citizens against discrimination in such areas as transportation, private sector employment, public accommodations, housing and communications and where appropriate the activities of State and local Government agencies.

America cannot afford to discard her disabled people. The majority of disabled people not working said they want to work. The first Louis Harris poll showed that disabled workers in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers. Disability does not mean incompetence. The perception that disabled people are flawed and incapable of caring for themselves is the result of discriminatory attitudes, not the result of disability.

In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years of age are not working. No one demographic group under 65 has such a small proportion working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

People with disabilities represent America's greatest untapped resource of employables who want to work. As we all know, in America, jobs are a major source of status, dignity, and self-esteem. "What do you do," is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

ADA sweeps into obsolescence those obstacles that limit opportunity, promote discrimination, prevent integration, restrict choice and frustrate self-help for the working aged disabled Americans who are unemployed.

May I remind you, America cannot afford to discard her disabled brothers and sisters. Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us, in the category of a person with a disability.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away with troubling historical echoes. Echoes that must no longer be interpreted by America's disabled citizenry as a life sentence.

Esteemed Members of Congress, in closing, I wish to relay a message from 36 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our Government. For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act must be enacted now.

The vision of equality for 36 million Americans with disabilities now rests with you.

I thank you. [Applause.]

[The prepared statement of Ms. Parrino follows:]

TESTIMONY OF SANDRA SWIFT PARRINO, CHAIRPERSON
NATIONAL COUNCIL ON THE HANDICAPPED

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

I AM HONORED TO LEAD OFF TESTIMONY ABOUT A PIECE OF LEGISLATION THAT IS VERY CLOSE TO MY HEART... THE AMERICANS WITH DISABILITIES ACT OF 1988.

I AM, IN PRIVATE LIFE, A MOTHER WITH AN INVOLVEMENT AND COMMITMENT TO TWO CHILDREN BORN WITH SERIOUS DISABILITIES.

I AM, IN PUBLIC LIFE, THE CHAIRPERSON OF THE NATIONAL COUNCIL ON THE HANDICAPPED. AN INDEPENDENT FEDERAL AGENCY WHOSE BOARD IS COMPRISED OF 15 KNOWLEDGEABLE PERSONS WITH DISABILITIES....AND EXPERTS ON DISABILITY SERVICE PROGRAMS. ALL OF US, APPOINTED BY THE PRESIDENT AND CONFIRMED BY THE SENATE.

WE ARE THE ONLY FEDERAL AGENCY MANDATED TO ADDRESS, ANALYZE AND MAKE RECOMMENDATIONS ON ISSUES OF PUBLIC POLICY AFFECTING AMERICANS WITH DISABILITIES. THE MAIN THRUST OF OUR EFFORTS IS TOWARDS ELIMINATING BARRIERS WHICH PREVENT DISABLED PERSONS FROM FULL PARTICIPATION IN THE MAINSTREAM OF AMERICAN LIFE. BARRIERS, AS YOU WILL SEE, THAT WILL TOPPLE UPON PASSAGE OF THE AMERICANS WITH DISABILITIES ACT WHICH YOU WILL HEAR REFERRED TO AS ADA.

THE NATIONAL COUNCIL ON THE HANDICAPPED HAS NOT BEEN TIMID IN ITS EFFORTS IN BOTH ORIGINATING AND SPEARHEADING THIS LEGISLATION. LEGISLATION WE FIRST RECOMMENDED IN A REPORT TITTLED "TOWARD INDEPENDENCE" THAT WAS SENT TO BOTH THE PRESIDENT AND THE CONGRESS IN 1986.

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES.

LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR 36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO 36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION.

FROM THE QUADRIPLEGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO 75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

ADA IS OF CRITICALLY IMPORTANT BECAUSE ITS PROVISIONS ARE SHAPED TO BREAK THE THE CHAINS THAT BIND MANY OF THESE 36 MILLIONS INTO A BONDAGE OF UNJUST, UNWANTED DEPENDENCY ON FAMILIES, CHARITY AND SOCIAL WELFARE. A DEPENDENCY THAT IS A MAJOR AND TOTALLY UNNECESSARY CONTRIBUTOR TO PUBLIC DEFICITS AND PRIVATE EXPENDITURES.

THESE HEARINGS WILL PROVIDE YOU WITH A VITAL SOURCE OF INFORMATION TO ASSESS THE SCOPE AND MEANING OF THE AMERICANS WITH DISABILITIES ACT. ON BEHALF OF 36 MILLION CITIZENS I ASK YOU TO KEEP IN MIND THAT...FOR DECADES DISABLED PEOPLE HAVE BEEN WAITING.

FOR DECADES THE DISABLED HAVE SEEN LAWS ENACTED BY THEIR ELECTED REPRESENTATIVES THAT PROHIBIT DISCRIMINATION FOR OTHER CATEGORIES OF INDIVIDUALS. FOR DECADES DISABLED AMERICANS HAVE HAD TO LIVE WITH THE REALIZATION THAT THERE ARE NO SIMILARLY EFFECTIVE LAWS TO PROTECT THEM. TODAY, I AM PROUD TO SAY, THERE IS AN EMERGING GROUP-CONSCIOUSNESS ON THE PART OF DISABLED AMERICANS, THEIR FAMILIES, FRIENDS AND ADVOCATES. A CONSCIOUSNESS TOWARD MOUNTING POLITICAL ACTIVISM. MARTIN LUTHER KING HAD A DREAM. WE HAVE A VISION. KING DREAMED OF AN AMERICA WHERE A PERSON WAS JUDGED NOT BY THE COLOR OF HIS SKIN, BUT BY THE NATURE OF HIS CHARACTER. ADA'S VISION IS OF AN AMERICA WHERE PERSONS ARE JUDGED BY THEIR ABILITIES AND NOT ON THE BASIS OF THEIR DISABILITIES.

36 MILLION AMERICANS...OUR NATION'S LARGEST AND NO LONGER SILENT MINORITY. LADIES AND GENTLEMEN, AMERICA CANNOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.

IN SHEPHERDING THIS LEGISLATION FROM RICHLY DESERVED CONCEPT TO STATUTORY CIVIL RIGHTS UMBRELLA...IN "TOWARDS INDEPENDENCE," OUR 1986 REPORT TO CONGRESS, OUR GOAL HAS BEEN TO DEVISE PRACTICAL, RESPONSIBLE LEGISLATION BY WHICH FEDERAL EXPENDITURES RELATING TO DISABILITY ARE MORE PRUDENTLY SPENT WHILE INEFFECTIVENESS AND COUNTER PRODUCTIVITY ARE MINIMIZED.

"IN THE 1984 REPORT TO CONGRESS BY THE REHABILITATION SERVICES ADMINISTRATION, IT WAS INDICATED FOR EVERY $1.00 SPENT TO RETURN A DISABLED PERSON TO WORK, $18.00 WERE RETURNED TO THE TAX BASE UPON THEIR PLACEMENT. THIS WOULD INCLUDE NOT ONLY TAXES PAID BY THE INDIVIDUAL, BUT MONEY SAVED FROM THE REMOVAL OF PUBLIC EXPENDITURES. (SINCE DISABILITY INCREASES WITH AGE, THE COUNCIL'S ROLE IN PREVENTION COULD BE MENTIONED IN THE TESTIMONY)."

ADA SEEKS TO PROTECT DISABLED CITIZENS AGAINST DISCRIMINATION IN AREAS SUCH AS TRANSPORTATION...PRIVATE SECTOR EMPLOYMENT...PUBLIC ACCOMMODATIONS...HOUSING AND COMMUNICATIONS AND WHERE APPROPRIATE THE ACTIVITIES OF STATE AND LOCAL GOVERNMENTS AGENCIES.

IN FACT, BOTH LOUIS HARRIS POLLS SUBSTANTIATED THAT THE TWO WORDS "NOT WORKING" ARE PERHAPS THE TRUEST DEFINITION OF WHAT IT MEANS TO BE DISABLED IN AMERICA TODAY.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED PEOPLE. THE MAJORITY OF DISABLED PEOPLE NOT WORKING SAID THAT THEY WANT TO WORK. THE FIRST LOUIS HARRIS POLL SHOWED THAT DISABLED WORKERS IN THE WORKPLACE ARE RATED "GOOD" TO "EXCELLENT" BY AN OVERWHELMING MAJORITY OF THEIR EMPLOYERS.

DISABILITY DOES NOT MEAN INCOMPETENCE. THE PERCEPTION THAT THE DISABLED ARE FLAWED AND INCAPABLE OF CARING FOR THEMSELVES IS THE RESULT OF

DISCRIMINATORY ATTITUDES...NOT THE RESULT OF DISABILITY. AS LOUIS HARRIS DISCOVERED, PEOPLE WITH DISABILITIES WANT TO BECOME INVOLVED IN THEIR COMMUNITIES AS TAXPAYING CONTRIBUTORS.

IT IS CONTRARY TO SOUND PRINCIPLES OF FISCAL RESPONSIBILITY TO SPEND BILLIONS OF FEDERAL TAX DOLLARS TO RELEGATE PEOPLE WITH DISABILITIES TO POSITIONS OF DEPENDENCY UPON PUBLIC SUPPORT.

MAY I REMIND YOU, PEOPLE WITH DISABILITIES REPRESENT AMERICA'S GREATEST UNTAPPED RESOURCE OF EMPLOYABLES WHO WANT TO WORK.

AS WE ALL KNOW, IN AMERICA JOBS ARE A MAJOR SOURCE OF STATUS, DIGNITY AND SELF-ESTEEM. "WHAT DO YOU DO?" IS A CONVERSATIONAL STAPLE, TO CONTRIBUTE TO SOCIETY AND SUPPORT YOURSELF IS A CHERISHED PRECEPT OF OUR AMERICAN VISION.

ADA SWEEPS INTO OBSOLESCENCE THOSE OBSTACLES THAT LIMIT OPPORTUNITY, PROMOTE DISCRIMINATION, PREVENT INTEGRATION RESTRICT CHOICE AND FRUSTRATE SELF-HELP FOR THE 65 PERCENT OF NON-INSTITUTIONAL WORKING AGE DISABLED AMERICANS WHO ARE UNEMPLOYED.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS. ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

THE GOALS ESPOUSED IN THE AMERICANS WITH DISABILITIES ACT ARE ECONOMICALLY PRACTICAL AS WELL AS MORALLY CORRECT... AND HUMANELY NECESSARY. THE ADA IS LEGISLATION THAT DOES AWAY WITH TROUBLING HISTORICAL ECHOES. ECHOES THAT MUST NO LONGER BE INTERPRETED BY AMERICA'S DISABLED CITIZENRY AS A LIFE SENTENCE.

IN CLOSING I WISH TO RELAY A MESSAGE FROM 36 MILLION DISABLED AMERICANS. FOR DECADES WE HAVE RETAINED A FAITH IN THE REFORMABILITY AND ADAPTABILITY OF OUR GOVERNMENT. FOR DECADES WE HAVE BEEN TOLD TO HAVE PATIENCE. BUT PATIENCE IS NOT AN INEXHAUSTIBLE COMMODITY. PEOPLE WITH DISABILITIES HAVE WAITED LONG ENOUGH. AMERICA HAS WAITED LONG ENOUGH. THE AMERICANS WITH DISABILITIES ACT MUST BE ENACTED NOW. THE HOPES, ASPIRATIONS AND VISIONS OF 36 MILLION AMERICANS WITH DISABILITIES NOW RESTS WITH YOU.

Senator Weicker. Sandy, thank you very much.

To the members of the panel, we have extraordinary individuals who have come to testify on this act. I would hope we could keep our questions down to a minimum, in order that all might have a chance to present their story, possibly each one of us only asking a question or two.

Sandy, very briefly, has a position been stated on this legislation by the Administration?

Ms. Parrino. At this time, this legislation reflects the views of the members of the National Council on the Handicapped. However, both Presidential nominees have endorsed the bill.

Senator Weicker. Last, in your view, is it possible to eliminate discrimination against persons with disabilities without Federal legislation?

Ms. Parrino. I think the testimony answers that question. We have waited. We have been patient. It has not happened. I think that it is necessary to have this legislation.

Personally, I find that the fact that my two children are not protected under the Constitution to be unacceptable to me and it is unacceptable to me that 36 million disabled Americans are not protected under the Constitution. I think we need the legislation.

Senator Weicker. Congressman Owens.

Mr. Owens. Mr. Chairman, I have no questions. I would just like to join Senator Harkin in congratulating Mrs. Parrino on the magnificent job that was done in achieving consensus on this piece of legislation, and to thank her for the many years of hard work it took to get to this point.

Senator Weicker. Congressman Jeffords.

Mr. Jeffords. Just one question. You mention a labor shortage which would indicate a need and if we end discrimination we would have an available resource, a human resource. Is the training that is available under present Federal legislation sufficient to handle the ability to make that resource available?

Ms. Parrino. There is not enough training at the moment. We spend much too much in sustaining dependency and not enough in rehabilitating and training and educating.

Mr. Jeffords. Thank you.

Senator Weicker. Senator Kennedy.

Senator Kennedy. Just one question. We will probably hear a good deal of discussion about the cost of this legislation. I think it has been well documented, and you have certainly referred to the fact, that if this legislation is actually implemented, the possibilities that it gives for those that are physically handicapped and handicapped will be able to be much more productive in terms of the kinds of returns that will come back, not only in human terms but actually in financial terms, will be useful as well.

I wonder if you would just address that briefly, because this will certainly that, on the floor of the Senate, will be asked about. If you could tell us, if we achieve this legislation, whether people will be able to, you believe, be much more productive in terms of being involved in our economy? I am sorry we have to have this kind of a bottom line type of a question, but I think that is what is on people's minds these days, unfortunately.

Ms. **Parrino**. The National Council is seeking to provide Congress with some kind of economic analysis of this bill. We are in the process of finding the appropriate people to do that, because it will be asked in the winter or the spring, we are sure.

There is a lot of data available in some of the areas, and there is also a lot of data that is not available. We are trying to first find what has already been done, what analysis has been done, and then see where the holes are, what has to be looked into.

I think we will be able to put some kind of a picture together by the spring. It is certainly a question that will be asked and has to be answered, but your reference to the labor shortage, we wonder just what this country is going to do as we know there is going to be a tremendous shortage of workers. It is a perfect match that we have here.

I certainly would hope we would not go looking outside the country to fill those jobs when we have a population here who wants to work in all levels of employment. So I think economically, if we look at it that way, it will be a great plus to us.

Senator **Kennedy**. I appreciate that, and I hope you will keep us informed. It seems to me to be reasonably self-evident. If you eliminate these barriers and people are able to participate, that they are going to be productive members of society and they will also be contributing members to the society, in terms of their involvement in our whole economy.

I think whatever material we can have on that will be generally useful. Thank you very much.

Senator **Weicker**. Congressman Coelho.

Mr. **Coelho**. Thank you, Senator.

Sandy, outstanding statement. Very, very nicely done. All of us appreciate your work and your effort and your presentation today.

Only one comment and one question. The comment is, do not have any more patience.

Ms. **Parrino**. I think it has run out, do you not?

Mr. **Coelho**. It is time, I think, to stand up. I think Gallaudet proved that and sort of lit a spark not only with the hearing disabled but with the disability community all over the country. We do not want to be patient anymore. So I hope that you do not believe that anymore. Let us move on.

The question I have is that your statement that it is up to us now to adopt it is correct, but you understand politics. You know that that is not the way it is done. What is really important is the grassroots.

You and I talk about 36 million or 43 million—and we move between those numbers, it is somewhere in there—Americans with disabilities. If 36 million Americans would contact their legislative leaders, and urge upon them the need for this legislation, it would be done. That is a tremendous political force.

I am, as I said, one of those in the disabled community. I do not think we have done enough of educating my colleagues, as to what we want and what we do not want. That is why I say patience is over with.

I would just ask the question what are you doing, in the grassroots, to get all the groups to lobby on the ADA bill? We have 130 sponsors in the House. I do not know how many in the Senate. But that is not enough.

Ms. **Parrino**. To try and answer your question, of course the members of the National Council on the Handicapped are not allowed to lobby, and of course we do not.

Mr. **Coelho**. We understand that. Not that we have got that out of the way.

Ms. **Parrino**. Now that that is out of the way. [Laughter.]

However, we certainly believe in education. The Council is preparing some information on the bill, some questions and answers and an explanation, sort of in plain English, what the bill means. We hope to go, the staff and the members, to all 50 States and to just educate people at a State level, and then encourage them to educate people down to the grassroots level.

We are only 15 members and our staff, we only have 8, so it is a very large job. But we are going to attempt to do it. We will not go out and tell people what they should do regarding their Congressmen, but we will educate them about the bill, tell them what it means, and why it has been written and why it has been introduced.

Mr. **Coelho**. Thank you.

Senator **Weicker**. Congressman Martinez.

Mr. **Martinez**. Thank you, Senator Weicker.

I have a question along the same line that the Senate asked. Maybe it is a little bit different, or maybe the response to his was not exactly what I was looking for. I am interested in what the present administration's reaction was to the Council's report, first. Second, we have, in the Federal sector, a law that is supposed to protect the physically challenged. I am wondering if the Council, in its examination of everything, made a determination of whether that law is effective.

Anytime Congress acts, it holds out great hope to the people that look to benefit from that act of Congress. In many instances the followup or administration of that law does not occur. So those people that held up that hope are very disappointed. In this particular area, I would hate to see these people disappointed because they have worked so hard to see this come about.

So the two questions are one, what was the administration's reaction? Two, in your observations, how is the present law in the Federal sector working?

Ms. **Parrino**. Well, to answer your first question, sitting behind me is our new Executive Director, Paul Hearne. Paul was sworn in to his position in August by the Vice President. At that swearing in, he indicated a need for Federal antidiscrimination legislation, to protect the rights of disabled people, and he mentioned this bill.

So that, I would say, there has been a level of acceptance of this legislation from the administration.

Mr. **Martinez**. The second question regards the law that presently exists in the Federal sector, that protects the physically disabled.

Ms. **Parrino**. Are you referring to 504 regulations?

Mr. **Martinez**. Yes.

Ms. **Parrino**. Is that adequate?

Mr. **Martinez**. Is it working? As with various other things, under our supervision as the oversight subcommittee on Employment Opportunities, we find that the EEOC has not really placed enough emphasis on those things that provide affirmative action in the workplace.

I am wondering if, in this instance, the same thing is occurring, that where we have the law on the books really no one is paying attention to it and the physically disadvantaged continue to be discriminated against?

Ms. **Parrino**. Well, here goes my hometown. I agree with you, not enough is being done. There is not enough compliance.

The village I live in, in Westchester County, Briar Cliff Manor, which does participate in revenue sharing, could not see fit to put a ramp in until just this year. Therefore, people in that town, that village, who wanted to go into the town hall and participate in town meetings or decisions that were being made for the population, disabled were not able—certainly physically disabled people were never able to get into that town hall.

That is just one example that has certainly irritated me for many years. I think it is true in communities all over the country. There has not been enough compliance in the 504 regulations. That is a personal opinion.

In that regard, then, does there need to be something put into the law that has teeth in it to force compliance?

Ms. **Parrino**. I am not an attorney, and I do not know that I can really answer that, but my uneducated guess would be yes, that there has to be something. It is not enough to just have it down on the books because the similar situation with education.

All the classrooms were supposed to have been made accessible, but many schools are not. Many schools do not have the elevators or the accessibilities, to this day, 13 years after the bill was enacted. They still are not accessible and the classrooms are not accessible.

I would say that we would need some more, I guess, teeth you call it.

Senator **Weicker**. Sandy, thank you very much. There will be further questions which can be submitted for the record. Thank you for your effort. Thank you for your courage. It is good to have the endorsement of the National Council. We will take it from here.

Ms. **Parrino**. Thank you.

Senator **Weicker**. Our next witness is Admiral Watkins. Again, in this particular instance, I would like to commend the Admiral for his courage for bringing sanity and common sense and fact to the discussion of AIDS within this Nation.

Before you arrived on the scene with your Commission, we were dealing with ignorance, superstition, fear, and philosophy. You have turned that around. You have my eternal gratitude for turning it around, you and your entire Commission.

Again, I will use that by way of introduction at this hearing. Thank you very much.

STATEMENT OF ADM. JAMES WATKINS, CHAIRPERSON, PRESIDENT'S COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC, WASHINGTON, DC

Mr. WATKINS. Thank you, Senator Weicker.

It is not only a pleasure to come over again to Capitol Hill to talk to important committees, but I am particularly honored that you would ask me to come over to testify on behalf of the Americans With Disabilities Act.

As former chairman of the President's Commission on the HIV Epidemic, I spent most of my time in the last year working with those who have a disability, the HIV infection, and those who, because of their infection, join millions of other Americans with handicaps and disabling conditions.

The Commission held over 45 days of public hearings and site visits in preparation for its report to the President. As I participated in these rigorous and, to my knowledge, unparalleled set of hearings, one point became clear early on, that without strong Federal antidiscrimination laws, to protect those with HIV from discrimination in both the public and private sectors, they would continue to face the unfair discrimination that other disabled persons have always faced.

As I prepared for this testimony today, I went back to read the section of our Commission's report on discrimination. Quite frankly, I felt it impossible to improve upon the words that we labored over for some weeks, so I would like to submit that section of the report in its entirety for my formal written statement.

Now, I would also like to summarize some of its points. Of course, my focus is obviously on AIDS and the HIV infection. Nevertheless, if the HIV epidemic had never occurred and, having experienced a unique opportunity over the past year to witness behaviors of many Americans toward their own neighbors, I would support the Americans With Disabilities Act so that all of our citizens with disabling conditions be guaranteed fair treatment in the workplace, schools, and housing.

My predecessor here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

Throughout our investigation of the spread of HIV in the United States, the Commission was confronted with a problem of discrimination against individuals with HIV seropositivity and all states of HIV infection, including AIDS.

At virtually every commission hearing, witnesses attested to discrimination's occurrence and its serous repercussions for both the individual who experiences it and for this Nation's effort to control the epidemic. Many witnesses indicated that addressing discrimination is the first critical step in the Nation's response to the epidemic.

HIV-related discrimination is impairing this Nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and cooperation of infected individuals or those at risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services that they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the epidemic, and will leave HIV-infected individuals isolated and alone.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings, there is virtually no risk of direct exposure to body fluids which could result in HIV transmission.

Detailed Centers for Disease Control guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those school children who lack control of bodily secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care or associate with such individuals.

As a witness at the Commission's hearings on discrimination explained, individuals infected with HIV face two fights: The fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels, National, State, and local, should speak out against ignorance and injustice, and make clear to the American people that discrimination against those disabled for whatever reasons will not be tolerated. This is the guts of your act.

The National Council on the Handicapped, an independent Federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included the proposal for a comprehensive Federal law of this kind in their January 1988 report to the President.

Their proposal, the Americans With Disabilities Act of 1988, of course, is the focal point of these hearings here today. It is what the Commission believes is the type of comprehensive, disability antidiscrimination legislation which should then serve as a model for all Federal legislation in this area.

I would like to close, Mr. Chairman, with one final comment. As the Commission debated this section of our report, one of the physicians on our panel, Dr. Burton Lee, a distinguished cancer specialist, made the following point. Dr. Lee said that in treating literally tens of thousands of lymphoma patients, even today, these patients faced almost inevitably some sort of discrimination once news of their disease became public.

Dr. Lee strongly supports the ADA because of the incredibly debilitating effects discrimination has on his own patients. He said that such a protection in law, particularly at a cancer patient's most vulnerable moment, can mean the difference between a premature death, or years more of life with family and friends.

Work, a decent place to live, a chance for an education are the essentials of life. Passage of the ADA will ensure that no one will lose these essentials simply because they have a disabling condition.

Thank you, Mr. Chairman, for allowing me to appear before you this morning.

[The prepared statement of Admiral Watkins, with an attachment, follows:]

STATEMENT OF ADMIRAL JAMES WATKINS

GOOD AFTERNOON:

I GREATLY APPRECIATE THE OPPORTUNITY THIS AFTERNOON TO BRIEFLY ADDRESS THE PRIVATE SECTOR LEADERSHIP CONFERENCE ON AIDS. AS YOU KNOW, FROM OCTOBER OF 1987 UNTIL JULY, I WAS THE CHAIRMAN OF THE PRESIDENTIAL COMMISSION ON THE HIV EPIDEMIC, A JOB WHICH REQUIRED MY FULL-TIME ATTENTION. I CAN TRUTHFULLY SAY THAT, HAVING BEEN INVOLVED IN PUBLIC SERVICE FOR THE LAST ___ YEARS, MY ROLE AS CHAIRMAN OF THE COMMISSION WAS THE MOST COMPLICATED AND DIFFICULT OF MY CAREER.

IN RETROSPECT, I SEE THAT THE COMMISSION BEGAN AS MANY AMERICAN INSTITUTIONS ARE STILL OPERATING, IN THE DARK, WITHOUT DIRECTION, THAT IS WITHOUT THE PROPER PLANNING NECESSARY TO DEAL WITH AIDS. AFTER THE COMMISSION CONDUCTED 50 DAYS OF PUBLIC HEARINGS AND SITE VISITS, OUR PERSPECTIVE WAS MUCH DIFFERENT AND WE WERE ABLE TO PUT TOGETHER A FINAL REPORT WHICH HAS BEEN WIDELY PRAISED.

YOU SEE, AFTER YOU'VE DONE YOUR HOMEWORK, THE HIV EPIDEMIC REALLY ISN'T SO HARD. ABOUT FIVE MONTHS INTO OUR

ASSIGNMENT, IT BECAME CLEAR TO ALL THE COMMISSIONERS THAT WE WERE HEARING AN INCREDIBLE AMOUNT OF CONSENSUS FROM OUR WIDE VARIETY OF HUNDREDS OF WITNESSES. THESE WERE PEOPLE FROM ALL WALKS OF LIFE, ALL POINTS OF VIEW. WHILE THEY DIFFERED ON SOME OF THE FINE POINTS OF PUBLIC POLICY, THE GREAT MAJORITY SUPPORTED A COMMON SENSE APPROACH TO DEALING WITH THE HIV EPIDEMIC.

THIS CONSENSUS OF ACTION IS WHAT YOU SEE IN THE COMMISSION'S REPORT--A COMMON SENSE APPROACH. WE TRY, AND I BELIEVE WE SUCCEED, TO SPEAK TO THE BASIC GOODNESS AND FAIRNESS THAT IS THE CENTERPIECE OF AMERICAN LIFE. NOBODY SHOULD GET SPECIAL TREATMENT, AND EVERYONE SHOULD BE TREATED FAIRLY WHEN THEY ARE SICK.

THIS IS MY FIRST PUBLIC APPEARANCE SINCE I LEFT FOR VACATION IN A REMOTE PART OF CANADA IN MID-JULY. BECAUSE I WAS NOT IN WASHINGTON, OR REACHABLE BY PHONE WHEN THE PRESIDENT ISSUED HIS FIRST IN A SERIES OF IMPLEMENTING ANNOUNCEMENTS, I MISSED BEING PART OF THE FIRST WAVE OF REACTION. I WOULD LIKE

TO GIVE YOU MY REACTION TODAY, AS IT IS RELATED TO THE SPECIAL MISSION AMERICAN BUSINESS AND LABOR HAVE IN DEALING WITH THE HIV EPIDEMIC.

AS MANY OF YOU KNOW, THE CENTERPIECE OF THE COMMISSION'S AIDS STRATEGY WAS PASSAGE OF FEDERAL AND STATE ANTIDISCRIMINATION LAWS WHICH CLEARLY STATE THAT THOSE WITH HIV ARE DISABLED AND HAVE A HANDICAPPING CONDITION. SO FAR, MANY STATES HAVE PASSED SUCH LAWS, BUT ACTION ON THE FEDERAL LEVEL HAS BEEN MUCH SLOWER. THE SENATE SUBCOMMITTEE ON THE HANDICAPPED WILL BE HOLDING ITS FIRST DAY OF HEARINGS ON SUCH A LAW ON SEPTEMBER 29TH AND I WILL BE A WITNESS AT THAT HEARING IN STRONG SUPPORT OF THE AMERICANS WITH DISABILITIES ACT. SO FAR, THE HOUSE HAS NOT HELD ANY HEARINGS ON THE ADA BILL, AND SEPARATE LEGISLATION TO EXTEND CIVIL RIGHTS COVERAGE FOR ONLY THOSE WITH HIV WAS DROPPED FROM A HOUSE BILL IN JUNE.

THIS LEGISLATION IS ESSENTIAL AS, AND I QUOTE FROM OUR REPORT, "HIV-RELATED DISCRIMINATION IS IMPAIRING THIS NATION'S ABILITY TO LIMIT THE SPREAD OF THE EPIDEMIC...AS LONG

AS DISCRIMINATION OCCURS...INDIVIDUALS WHO ARE INFECTED WITH HIV WILL BE RELUCTANT TO COME FORWARD FOR TESTING, COUNSELING, AND CARE. PUT YOURSELF IN THE SHOES OF SOMEONE WHO IS AFRAID HE WILL LOSE HIS JOB AND HOME, AND WHO MIGHT HAVE 10 OR 15 YEARS FROM TIME OF INFECTION UNTIL any SYMPTOMS ARE PRESENT. THE COMMISSION FELT THAT THIS PERSON SHOULD BE TREATED LIKE ANYONE ELSE WHO HAS CANCER, HEART DISEASE, DIABETES OR ANY OTHER DISABLING CONDITION. NO SPECIAL TREATMENT, JUST FAIR TREATMENT.

AS YOU CAN SEE, THE CONGRESS HAS NOT GOTTEN VERY FAR IN THIS PROCESS. I INTEND TO WORK WITH MEMBERS OVER THE NEXT YEAR TO MAKE SURE THIS NECESSARY LEGISLATION TO COVER THE RIGHTS OF ALL ILL AND DISABLED PEOPLE IN BOTH THE PUBLIC AND PRIVATE SECTORS IS ENACTED AND SIGNED INTO LAW. BOTH PRESIDENTIAL CANDIDATES HAVE ENDORSED THIS TYPE OF LEGISLATION.

HOWEVER, AS IMPORTANT AS PASSAGE OF A FEDERAL ANTIDISCRIMINATION LAW IS, THE COMMISSION ALSO RECOGNIZED THAT

PASSAGE OF CIVIL RIGHTS LAWS CAN BE A SLOW PROCESS. I QUOTE:

> "THE COMMISSION RECOGNIZES THAT PASSAGE OF MORE COMPREHENSIVE DISABILITY DISCRIMINATION LEGISLATION BY CONGRESS MAY TAKE TIME. THEREFORE, THE COMMISSION BELIEVES THAT IT IS IMPERATIVE FOR THE FEDERAL GOVERNMENT TO TAKE IMMEDIATE STEPS TO INFORM THE PUBLIC REGARDING EXISTING FEDERAL ANTIDISCRIMINATION LAW AND REGARDING THE REMEDIES WHICH ARE AVAILABLE...."

I AM CONCERNED THAT THE DEBATE OF THE LAST TWO MONTHS HAS NOT FOCUSED PROPERLY ON WHAT WAS ACTUALLY IN THE PRESIDENT'S STATEMENT, AND THAT IS AN ENDORSEMENT OF THE OFFICE OF PERSONNEL MANAGEMENT GUIDELINES FOR ALL FEDERAL AGENCIES, BUT ALSO, MOST IMPORTANTLY, AS A STANDARD OF CONDUCT FOR THE NATION.

WE DO NOT HAVE TO WAIT UNTIL THE ADA BILL IS PASSED NEXT YEAR TO USE THE OPM GUIDELINES AS A MODEL FOR ALL AMERICAN BUSINESSES. I URGE EVERYONE HERE TODAY TO GET A COPY OF THE

GUIDELINES AND ENDORSE THEM IN YOUR WORKPLACE. WHEN I FIRST HAD A CHANCE TO REVIEW THEM, I WAS SO IMPRESSED WITH THEIR CLARITY. CONNIE HORNER, THE DIRECTOR OF OPM, HAD PUT INTO WORDS THE COMMON SENSE WE NEED ON THIS ISSUE.

THE ROLE OF AMERICAN BUSINESS AND LABOR IS CENTRAL IN ESTABLISHING FAIR EMPLOYMENT POLICIES AS WELL AS POTENTIALLY BEING THE MAJOR AVENUE OF EDUCATION ON THE HIV EPIDEMIC FOR THE AVERAGE AMERICAN. LET US TAKE THE TRAGEDY OF AIDS AND TURN IT INTO AN OPPORTUNITY TO IMPROVE THE EDUCATION AND HEALTH OF ALL AMERICANS. WHAT THE WORKER LEARNS IN THE WORKPLACE ABOUT THE HIV EPIDEMIC, AS WELL AS HIS OR HER OWN HEALTH, IS TAKEN HOME AND SHARED WITH THE REST OF THE FAMILY. WE MUST NOT MISS THE OPPORTUNITY TO EDUCATE WORKERS ABOUT HOW THEY CAN MAINTAIN A HEALTH LIFESTYLE FOR THEMSELVES AND THEIR FAMILIES.

MANY PEOPLE HAVE ASKED ME WHAT MY GREATEST WORRY IS FOR THE FUTURE WITH THE HIV EPIDEMIC, AND I ALWAYS ANSWER--OUR TEENAGERS, AND THE ROLE OF DRUG ABUSE IN FUTURE SPREAD OF HIV. WITH REGARD TO THE LATTER, IT IS TIME THAT WE COLLECTIVELY

RENOUNCE THE USE OF ILLEGAL DRUGS. WE NEED STRONGER LAW ENFORCEMENT POLICIES THAT REACH NOT ONLY THE STREET MERCHANT IN HARLEM, BUT THE YUPPIE ON WALL STREET. WE NEED A GREATLY EXPANDED TREATMENT SYSTEM, SO THAT ANYONE WHO DESIRES HELP IN KICKING THE HABIT CAN DO SO. PERIOD. ANYONE, ANYTIME, NO MORE SIX MONTH WAITING LISTS.

WITH REGARD TO OUR YOUNG PEOPLE, THE FUTURE OF OUR NATION, WE ARE LEARNING MANY LESSONS FROM THIS EPIDEMIC. WE HAVE SEEN THAT IT IS BETTER, LESS EXPENSIVE, AND FAR MORE HUMANE TO PREVENT A PROBLEM THAN TO CORRECT IT -- AND IF THIS IS TRUE FOR HIV, IT IS EVEN MORE TRUE FOR DRUG ABUSE. WE HAVE SEEN THAT SCIENCE DOES NOT HOLD ALL THE ANSWERS TODAY, AND MAY NOT TOMORROW. WE HAVE SEEN THAT EDUCATION IS OUR GREATEST WEAPON AGAINST THIS EPIDEMIC, AND AGAINST SO MANY OF OUR OTHER PROBLEMS NEEDING SOLUTIONS. AND WE HAVE SEEN THAT WE CANNOT FIND THOSE SOLUTIONS ALONE. ONLY THROUGH THE EFFORTS OF MANY, WORKING TOGETHER, WILL THESE BOULDERS FINALLY BEGIN TO BE ROLLED AWAY.

LET US USE THIS EPIDEMIC AS A CATALYST. LET US SEE IT AS PROVIDING OPPORTUNITIES TO CREATE A BETTER NATION FOR OUR CHILDREN TO INHERIT. LET US ELIMINATE INEQUITIES IN OUR HEALTH CARE DELIVERY SYSTEM; EDUCATE OUR YOUNG PEOPLE ABOUT THEIR OWN HUMAN BIOLOGY; ELIMINATE DISCRIMINATION, AND HARNESS THE GOODNESS ALREADY AT WORK OUT THERE INTO AN UNBEATABLE ARMY AGAINST THIS DISEASE.

YOUR LEADERSHIP IN ACHIEVING THESE GOALS IS ESSENTIAL, AND I APPLAUD ALL THAT MANY OF YOU HAVE ALREADY DONE TO ATTACK AND CONQUER SO MANY OF THESE PROBLEMS. I AM ALSO GRATEFUL THAT YOU ALLOWED ME TO COME BEFORE YOU TODAY TO CHALLENGE YOU CONTINUE TO WORK -- SINGLY AND TOGETHER, WITH GOVERNMENT, AND TO IMPROVE THAT GOVERNMENT WHEN NECESSARY -- TO REMOVE THE MANY OBSTACLES IN THE WAY OF FREE AND HEALTHY LIVES FOR OUR YOUNG PEOPLE.

FINALLY, I WANT TO PAY A SPECIAL TRIBUTE TO THE WORK OF B.J. STILES AND THE NATIONAL LEADERSHIP COALITION ON AIDS. NOT ONLY HAVE THEY PROVEN AN EFFECTIVE NATIONAL ORGANIZATION

ENCOURAGING DEVELOPMENT OF AND OTHER RATIONAL WORKPLACE AND PUBLIC POLICIES, BUT AT OUR DARKEST HOUR LAST OCTOBER, B.J. AND HIS BOARD STEPPED FORWARD TO EXTEND THE HAND OF FRIENDSHIP TO ME AND THE OTHER COMMISSIONERS, AND WISH US WELL IN OUR WORK. IT WAS A GENEROUS GESTURE, AND THE WORKING RELATIONSHIP BETWEEN THE LEADERSHIP COALITION AND THE COMMISSION WAS EXCELLENT THROUGHOUT MY TENURE. I WANTED TO THANK B.J. PUBLICLY TODAY FOR THAT.

THANK YOU.

Admiral
James
Watkins

CHAPTER NINE: LEGAL AND ETHICAL ISSUES

Section I. Discrimination

Throughout our investigation of the spread of HIV in the United States, the Commission has been confronted with the problem of discrimination against individuals with HIV seropositivity and all stages of HIV infection, including AIDS. At virtually every Commission hearing, witnesses have attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this nation's efforts to control the epidemic. Many witnesses have indicated that addressing discrimination is the first critical step in the nation's response to the epidemic.

HIV-related discrimination is impairing this nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing, and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and cooperation of infected individuals or those at high risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

On the other hand, the Commission has also received testimony about situations in which HIV-infected individuals have been treated with compassion and understanding by employers, coworkers, fellow students, and members of their local community. From these contrasting experiences, it is clear that the key to an enlightened and compassionate response is education and the planning and development of HIV programs and policies well in advance of the occurrence of the first case of HIV infection. The Commission believes that every employer, school system, and community should start that education and planning process now.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings there is virtually no risk of the direct exposure to body fluids which could result in HIV transmission. Detailed Centers for Disease Control (CDC) guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those schoolchildren who lack control of their body secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.

It is illegal to discriminate against persons with AIDS in those local jurisdictions with AIDS-specific anti-discrimination statutes, in those states which include AIDS as a protected handicap under their disability anti-discrimination laws, and in programs which receive federal funds. Section 504 of the Rehabilitation Act of 1973 is the federal anti-discrimination statute which prohibits discrimination against otherwise qualified persons with disabilities (including persons subject to a range of AIDS-related discrimination) in any program or activity receiving federal funds.

Nevertheless, complaints of HIV-related discrimination persist and their number is increasing. For example, HIV-related cases handled by the New York City Commission on Human Rights have risen from three in 1983, to more than 300 in 1986, to almost 600 in 1987. Similarly, the Office of Civil Rights which enforces federal disability discrimination law in programs funded by the Department of Health and Human Services reports a rise in complaints related to HIV infection in the past few years. AIDS advocacy groups and civil rights organizations nationwide also are experiencing an increase in HIV-related discrimination cases.

As a witness at the Commission's hearing on discrimination explained, individuals infected with HIV face two fights: the fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

One of the primary causes of discriminatory responses to an individual with HIV infection is fear, based on ignorance or misinformation about the transmission of the virus. We cannot afford to let such ignorance and misinformation persist. Each publicized incidence of discrimination, such as the picketing of a school that has admitted a child with HIV infection, perpetuates this ignorance and sows doubts in the minds of those who hear of it. This undermines current and future HIV education programs as well as rational HIV policies.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels—national, state, and local—should speak out against ignorance and injustice, and make clear to the American people that discrimination against persons with HIV infection will not be tolerated.

Just as our society has taken a definitive stand on discrimination against persons with other handicapping conditions and illnesses—such as cerebral palsy, mental retardation, and cancer—society must take a stand on discrimination against persons with HIV infection. The United States has been an international leader in affirming and promoting the civil rights of persons with disabilities. While much remains to be done, as a nation we can take great pride in the progress we have made in embracing persons with disabilities as a part of the mainstream of society. Persons with HIV infection must be clearly and definitively guaranteed their civil rights and be protected against discrimination just as persons with other disabilities are. Such protection enables the HIV-infected person to become a partner with social institutions in limiting further spread of the infection and supporting effective care-giving systems.

Obstacles to Progress

The Commission has identified the following obstacles to progress in combating discrimination against persons with HIV infection:

- There is not a societal standard or national policy statement clearly and unequivocally stating that discrimination against persons with HIV infection is wrong.
- There is no comprehensive, national legislation clearly prohibiting discrimination against persons with HIV infection as a handicapping condition.
- There is a lack of coordinated leadership from our public and private institutions on the issue of discrimination against persons with HIV infection.
- A patchwork of federal, state, and local laws is both confusing and, ultimately, ineffective in preventing discrimination or providing remedies.
- Enforcement of existing anti-discrimination laws is slow and ineffective.
- Education about transmission of the virus and about the laws banning HIV-related discrimination is insufficient. This results in ignorance, misinformation, acts of discrimination, and, in some persons, an irrational fear of association with those who are HIV-infected.

The Commission believes that removing these obstacles and eliminating HIV-related discrimination will require coordinated action by all Americans—by individuals and organizaered under Section 504. The Commission supports the position that Section 504 coverage applies to persons who are HIV positive yet asymptomatic.

Section 504's prohibition against discrimination extends, however, only to federally funded programs and activities. Thus, large segments of the population in the private sector do not fall within its jurisdiction. There is no existing federal anti-discrimination protection for persons with disabilities facing discrimination in the workplace, housing, or public accommodations which do not receive federal funds.

RECOMMENDATIONS

The Commission believes that federal disability anti-discrimination law should be expanded to cover the private as well as the public sector. Specifically, the Commission recommends:

9-4 Comprehensive federal anti-discrimination legislation which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

The National Council on the Handicapped, an independent federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included a proposal for a comprehensive federal law of this kind in their January 1988 report to the President. Their proposal, the Americans with Disabilities Act of 1988, was recently introduced in the United States Congress. The Commission believes that this type of comprehensive, disability anti-discrimination legislation should serve as a model for federal legislation in this area.

The Commission does not intend for anti-discrimination legislation to invoke affirmative action for persons with HIV infection. In other words, no one would be required to hire an individual with HIV infection based on that status.

The Commission recognizes that particular attention will need to be paid to the impact of such legislation on small employers, as has been done in other civil rights laws. Any disability anti-discrimination law passed should be consistent with, and not go beyond, the reach of existing civil rights laws for other groups such as minorities and women. In carrying out provisions of the new legislation, all persons with disabilities should have access to the same support services as those covered under other comprehensive federal anti-discrimination laws.

The Commission recognizes that passage of more comprehensive disability discrimination legislation by Congress may take time. Therefore, the Commission believes that it is imperative for the federal government to take immediate steps to inform the public regarding existing federal anti-discrimination law and regarding the remedies which are available for those who experience HIV-related discrimination by entities that receive federal financial assistance. Enforcement of existing law must be strengthened.

In 1986, the Department of Justice issued a memorandum which concluded that although federal disability law prohibits discrimination based on the disabling effects of AIDS, discrimination based on fear of contagion was not covered. The absence of any further statement from the Department of Justice has created confusion and uncertainty about its position, particularly since *Arline* rejected the fear of contagion argument. Specifically, the *Arline* decision stated:

> We do not agree with petitioners that, in defining a handicapped individual under Section 504, the contagious effects of a disease can be meaningfully distinguished from the disease's physical effects on a claimant in a case such as this.

To eliminate uncertainty and clarify the applicability of federal disability law to HIV-related conditions, the Commission recommends:

9-5 The Department of Justice, which has been designated to coordinate the enforcement of disability discrimination law for all federal agencies, should issue a follow-up memorandum expressing support for the *Arline* decision and withdrawing its earlier opinion that fear of contagion is not a basis for Section 504 coverage. In addition, the Department of Justice memorandum should take the lead in endorsing lower court rulings by clarifying that persons who are HIV-infected yet asymptomatic, as well as persons with symptomatic HIV infection, are covered by Section 504.

9-6 The Office of Civil Rights within each agency should develop policy guidelines stating that all HIV-infected persons, including those who are asymptomatic, are subject to the jurisdiction of the Office. The agencies should publicize the availability of the services of their Offices of Civil Rights to those who have experienced HIV-related discrimination and should publish their intent to investigate actively all complaints. The agencies should distribute these policy guidelines to all contractors and grantees.

9-7 All agency Offices of Civil Rights should establish a system of aggressive investigation of violations of Section 504 in HIV infection-related cases, including expedited procedures for review of complaints and regular monitoring of those procedures.

9-8 Supplemental funds should be allocated to all agency Offices of Civil Rights to increase staff and resources for the enforcement of Section 504.

State and Local Government Response

In addition to strong federal anti-discrimination legislation, state and local legislation is needed to provide the local administrative procedures and courts as an alternative to federal litigation for enforcement of the rights of the HIV-infected. Local government officials are able to intervene quickly and utilize ongoing relationships in the community for rapid resolution of discrimination complaints. Rapid resolution is needed as the infected individual may well die in the time interval that a typical case is processed.

RECOMMENDATIONS

For state and local governments, the Commission recommends:

9-9 If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services.

9-10 State-sponsored HIV education campaigns should include anti-discrimination components.

9-11 Arbitration, mediation, and accelerated settlement procedures and programs should be developed and utilized to assist in the speedy resolution of HIV-related discrimination complaints. Mediators and arbitrators should be trained to deal with the special circumstances surrounding HIV-related discrimination cases.

Community Response

One of the primary barriers between those infected with HIV and those not infected is the widespread belief that HIV infection is someone else's problem—there is no need to become educated about it. Individuals in large and small communities across the country are discovering that this is not the case, as they have learned to accommodate individuals with HIV infection living in their midst. In those communities which have developed HIV-related policies and guidelines for health care settings, the workplace, and the schools, and had their programs in place before the first case of HIV infection appeared, fears were reduced and individuals with HIV infection have been accepted. In some cases, where community leaders have not educated the community and not developed policies in advance, the result has been discrimination fueled by fear and ignorance, leading to divisiveness in the community and suffering for the family and friends of the infected individual.

To prevent discrimination, the primary tools at the local level are comprehensive, participatory educational programs, advance planning, and preparation. Educational programs about the transmission of the virus, the laws against discrimination, and the reasons for compliance should be developed by employers, school systems, and health care providers. Education should be provided in simple language for the layman and it should come from a person who has the confidence of those being offered the information. Local officials in government, business, public health, schools, and religious and community organizations should assume a leadership role in this effort.

RECOMMENDATIONS

Specifically, the Commission recommends:

9-12 Organizations representing health professionals should adopt a public policy stating that their members have an ethical obligation to treat patients with HIV infection in a non-discriminatory fashion. These organizations should develop education programs for their members which include education on non-discrimination.

9-13 Religious leaders should take an active role in the anti-discrimination education effort with members of their parish or congregation. In addition, religious institutions should develop outreach programs for individuals in their community with HIV infection and should involve the congregation or parish members in volunteer activities.

9-14 Employers should develop an HIV education program for all employees. Education programs to combat discrimination should emphasize two goals: information about transmission to prevent the further spread of HIV infection and education about legal issues—such as how to ensure confidentiality and prevent discrimination. This approach should be used in all workplace settings.

9-15 Employers should have each department or office review and revise policies and procedures in light of medical and legal information related to HIV infection, and, where applicable, interact with the community to further public education about HIV infection. This last step may be most applicable to the public sector.

HIV and the Schools

The Commission has heard testimony about the experiences, both good and bad, of a number of HIV-infected schoolchildren. Important lessons can be learned from those model communities which have policies in place regarding HIV infection in advance of the first case, and have been able to accept the HIV-infected individual in their schools without fear and discrimination. In some school districts, a well-coordinated system of educational programs has produced an enhanced sense of community pride and satisfaction from having worked together to fashion an enlightened, rational policy on HIV infection for the schools. The Commission has been impressed with the courage and compassion which school and public health officials have displayed in planning and preparing for a positive outcome. A number of common principles emerge from the experiences of these model communities. The recommendations in this section should be implemented in conjunction with the school-based education recommendations in the education chapter of this report.

RECOMMENDATIONS

Specifically, the Commission recommends:

9-16 Each school system should establish a board-developed policy, with accompanying guidelines, for dealing with an individual with HIV infection in the school *before* it is confronted with the first case. The Centers for Disease Control or other public health guidelines should be utilized but the policy should be flexible and allow each case to be dealt with on an individual basis, based on medical facts.

9-17 Educational materials about the transmission of the disease and the anti-discrimination laws should be developed and disseminated and, where necessary, explained fully by legal and medical experts. Age-appropriate materials on these topics should be developed for students.

9-18 School officials should identify a decision-making structure to review all HIV policies and procedures and to deal with each individual case. Legal, medical, and public health consultants from the community should be involved.

9-19 Open public meetings should be scheduled, featuring school officials, medical and legal consultants, and community officials, to discuss the board's policies and the rationale for its decisions. School officials must be prepared to educate the entire community, including parents, public officials, clergy, pediatricians, students, and media representatives, about the reasons for the board's decisions. Support and counseling should be offered to employees, parents, or children who are troubled by the board's decision.

9-20 In any communications about specific HIV-infected individuals, the confidentiality of the schoolchild or staff member should be maintained to minimize the opportunity for discriminatory behavior.

9-21 A team should be formed with responsibility for reviewing all aspects of the case on an ongoing basis and monitoring medical or legal developments that might affect school district decisions.

9-22 School officials should actively participate in community education efforts so that they support acceptance of HIV-infected individuals in the schools in a non-discriminatory manner.

9-23 Educational associations should disseminate information to their members on the policies and procedures used by those communities which have accepted an HIV-infected individual in their schools without fear and discrimination.

HIV and Health Care Settings

The Commission has heard testimony that some hospitals and some health care workers in hospitals have been unwilling to care for HIV-infected persons or have provided inappropriate care because of fear. Steps must be taken to eradicate this fear because these institutions are critical sources of care and are leaders in community attitudes.

Over the next five to 10 years, even more community-based health care facilities, such as group homes, nursing homes, hospices, and mental health facilities, will be needed in many communities to care for patients with HIV infection. Long-range planning for these facilities must be undertaken now in order to avoid fearful and discriminatory reactions from the community.

RECOMMENDATIONS

Specifically, the Commission recommends:

9-24 Hospitals and providers of health care to HIV-infected patients should establish a mandatory education program for all hospital employees, including an anti-discrimination component and professional, confidential counseling for all employees. Health care workers need to be reminded about the social context of HIV infection and the need for confidentiality and protection of private medical information.

9-25 Health care providers dealing with patients with HIV should make available a patient care advocate, if one does not yet exist, to regularly contact individuals with HIV, so that patients could confidentially report treatment problems. Health care professionals who have repeated, substantiated complaints made against them, and who resist education, should be formally reprimanded and placed on probation. In general, the Commission feels that remedies such as this should be short-term in nature and could gradually be phased out.

9-26 State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to educate community members to accept facilities and prevent discriminatory responses.

9-27 Those working to educate a community in preparation for acceptance of patients with HIV infection should develop a strategy to prevent discrimination. Some important points to include are: allowing time for education; knowing the legal issues involved; mobilizing political, community, and religious leaders for support; bringing in legal and public health experts; meeting with people who have concerns and listening to their concerns.

Senator **Weicker**. Thank you very much. Before I proceed to questions with Admiral Watkins, those that are in wheelchairs, I would like to get as many as possible up here. This is a tremendous statement by the entire community. I think we have the entire community right in this hearing room. [Applause.]

If you want to just come forward, that will enable more that are in the back to be in a comfortable position, as comfortable as possible during such as this. I think it is terrific that you are all here.

Admiral Watkins, one question that I have is that the words that I hear all over the place are well, we like that Presidential Commission report, but we do not like the antidiscrimination aspect of it. We can take the report, but we do not want that antidiscrimination aspect of it. Have you heard this, also?

Mr. **Watkins**. Yes, I have, Senator Weicker.

Senator **Weicker**. That is what we are contending with here. That is why it is such a privilege to have you here, because it is not just a question of discrimination against AIDS, which is the most recent discrimination, but the decades old discrimination that so many have suffered with here in this room.

I could not help but think, with all the concern for the ritual of the Pledge of Allegiance, how many people think about those last words, indivisible with liberty and justice for all? And justice for all. That is what the Americans with Disabilities Act is all about, justice for all.

So instead of being a ritual, let us make it a reality. [Applause.]

Congressman Owens.

Mr. **Owens**. I have no questions, Admiral, but since you first came to my office for a brief introductory session, I have been quite pleased with the way you have moved in this city and the Nation as a whole, to establish a certain kind of calm and a return to reason on this whole issue. I want to congratulate you on a magnificent job that you have done.

We recently passed legislation related to AIDS on the House level. It may have some shortcomings, but I think that the positive, upbeat nature of that legislation is due primarily to the fact that you established an environment in which we could work; an environment where anybody who was not a reasonable person was isolated. In several votes that we took, we isolated those unreasonable and hysterical people.

I think you are to be congratulated for helping to establish that atmosphere which made possible the passing of the current legislation.

Mr. **Watkins**. Thank you, Congressman Owens.

Senator **Weicker**. Thank you, Congressman. Congressman Jeffords.

Mr. **Jeffords**. Admiral, it is good to see you again. I deeply appreciate the earlier conversation we had on the dynamics of the work force, which put me a little ahead of the curve in understanding, and I appreciate that, and your dedication to public service after work as a tremendous member of our naval establishment.

Congressman Waxman introduced a bill earlier this year, and I joined him on that, on counseling and testing and discrimination. I just want to alert everyone that all we could get out was counseling and testing. The problems of discrimination, the inability to articulate anything which we could get past the House on the floor debate, many of these things indicate that that is going to be the most serious problem that we face when we get to ADA, is how we can work in to ensure the rights of those that have AIDS.

I appreciate very much your very excellent testimony on that. I want to alert my colleagues that it is going to be no easy task and hopefully we will find a rational way to deal with this. Your statements are going to be so helpful in that regard, and I thank you for that.

Mr. **Watkins**. Thank you, Mr. Jeffords.

Senator **Weicker**. There will be further questions for response to the record, more particularly those of the Chairman, Senator Harkin, who I might add, without his help, without his hard driving on this issue, we would not be here today. He is a magnificent chairman.

He has specific questions for you, Admiral Watkins, which I would appreciate your responding for the record.

Mr. **Watkins**. Thank you, Mr. Chairman.

Senator **Weicker**. Thank you very, very much for all you have done for the Nation. Thank you. [Applause.]

Now we have a panel of witnesses, Mary Linden from Morton Grove, IL; Dan Piper from Ankeny, IA, accompanied by his mother, Sylvia; Jade Calegory from Corona Del Mar, CA; and Lakisha Griffin, from Talladega, AL.

I think that we will go in order of how I called the witnesses. Please be relaxed. You are among friends, both in front and behind you. I think we want, and America wants, to hear your story. Please proceed. Mary, you are the first witness.

STATEMENTS OF MARY LINDEN, MORTON GROVE, IL; DAN PIPER, ANKENY, IA, ACCOMPANIED BY SYLVIA PIPER, ANKENY, IA; JADE CALEGORY, CORONA DEL MAR, CA; AND LAKISHA GRIFFIN, ALABAMA SCHOOL FOR THE BLIND, TALLADEGA, AL

Ms. **Linden**. I am deeply honored to be asked to speak before the committee. The Americans with Disabilities Act is the greatest act ever passed in the 20th century, I believe, sir.

You see before you a woman who, until 1987, did not even believe that she could help with anything or even change her own outlook. My father had always chosen my path, before his death in 1964. There was no accessible housing for him to use for me, so he put both my mother and myself in a retirement home. Upon her death, I moved to their adjacent nursing home. His access still provides for my care.

His words, "As long as I am paying for your keep, you take my orders" still go through my mind every time new challenges offer themselves.

At 7 years of age, I entered the Jesse Spalding School for the Crippled, a venerable institution of the Chicago school system, a segregated institution of the Chicago school system which is still in operation today. I was there and they never even taught me to write. I learned to print after, I taught myself to print after I finished high school, with a class rank of 9 out of a class of 45, in 1951.

No career plans or educational plans were made for me because the school and my parents thought I was too disabled to compete. I have been after my education for 20 years. I got most of it after transportation became accessible, after a fashion that is. It is not. I have got 61 hours of credit.

But we cannot get from Morton Grove to Northeastern University because the two transportation organizations will not unite, so discrimination still exists. I want my 4 year degree so that I can go and have Executive Director Jim DeJong of the Coalition for Citizens with Disabilities [CCDI] in Illinois, for the most precious thing in the world, a paying job.

I beg of you to pass this act, so that other children will not have to go through what I went through, will not be stared at, will not be limited as to how many times they can see things. It will not be once every 6 months that we get to go shopping. If we pass it, we can go stare at the glass windows any time we want to.

The youngsters here will have much more chance than I did, but they should have a chance to work and to contribute as much as they can.

I thank you.

[The prepared statement of Ms. Linden follows:]

Testimony of Mary Ella Linden
before the
Senate SubCommittee on the Handicapped
September 27, 1988

on the
Americans with Disabilities Act (ADA)

Ladies and Gentlemen, I am deeply honored to speak before you in support of the Americans with Disabilities Act of 1988. This legislation is very much needed, not only for the provisions it contains, but also for the principle it embodies: freedom from discrimination on the basis of a disability which will give us the opportunity to participate in American society as equal members, as fully human beings.

When the Act becomes law, people with disabilities will have several accepted, legal, legitimate channels through which to air their needs and grievances. There will no longer be a necessity for those demonstrations which the noninvolved world may find so distasteful. Freer access to job opportunities will allow people with disabilities to be seen as human beings with the same needs, drives, and desires as the nonimpaired in the workplace. Perhaps people will learn not to stare so hard, too.

You see before you a woman who did not learn until August 10, 1987, that she had the strength to help with anything or to change her own outlook. My father had always chosen my path until his death in 1964. There was no alternative housing situation for my father to use for me after his death, but a nursing home. And so, at the age of 34, I was placed in a retirement home with my mother upon his death. And upon her death I was placed in the adjacent nursing home. His estate still provides for my care. His words, "As long as I'm paying the bills, you take my orders", have echoed through my mind whenever new challenges have offered themselves.

I was born in Chicago in 1930, attended segregated public schools, and graduated from high school in 1950 with a class rank of ninth out of forty five. But no plans were made for me for a career or for higher education, because I was considered too "crippled" to compete -- by both the school and my parents. In fact, the school never even took the time to teach me to write! I taught myself to print in 1951 -- after I had graduated from the public school system. However, I can still neither read nor write in cursive. It is very embarrassing to have to ask someone to read a letter or a professor's comments. The effects of the school's failure to teach me are still evident today. Fortunately I had been taught to use the typewriter by a very creative and resourceful aunt. This skill has enabled me to obtain sixty-one hours of college credit. But I am getting ahead of myself.

Both of my parents were children of Swedish immigrants -- eager to succeed and to be "American". They believed the doctors who made surgical adjustments on my leg and heel chords in successive operations between the ages of 18 months and three years. I spent most of that time in the hospital. When I was six years old, a specialist told my parents that the doctors had cut too much and that I would never be able to walk. Nowadays a malpractice suit might have been brought against the surgeons or even the doctor who delivered me, but not in the 1950s and certainly not by my parents!

When I was seven years old I entered the Jesse Spalding School for the Crippled, a venerable institution even then of the Chicago public school system which is still in existence today. I always attended segregated schools, rode to and from school in a cab (paid for by the school system) and had little or none of the usual childhood activities, especially those involving socialization. As an only child, I had no sibling to play with, to interact with, to learn from, or just to be with. The few school activities that did occur, my parents did not encourage me to attend. And shopping expeditions -- which all children love -- were not often possible. Twice a year I went to the dentist, went shopping and to a restaurant. Otherwise I saw little of the "outside world" and they saw little of me, as was the custom. The accessibility of public accommodations, especially in public meeting places, will open the doors for all people with disabilities and the general public will finally begin to see us as we are and learn not to stare, cringe, or otherwise react to our mere presence among them. But, back to school, the teachers in the sight saving class were unable to show a pupil with one usable hand how to form the letters of the alphabet. The embarrassment of trying to write on the blackboard in front of the other students who could write is something I still dread to remember. After the teachers had declared me unable to acquire writing skills, my patient aunt taught me how to use a typewriter during my tenth summer. A lack of training in activities of daily living skills meant that I had to learn them on my own.

The years from my graduation from high school in 1951 until 1987 are one big blur of discrimination. In 1951 I studied history by a correspondence course. Each of the two courses took two years to finish because I had not learned correct study habits in the public school system. Over those many years I have managed to acquire sixty-one hours of college credit, much of it when accessible public transportation finally became available through the Rail Corridor Access System. The regional transit authority provides a lift equipped bus that will travel along the same route as the suburban train system. However, at this time I am unable to enroll in a four year college and complete my degree because of the inability of the transit systems to cooperate within the same regional authority! I want to complete my degree so that I can go to Director Jim DeJong of the Coalition of Citizens with Disabilities in Illinois and ask him for the most precious thing in the world, a paying job! More than anything else I want to devote the rest of my life to the Coalition and its work on behalf of people with disabilities.

I beg you to pass this bill. Let each of us make as tangible a contribution to American society as we can. The ADA will make things possible for today's children with disabilities that I never even dreamed were possible for me. It is deeply needed for many reasons, chief among these is that it will show people with disabilities, as well as the whole community, that we are entitled to become full human beings, participating in our community. No longer will a person need to grow up without knowing how to write because teachers did not take the time to show them how to form their letters. The increased transportation services demanded under ADA will make possible much greater integration of the whole community. There will be no cases like mine where the disability alone determines where we live and what we do. God only knows how many contributions society has missed because there were no provisions for the disabled to move about freely and to determine their own lives. I pray that the Americans with Disabilities Act will be passed as soon as possible so that we may become another "melted" minority. Thank you very much for your patience and for this opportunity to speak today.

Senator WEICKER. Mary, I thank you. That is courage and optimism. Just great. Just great.

Our next witness is Jade Calegory from Corona Del Mar. Jade, nice to have you with us.

Mr. CALEGORY. Thanks.

Hi. My name is Jade Calegory. I am 12 years old and I go to Corona Del Mar High School, CDM for short, in California. I am in the seventh grade and I just started this new school last week. I have been mainstreamed since the second grade.

You see, I was born with spina bifida and I have had lots of operations. I started kindergarten on a gurney and had to go to a separate school. But now that I am OK enough, I go to a regular school. So I wanted to thank you all for passing that law, 94-142, so I can go to a school with all of my friends.

CDM is my third regular school. When I was a little kid, I got called names and was teased a lot because of my disability. I know now that it was just because those kids did not understand, but the kids at my new school are smart enough to know that I am not different because of my disability.

But still, sometimes when I meet new people, I wish they would talk to me first, before they ask what is wrong with me, or what happened to me. It makes me feel like my wheelchair is more important than I am.

Anyway, I was born in 1976, 200 years after the Constitution promised freedom and independence for all of us, no matter what. Thanks to you, and the people who sat in those seats before you, I am lucky to grow up in a world that is different than when you folks were kids. Thanks to you, people are not separated as much by their age, religion, color of their skin, disability, whether they are men or women, stuff like that. Things are getting better, but it sure does take a long time.

Even though some things have gotten better, there is more that can and should be done. It is kind of like my grades in school. They are good, but I know that if I work harder, they can get even better. [Applause.]

I guess that is why I am here today, not because America's 36 million citizens are physically challenged, but because we are also politically challenged.

Although there are over 4.5 million other kids with disabilities, there are only a few of us who have the chance to work and pay taxes. I guess I am luckier than a lot of other kids with disabilities, I work as an actor.

My movie, "Mac and Me" is out right now. Maybe you have seen it. I like it because it shows that kids with disabilities are not any different and can do the same things as other kids without disabilities, if given a chance. It is the first movie to star a kid with a disability, and it is a great family film full of adventures. I even got to do some of my own stunts.

I also think "Mac and Me" is terrific because it shows a kid with a disability giving help instead of just getting help, and nobody tries to cure me, or take away my disability by the end of the movie. [Applause.]

That gives people the idea that it is okay to be disabled and just be accepted for who you are. I hope there will be more non-disabled movie roles for disabled actors. We could be anybody, because after all we are, in real life.

R.J. Louis, who produced "Mac and Me", auditioned only disabled kids for the role. He knew disabled kids could be good actors. He gave us a chance.

At least one-half million dollars from "Mac and Me" is going to the Ronald McDonald Children's Charities to help kids with cancer. McDonald's is a good friend to the disability community. McJobs helps mentally retarded people train for a job. McDonald's has made seven TV commercials with disabled actors and was the first to have braille menus for blind customers.

McDonald's is a great company. They are a good example of how a big company should help people with disabilities become more independent. But if other companies cannot learn from McDonald's, then this American With Disabilities Act can teach them that 36 million Americans with disabilities are an important part of this world, too.

Orion Pictures wanted to advertise those theaters showing "Mac and Me" that were accessible to people using wheelchairs, but the theater owners would not let them. Here is this great family movie and a lot of people from the disability community do not even know if they can get into the theater to see it. I do not think that is fair.

I learned in my school that you are the Congress and that you have the power and the responsibility to change the laws that make life better for everyone. TV and movies have the power and responsibility to change the attitudes that also makes life better for those of us with disabilities. Without new laws like this one, and new attitudes, 36 million of America's citizens will be stuck without equal rights, and that is not fair.

Aside from acting, I like racing in my wheelchair. I have won 5K and 10K races. After my mom and I go jogging on the beach back in California, we sometimes take the bus back home, or at least we try to. Most of the buses do not have lifts on them. Some of the drivers are very rude and get mad if I want to take the bus. Can you believe that?

I work and part of my taxes pay for public buses and then they get mad just because I am using a wheelchair. I do not think that is fair or right. I am important, too.

If I really have to, I could get out of my wheelchair and climb up the stairs, but I do not think I should have to. Maybe another person using a wheelchair is trying to go to work or school and they should not have to crawl up the stairs and get dirty. Or maybe they cannot even get out of their wheelchair by themselves.

Anyway, I was thinking, if all of the buses had lifts on them, it would be better for all of us. It is hard for people to feel good about themselves if they have to crawl up the stairs of a bus, or if the driver passes by without stopping. They could be late to work or school and that is not even their fault.

I guess my teacher was right about history repeating itself. I learned in school that black people had problems with buses, too. They had to sit in the back of the bus, but some of us with disabilities cannot even get on the bus at all. Black people had to use separate drinking fountains and those of us using wheelchairs cannot even reach some drinking fountains. We get thirsty, too.

Black people had to go to separate theaters, schools, restaurants, and some of us have to, also. That is not because we want to, but because we cannot get in. That means that we do not have a choice. I think that everybody should be able to have choices, do you not?

In "Mac and Me", my family moves from Chicago to Los Angeles, and as we talk about the new house, we talk about lowered counters, no stairs, and wide hallways. I am excited that Congress has already dealt with things like accessible housing in passing the Fair Housing Act. That is neat. Thanks.

Because of "Mac and Me", I have been traveling around the country and I noticed that Chicago and New York are harder to get around. There are not as many cuts in the curbs, and the bathrooms in the hotels are not made for those of us using wheelchairs. I hope that you will help us make this world more open to people with disabilities.

You can help us make that happen. We have a right to have a world where people do not build houses and schools with steps and no ramps, buses without lifts, curbs without cuts, TV and movies without captions. I am not old enough to vote yet, but if I were, I would vote for this bill. I am sure that some of the people from your States and hometowns who voted for you were disabled. They would vote for this bill, too.

This is our future and just like Martin Luther King 25 years ago, we have a dream, too. The Americans with Disabilities Act of 1988 can help to make that dream a reality. Thanks for listening and helping us with our political challenge to make this world a better place to live for all of us with disabilities. [Applause.]

Senator **Harkin** [presiding]. Thank you very much.

Bobby Silverstein, who a lot of you know here, our staff director, saw the movie last weekend. I have two young kids and this weekend I am home, so I get to go see it this weekend. Now I really want to see it.

I apologize to many of you for having been gone for a short period of time, especially those who have testified. As so often happens around here, things conflict. I am on the Appropriations Committee and we had to wrap up a certain item that I was involved in, so I apologize for having been gone for a small amount of time.

I also want to do two more things. I want to recognize a group of individuals, citizens, who have come down here from New Jersey. I understand they all got on the train this morning and came down here, a group of about 40 or more citizens, some of whom use chairs. Over 100, 170.

Raise your hands. All of those of you who came down on that train this morning. Look at that.

[A show of hands.] [Applause.]

I welcome you here and we really thank you for taking the time and the energy to come down to this important hearing.

Second, I do not know what your time element is right here, but I want to publicly say thank you to Senator Weicker for his many years of championing the cause of many Americans, not just those with disabilities, but those who perhaps find themselves at a disadvantage one way or another, and fighting for the underdog. I know of no more eloquent nor determined individual in the entire Congress than Senator Weicker, in what I call fighting for the underdog and not the topdog.

I just want to publicly say thank you for your many years of service and thank you for chairing this subcommittee before I took over, and also for you and your staff's work in really making this subcommittee work well and getting this legislation through. He really deserves our thanks. [Applause.]

Now I would like to turn to two individuals that I hold in very high esteem, Dan Piper and his mother, Sylvia, from Ankeny, IA.

I want you to know, Dan, that I often use you as an example when I go around the country, talking about what early intervention can do. Dan, to me, represents a prime example of why we must push very hard on early intervention. I think you will shortly see what I mean.

We welcome you here, Dan, and welcome your mother, Sylvia. Please proceed as you so desire.

Ms. Piper. OK. Dan, how old are you?

Mr. Piper. I am 17.

Ms. Piper. What is your address?

Mr. Piper. 406 N.E. Sherman Drive, Ankeny, Iowa.

Ms. Piper. Dan, you attend Ankeny High School. Do you have friends at Ankeny High School?

Mr. Piper. Yes. I have Jeff Bachman, Cory Heagle, Jayme Martin, Chris Piper, Aaron Baugher, Melissa Berry and Melissa Berry is a nice girl.

Ms. Piper. That is Dan's girlfriend and he is also mentioning his brother. It is interesting to note, he considers him a friend today.

Dan, have you had any jobs?

Mr. Piper. Yes. I work at a job. I work at Parkview Junior High.

Ms. Piper. Where else have you worked?

Mr. Piper. I worked at Walmart, Hardee's, Dillows other stuff.

Ms. Piper. When you are an adult, and you are not going to school anymore, do you want to work?

Mr. Piper. Yes.

Ms. Piper. Where would you like to work when you are an adult, and earn some money?

Mr. Piper. I want to earn money in a video store.

Ms. Piper. Dan, where would you like to live?

Mr. Piper. I want to live in an apartment, number 3999.

Ms. Piper. Where would the apartment be?

Mr. Piper. Des Moines.

Ms. Piper. That is interesting. Dan's father and I are kind of gearing his adult life in Ankeny, but he is obviously choosing otherwise.

I would like to share with you and do appreciate the opportunity. At the time of Dan's birth in 1979, his father and I were advised by the attending physician and pediatrician to place Dan in an institution. It was a very difficult time for his father and I and the grief overrode logical decision making.

Dan's development was described as hopeless. His dad and I rejected this recommendation, and Dan has been living at home with his family since his birth. I might mention here that his birthday is

Sunday, and that is a really important moment to him. He will be turning 18, age of majority.

Dan received services through the Child Study Center at 6 months of age. Our area education agency provided an in-home teacher until age 4, when Dan was enrolled in a segregated preschool program in Des Moines. His integrated educational experience began at 8 years of age until the present.

Dan, despite an IQ of 39, is a typical teenager who has just entered his fourth year of quality integrated special education in the Ankeny School District, which is his home community. This was only achieved through intense advocacy efforts by his father and me, coupled with representatives from ARC/Iowa, the Association for Retarded Citizens.

In Ankeny, Dan finally has had the opportunity to form friendships with his nondisabled peers who live in his community. He serves as manager for the football team. He was elected as his regular ed homeroom representative for the Pep Club. He attends all school and community functions. Dan participates in music, art, physical education, industrial arts, and home economics in regular ed classrooms with his nondisabled peers.

Since Dan is now rapidly approaching the end of his school years, the major thrust of his educational experience is onsite vocational training within cooperative businesses in Ankeny.

Positive relationships with regular education high school students resulted in Dan's favorite activity, The Greasers, a lip sync group of high school students featuring Dan as lead performer. The group makes appearances at various functions within the Des Moines area. This is an ideal opportunity for a young man who has speech problems to express himself with the arts.

Dan, a young man with Down Syndrome, is considered medically fragile. He is dependent upon insulin and a rigid diet to respond to his diabetic condition. Dan has learned to administer his own injections in spite of the doubts held by the adults in his life, and his parents are included as doubters.

Transition into adulthood holds many fears for Dan's father, his brothers Larry and Chris, and me. Dan can work and can live independently in the community with services, but how many doors will be closed to employment and community living when his parents are no longer around to break down those barriers?

Our family has served as effective advocates for Dan. Many children, with whom I have contact, do not have the luxury of consistent support. The reality is that, while our advocacy has proven successful, we will soon face the private sector where there are no assurances.

We have invested in Dan's future. The State of Iowa has invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. We fear that he will be denied employment based on disability rather than capability. He has already encountered discrimination with employment.

Dan indicates that he chooses to live in an apartment, of course in Des Moines as opposed to our choice in Ankeny. Will the landlord decide, because Dan has mental retardation, that he is incapable of independent living? Will he be denied access to transportation? Will restaurants refuse service? Will hotels refuse accommodations?

Senators and Representatives, are we going to allow this investment of time, energy and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21? Over a decade ago, the U.S. Congress enacted Public Law 94-142, which guaranteed Dan the right to special education, and 504 to address disabilities in the public sector. It is now time to expand handicapped antidiscrimination to the private sector so that Dan's and our visions for his adult life and the lives of many others can finally become a reality.

We implore you to enact the Americans With Disabilities Act as quickly as possible. Thank you. [Applause.]

Senator HARKIN. We are going to hold the questions until we finish the panel, but I just say that I saw Dan this summer at the fair grounds. Jade, you better look out, he is coming.

Our last witness is Lakisha Griffin from the Alabama School for the Blind in Talladega, AL. Lakisha will describe her background. She's had no schooling until recently. Her positive experience at her current school, where she is an A student, and her hopes for the future.

Lakisha, I hope I pronounced your first name correctly. We welcome you here and you are among friends. Please proceed to tell us about your experiences and what you would like us to know about this bill.

Ms. GRIFFIN. Good morning, Mr. Chairman. My name is Lakisha Griffin from Lafayette, AL. I am 14 years old and a seventh grader at the Alabama School for the Deaf and Blind in Talladega, AL. With me today is Ms. Dot Nelson, who is a house parent at my school.

I am glad to talk with you today regarding the need for the Americans with Disabilities Act. I understand that this proposed law would protect blind and other disabled people from being treated badly because of our handicap. Discrimination is a big word, but I can tell you that it is real, and I hope Congress will do something about it.

I am the youngest of six children. Until 2 years ago, I was educated at home by my two older sisters. Lafayette is a small rural town in Alabama, and my family did not know much about opportunities for blind people like me. All of my friends at home were sighted. Sometimes the other kids would not want to play with me, and sometimes even their parents acted sort of funny toward me.

I am not sure why this happened, except that many people sometimes do not like people who are different.

My life changed a lot in 1986, when I enrolled at the Alabama School for the Deaf and Blind in Talladega. I made many new friends, both blind and sighted, and I have been on both the A and B honor rolls. I also learned braille at the Alabama School, and that has opened up a new world of knowledge for me. I also like math and English.

When I grow up, I want to go to college to become a teacher. I want to teach braille to other blind people, since the knowledge of braille has been so useful to me.

I know that I can become a braille teacher if I study hard. My parents have worked hard in the textile mill, and I know that I must also work hard to get ahead in life. I hope to be the first person in my family to go to college. I am worried, however, that people will treat me differently because I am blind, black, and female. Some people will think that I cannot be a teacher, but I know I can.

I do not need sympathy. I do not need prejudice. I do need a fair chance to get a job and live independently. Discrimination against blind and other disabled people must be eliminated, and the Americans With Disabilities Act will help that happen. People pay attention when it is the law.

Please pass the Americans with Disabilities Act now so that I and other young people can look forward to a fair chance tomorrow.

Thank you. [Applause.]

Senator HARKIN. I think for the benefit of those who are sitting back there in the back, Lakisha went through that whole thing from her memory. That is really brilliant.

Well, you are just all outstanding. What can I say? You are tremendously outstanding, every one of you.

I would recognize, if you want to, Senator Weicker for any questions or comments you might have for the panel.

Senator WEICKER. I have no questions at all. I cannot say anything that will better express to America what needs to be done and what each of our panelists has stated. I am so proud of you. I really am.

Senator HARKIN. Congressman Owens.

Mr. OWENS. I have no questions. I want to just congratulate and thank the witnesses. Your being here will help us a great deal in the passage of this legislation. Thank you very much.

Senator HARKIN. Congressman Jeffords.

Mr. JEFFORDS. I just have one question. One of the most controversial aspects of 94-142 was the mainstreaming aspect. I wondered if you could give us some reflections on the reaction to the mainstreaming and whether it has improved, from your observations, as far as the acceptability in the schools, since the initiation of the 94-142 from your own history? Jade.

Mr. CALEGORY. You mean, like is it easy to get into the school?

Mr. JEFFORDS. How are the young people reacting, perhaps from your observations not only to yourself, but other disabled that might have come into your school since the time you started?

Mr. CALEGORY. How did the young people react to me?

Mr. JEFFORDS. Yes, and others that you have observed? And has it improved over the course of time?

Mr. CALEGORY. In junior high and in my new school, they do not treat me different or anything. They just treat me like I am one of them.

Mr. JEFFORDS. Did you observe any change in the other schools that you were in, over the course of time, or were you still kind of treated different?

Mr. CALEGORY. Any other of my schools, was I treated differently?

Mr. JEFFORDS. Yes.

Mr. CALEGORY. I think so. I was a little bit teased, like I said in my speech, that I was teased because of my disability and just stuff like that, in some of my elementary schools. But the teachers were good about it, and stuff like that. It was just the kids did not understand.

I am with the Easter Seals now and I think what we are trying to do is educate them so they will not tease kids with disabilities, so they will not tease them anymore, so they know what is going on and they can make friends with them.

Mr. JEFFORDS. Thank you.

Senator HARKIN. Thank you. I just have a couple of questions, maybe just to further elaborate on a couple of things, and why this bill is so necessary.

Mary, I am sorry I missed your testimony. However, I have read it. You have really had a rough time. What I would like to ask you is you are now 58 years young?

Ms. LINDEN. Yes, I just turned.

Senator HARKIN. How would your life be different today?

Ms. LINDEN. I think I would be a 30-year veteran of the Chicago school system, or one from the suburbs, because my family, my mother, my father and all my aunts, were teachers. Of course, you follow in your family's profession. By now I would be worried about my retirement.

I think I would have been in one of the teacher's union because I love politics, but I do not know. That is about it.

If the transportation were better, I would right now be too busy to come here because I would be working for my degree at Northeastern, because I want to go up and get my job. And Mr. DeJong needs a fully educated woman, not a half one. That is where I would be right now.

Senator HARKIN. So I guess, Mary, what you are saying is that not only will future generations benefit from this bill, but you will, also?

Ms. LINDEN. Oh, yes, sir. The day the bill is passed, the very day that you gentlemen have fixed it up so they can use it, my attorney will put a lawsuit through the Federal courts to sue the RTA and the CTA for whatever I have to.

Senator HARKIN. I like your attitude.

Ms. LINDEN. I will get my education, I swear. I would intend to sue them, because there is no reason for this. They have a transit authority and it provides provisions for handicapped people in the city of Chicago and the suburbs, but there is no way in the world that we can get into the city of Chicago or out of it.

And would you believe we have to be home at seven o'clock at night? My gosh, the shows do not even start until 8:30. [Applause.]

Senator HARKIN. Mary, I just had a letter here.

> Mr. Chairman, I hope you will express my deep regret for missing the hearing this morning. I am particularly sorry not to be able to welcome Mary Linden, the witness from Illinois. I had the opportunity to meet her yesterday, and I know the committee will benefit from her testimony.
>
> The subject of this hearing is important, not just for Americans with disabilities, but to all Americans. I look forward to reading the testimony of all the witnesses. Thank you very much. Senator Paul Simon from Illinois.

He could not be here, but you saw him yesterday, right?

Ms. Linden. Yes, we did and I thank him very, very much.

Senator Harkin. Jade, do you see the day coming when you will get a role that will be advertised as child actor and not as child actor with disability?

Mr. Calegory. Right now my mom had my agent, if she got information for a part for someone with blue eyes or someone to play basketball or something, that she would send me out for it. So right now I am going out for any part that comes out, whether it is for someone with blue eyes, or something like that.

Senator Harkin. I am going to see that movie this weekend. It is down in our neighborhood and I am going to go see it. "Mac and Me."

Lakisha, I was very moved by your testimony and by what you have had to overcome and what you are overcoming. I have all the confidence in the world that you are going to be the first person in your family to go to college, and that you will indeed be a braille teacher. We know you are going to do it, do we not? [Applause.]

Is this your first trip to Washington?

Ms. Griffin. Yes, it is.

Senator Harkin. I want you to know that within the last year, we have prevailed upon the Sergeant of Arms and we now have braille maps of the entire Capitol and indeed of all of the downtown monuments and surrounding area. Have you gotten those yet?

Ms. Griffin. No, I have not.

Senator Harkin. As soon as you get done here, how about getting a set of those, OK?

Ms. Griffin. OK.

Senator Harkin. I am sure that you can get taken around the Capitol and make sure that you take in everything that you can while you are here, OK?

Ms. Griffin. OK.

Senator Harkin. We have those for anyone else here who needs them, we have braille maps now of the entire Capitol and of all the downtown monuments and the mall. If you have any problems getting them, you come see me or see one of my staff. I will make sure you get them.

Dan Piper, like I said, Dan, I use you a lot in my speeches around the country. You are getting to be pretty famous, Dan Piper from Ankeny, IA. I just have to tell you, you are not only a source of pride and joy to your parents, but a unique sense of pride and joy to me and to a lot of people.

The State of Iowa has had an early intervention program—I hope you do not mind if I be a little chauvinistic here—since 1975, I think. Since the mid-1970's anyway. We have got a good support group in Iowa. This is a great example of what can be done with early intervention.

Dan, I know from your mother, and also from your own testimony, that you are going to be 18 pretty soon and you are thinking of moving away. Are you not kind of afraid that might break your mother's heart, moving away from Ankeny?

Mr. Piper. Oh, no. Just me and my dad is.

Ms. Piper. I did not know he was taking his father with him.

Senator HARKIN. At least you will invite her to come visit you, right?

Mr. PIPER. Yes, and my girlfriend.

Senator HARKIN. I will not get into that, all right?

I just want you to know I am the father of two young people, and I am not looking forward to the day when they leave home either, so I know how your mother feels.

Dan, your hopes for the future are real hopes, and I know that you can accomplish a lot. Let me ask your mother a question.

Mr. PIPER. All right, go ahead.

Senator HARKIN. Is that OK?

Mr. PIPER. Sure.

Senator HARKIN. Ms. Piper, do you agree with Ms. Parrino, when she says that the Americans With Disabilities Act should be looked at as bringing about cost savings to our Nation, rather than additional costs?

Ms. PIPER. Definitely. In our circumstances, we certainly have spent a lot of time and energy, as I stated, in seeing to it that Dan is appropriately trained to be a tax payer rather than a tax recipient. However, with discrimination, we are looking at a future that may very well hold nothing more than sheltered employment for him, which is certainly an opportunity for some people.

However, he has a desperate need for growth and is capable. Our concern is that he will be sitting at home, on our living room couch, watching television for the rest of his life. That is not acceptable, with all of the money that has been poured into his education. There is no reason he cannot be a tax payer.

Senator HARKIN. And it is not acceptable with—look at him. My gosh, look how good he is. Danny, you can do a lot of things.

Mr. PIPER. That is right.

Senator HARKIN. You sure can. We are going to make sure that you are able to do those things, too. You are a great source of pride.

Is this your first trip to Washington? This is your first time here, is it not?

Mr. PIPER. Yes.

Senator HARKIN. I think so, yes. Make sure you get around and see the monuments and everything like that, OK?

Mr. PIPER. Yes.

Senator HARKIN. You do not mind if I keep using you as an example, do you? You do not mind if I keep talking about you, do you?

Mr. PIPER. Yes.

Senator HARKIN. As long as I say good things, right?

Mr. PIPER. Yes, you got it. [Laughter.]

Senator HARKIN. All of you are just great. Thank you so much. You have made our day and made our year and hopefully we will make this bill get through next year.

Thank you all, and now we will call our second panel. [Applause.]

Our second panel is Judith Heumann, World Institute on Disability at Berkeley, CA; Gregory Hlibok—if I mispronounce that, you tell me—Gregory Hlibok from Gallaudet University; Belinda

Mason, Tobinsport, IN; and W Mitchell from Denver, CO. Please come up.

We welcome you all to the hearing, and some of you for coming a long, long distance. I will just go in the order in which I called you. Judith Heumann. Judy is the mother of the disability rights and independent living movement. She has a masters in public health and she's going to discuss the history of the movements and personal examples of discrimination and the need for the bill.

STATEMENTS OF JUDITH HEUMANN, WORLD INSTITUTE ON DISABILITY, BERKELEY, CA; GREGORY HLIBOK, GALLAUDET UNIVERSITY, WASHINGTON, DC; BELINDA MASON, TOBINSPORT, IN; AND W. MITCHELL, DENVER CO

Ms. **HEUMANN**. Good morning, Senator. I got a little alarmed. I thought you were about to tell me I was a mother. I did not know I had any children.

Senator **HARKIN**. No, I wondered what that momentary disturbance was. No, the mother of the disability rights and independent living movement.

Ms. **HEUMANN**. After taking a redeye here, I did not know something had happened.

It is really a privilege to be here with all of you today. My name is Judy Heumann. I am the oldest of three children born to an immigrant family. Like most other Americans, I was born without a disability. When I was 1½ years old, I contracted polio. Becoming disabled changed my family's life and mine forever.

My disability has made me a target for arbitrary and capricious prejudices from any person with whom I come into contact. Over the years, experience has taught us that we must be constantly aware of people's attempts to discriminate against us. We must be prepared at every moment to fight this discrimination.

The average American is not, nor should they have to be, prepared to fight every day of their life for basic civil rights. All too many incidents of discrimination have gone by undefended because of lack of protection under the law.

In the past, disability has been a cause for shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity. This is not the way we, as Americans, should have to live our lives.

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was "a fire hazard." I was forced to go onto home instruction, receiving 1 hour of education twice a week for 3½ years. Was this the America of my parents' dreams?

My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level, but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomolitis." At the time I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was because of. So it was obviously because of my disability that I was discriminated against.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forceably remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life. Many disabled persons experience discrimination of the same magnitude but not every one of us possesses the intestinal fortitude and has the support of family and friends required to face up to these daily societal barriers.

Sadly, these are not isolated examples true only in the past tense. This is an ongoing social phenomenon which haunts our lives at every minute.

I have been told throughout my life to be understanding of these people's actions. "They do not know any better." Neither I nor any one of the 42 million other people with disabilities can wait for the 200 million nondisabled Americans to become educated to the fact that disability does not negate our entitlement to the same constitutional rights as they have.

Just as other civil rights legislation has made previously sanctioned discrimination illegal, so too will the passage of the Americans With Disabilities Act of 1988 outlaw protectivist, paternalistic, ignorant discrimination against all persons with disabilities.

We, as disabled persons, are here today to ensure for the class of disabled Americans the ordinary daily life that non-disabled Americans too often take for granted: the right to ride a bus or a train; the right to any job for which we are qualified; the right to enter any theater, restaurant or public accommodation; the right to purchase a home or rent an apartment; the right to appropriate communication.

Whether you have HIV infection, cancer, heart disease, back problems, epilepsy, diabetes, polio, muscular dystrophy, cerebral palsy, multiple sclerosis, are deaf or blind, discrimination affects all of us the same. Simply put, we are here today to say that people in our society have been raised with prejudicial attitudes that have resulted in extreme discrimination against the 42 million persons with disabilities in the United States.

Discrimination is intolerable. The U.S. Congress is to be commended for its introduction of the Americans With Disabilities Act. The passage of this monumental legislation will make it clear that our Government will not longer allow the largest minority group in the United States to be denied equal opportunity.

You have all heard our testimony today. But you have also been aware of these stories for many years. As elected Representatives, you must act without delay to end these reprehensible acts of discrimination. To do any less is immoral. [Applause.]

Senator HARKIN. Belinda Mason from Tobinsport, IN. Welcome, Belinda, and please proceed.

Ms. MASON. That is Tobinsport, IN.

Senator HARKIN. What is it?

Ms. MASON. Tobinsport. The 75 citizens of Tobinsport would be awful disappointed if word got out in the U.S. Senate that they were in Tobinsport.

Senator HARKIN. We will correct the record, be assured. Tobinsport lives on.

Ms. MASON. Thank you. I thank you all for having me today and I hope you all are listening good and taking note of all this, because we represent a part of society that is unfortunately often invisible, particularly the disability that I am speaking out, HIV infection is invisible and a hidden disability.

I am just going to read from prepared stuff because I am recovering from a stroke and my brain will not let me remember anything for long enough to really spit it out well unless it is written down and I can read it.

My name is Belinda Mason and I live in Tobinsport, IN. I am 30 years old and I work as a free-lance writer. My husband, who is a college instructor, and I have two small children, a daughter who is 5 and a son almost 2.

Until early last year, my family and I had an average life near one of America's thousands of average small country towns. We juggled our jobs, our daughter, and our credit card payments. Our pleasures were simple and common, a walk in the woods, a new song on the radio, or a cookout with other young families.

But then my life changed dramatically. While delivering our healthy son, I suffered serious complications, including cardiac arrest and a stroke. Because of massive hemorrhaging, I received numerous transfusions of blood products. One unit was later found HIV positive and in March 1987, my own blood first tested positive for antibodies to the HIV virus, the virus that causes AIDS.

I also maintained residual damage from my stroke in the form of partial paralysis on my left side, and a tendency to be stupid when I am tired. That is a joke. [Laughter.] Thank you.

With that diagnosis, I became a person with a "hidden disability," a disability just like epilepsy and diabetes and tens of other disabilities. And just like people with those other hidden disabilities, I became subject to irrational and unjustified discrimination.

The average life I once enjoyed has vanished. And since I have been living with HIV, I have learned a terrible truth about America, that it is not a good place to be different or to be ill, in spite of what we teach in government class.

Shortly before the news of my HIV infection became public, but long after the rumor mill had assured that everyone in town already knew about it, I took my girl to the local public pool. I remember the day very well because we had something to celebrate. I had learned that I was sick enough to qualify for AZT, a drug that has been found to prolong the lives of people with HIV infection. It was our first breath of hope.

I was still recovering from the stroke, but I could drive again. I could not swim yet, but I slid into the children's pool for a couple of hours and watched my daughter play. I remember thinking that maybe I would live, and that maybe my life would settle back to normal.

I was recognized by most of the adults in the town because I had worked as a reporter and was therefore visible in a place where everyone knew everybody else anyway. This was the other adults at the pool. Later I learned that the town closed the pool for a week. The official story was that a cigarette butt had been found in the filter. I have always thought that it was because I was in the water for a few hours, though, just watching my daughter swim.

There are other incidents like this that I have submitted in my written testimony.

A woman in another part of Kentucky had managed a school cafeteria for a number of years. Her adult son, who was living in California, became ill with AIDS. The woman went to California to bring her son home, so she could care for him. But when she returned, she was abruptly fired from her job.

Apparently, even the perception that you are associated somehow with HIV, whether or not you have it, is grounds for ill treatment. This has to change. We need a law that will protect all people, even those perceived to be infected simply because they are helping those who are ill.

A man passing through a central Kentucky town was stopped for drunk driving. After he told the arresting officers that he had AIDS, the man's car was driven to a parking lot of the jail. Instead of putting the man in jail, the officers locked him inside his car to spend the night. The car was eventually surrounded by sightseers, staring and pointing at the man.

As a board member of the National Association of People with AIDS, I know these and many other stories.

When we look in the mirror that AIDS and HIV holds up to our society, we can see how scared we are of each other, of death and even of life. We can see how little tolerance, let alone compassion, that we often show.

HIV disease is blind to race, age, gender, and sexual orientation. It no longer affects other people. Beyond risk groups, immune deficiency is a disease of individuals, our friends, our sisters, our lovers, and our children. People who are just like us because they are us. And because HIV affects us all, it makes no difference how one gets HIV. The fact is that the discrimination is the same and the protections must be the same.

Living with HIV is particularly stressful for people in America's small towns and rural communities. Until we can be counted on to demonstrate fair and equitable treatment, legislation like this is essential.

There are some things that legislation, by its nature, cannot and will not do. For example, this bill probably will not change anything for Stella McKee, a Kentucky woman whose husband David, a hemophiliac, died just when we were learning about what AIDS was all about. Stella carried home many bowls of untouched food from church potluck dinners.

And this bill probably would not have helped me when my next door neighbor in Indiana, a registered nurse, carried a petition to every neighbor on the block, demanding that my family and I move. You cannot legislate good manners. But you can legislate recourse for some forms of discrimination. By legislating that protection, perhaps you may also help promote reason and foster more decent treatment. The truth is that sometimes legislation precedes and enhances humanity.

I thank you for having me here today and I urge you to pass the Americans with Disabilities Act as quickly as possible. It will make a real and incredible difference in the lives of millions of people, and just some of those are the ones you see today. Thank you. [Applause.]

Senator Harkin. Greg Hlibok, a student leader from Gallaudet University, welcome to the subcommittee and please proceed.

Mr. Hlibok. Thank you very much for giving me the opportunity to testify here today. As she just said, people who have HIV are often invisible because you cannot tell by their race or their appearance. It applies to deaf people as well. You cannot tell if a person is deaf unless you see them signing.

My name is Greg Hlibok. I am president of the student body government at Gallaudet University. Last March's victory in getting a deaf president for Gallaudet sent a message to the world. The focus was on what deaf people can do, and not what they cannot do.

As Dr. King Jordan says, "deaf people can do everything, except hear." How can we prove ourselves that we are capable if we are not given equal opportunities. It is society itself that creates the barriers by not giving us these opportunities.

Very often discrimination appears on a daily basis in our lives. We face that all the time, every day. We have many experiences in being turned down for jobs, denied promotions. For example, my own deaf brother had to hire and pay for an interpreter himself so he could interview for a job.

I have been denied medical treatment because doctors misunderstood us and could not communicate with us. They refuse to hire a qualified interpreter. We have tried contacting police stations very often, but often they do not know how to use TTYs, or they do not have it in our stations.

I remember when I was young and I was going home, and I did not have any money with me. I was going home from school. I tried to contact my parents through public service, but there was no way to do that, no relay service. There were no TTYs around, so I had to walk the 3 miles in the snow to get home. Good thing I did not get pneumonia. Also, in San Diego, CA, there is a deaf woman there who died of a heart attack because her husband tried to reach the police through 911 but could not get through.

We have waited for 124 years to get a deaf president at Gallaudet, but we were still told that we were not ready. Hearing people told us that we were not ready and were unable to communicate and work through Congress and work with the hearing world. In the past we felt that there was nothing that we could do, that we had to accept this fate, and that those were just false excuses and discrimination. We put up with this for a very long time.

Last March showed that our tolerance and patience has run out. I said last March that we wanted a deaf president and we got one. President King's appointment shows that deaf people are capable of holding a responsible job and leading us. He has already proven his success in the past six months.

Now we want our civil rights. The Americans with Disabilities Act would give us the legal tools to fight discrimination. Legal rights women and minorities have already been brought to bear, and now it is time to remove communication barriers and provide reasonable accommodation.

For example, captions, TTYs, qualified interpreters, note takers, and visual aids, and these type of things would reduce the communication barriers that we face. It is not simply just accommodations, but we would like to participate equally and to be effective in society, not to be ignored.

We do not want sympathy, we want support. Because we can help ourselves if things are accessible for us. All we ask for is that you let us guide our own destinies. We urge that communication barriers be identified and the kinds of situations be specified. For example, there are people who have many different disabilities all over the world, and they are fighting against discrimination of all kinds. We can no longer wait. Civil rights must happen now.

[The prepared statement of Mr. Hlibok follows:]

STATEMENT OF GREG HLIBOK, PRESIDENT OF THE STUDENT BODY GOVERNMENT AT GALLAUDET UNIVERSITY, BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED ON THE AMERICANS WITH DISABILITIES ACT OF 1988

My name is Greg Hlibok and I am President of the Student Body Government at Gallaudet University. Our victory at Gallaudet last March resulting in the appointment of our first deaf president sent the world a message. Focus on what deaf people can do - not what we can't do. As Dr. King Jordan said "Deaf People Can Do Anything...Except Hear". How can we prove ourselves that we are capable if we are not being given an equal opportunity. Its society that has created barriers.

Many of us confront discrimination every day. We have experienced the disappointment of being turned down for a job or promotion because we were told the communication barriers were too great. My own deaf brother was told he had to pay for his own interpreter on his job. We have been denied medical treatment at hospitals because the staff could not understand us and refused to provide qualified interpreters. We have tried to call the police for help using our telecommunications devices for the deaf, but the police hang up on us, because they had no TDDs. I remember when I was fifteen I left school without money to take the bus home. I had no way to call my parents or the police. I had to walk the 3 miles home in the snow. In one case in San Diego, a deaf woman died of a heart attack because the police did not respond when her husband called 911. We have waited for 124 years to have a deaf President chosen at Gallaudet. But we were told we were not ready, and that we could not work with Congress and the hearing world. In the past we felt there

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was nothing we could do but accept these false excuses and discrimination and keep patiently plodding on. But, as we showed vividly last March, our patience has run out. I said last March, "we want a deaf president who can show the world a deaf person can lead a major university. We want one now". And we got it! President King's appointment shows that deaf people are capable of holding responsible jobs and of leadership. King Jordan has shown for 6 months that he is successful.

Now we want our civil rights. The Americans with Disabilities Act will give us the legal tools to fight discrimination, the legal rights woman and minorities already have. This bill would require removal of communication barriers and "reasonable accommodation to assure effective communication." The kinds of accommodations listed in the Act such as captioning, TDDs, qualified interpreters and note takers, and visual aids like flashing alarms would greatly reduce communication barriers. With simple accommodations, we can participate equally. We can be effective. We will not be excluded or ignored. We don't need any pity, we need your support. Because we can help ourselves only if things are accessible for us! I would urge that the Communication Barriers Section identify the kinds of situations where specific accommodations are required. Our example last March has inspired deaf people and all disabled people everywhere to fight against discrimination of any kind. We will no longer wait. We want our civil rights now.

Senator **Harkin**. Thank you very much. I am going to take the opportunity to introduce to you first about whom Greg spoke, who has really showed us that there are no barriers that deaf people cannot overcome. The new president of Gallaudet University, Dr. King Jordan. Stand up, will you please. [Applause.]

Thank you very much. Next, W Mitchell from Denver, CO. Mr. Mitchell, welcome to the subcommittee and again, please proceed as you so desire.

Mr. **Mitchell**. Thank you very much, Mr. Chairman. Good morning, Congressman. It is a pleasure being in front of you today. I am W Mitchell. I am the former mayor of Crested Butte, CO, a very beautiful town high in the mountains of Colorado. Do not get confused with Mount Crested Butte. That is the town that Bo Calloway owns. No, we are Crested Butte. We have a lot of Democrats in Crested Butte.

It is a little town that is nestled in the mountains of Colorado, about 9,000 feet above sea level. We are kind of at the end of a paved road, surrounded by all these 14,000 foot mountains. One of the things that is often said in Crested Butte is that you cannot get there from here.

It is very tough to get to other places in Colorado. Aspen is just 30 miles across the mountains, and yet it is about a 250 mile drive to get around all those mountains. You cannot get there from here. That's the challenge for millions of disabled Americans today—they can't get there from here.

In 1984, I ran for Congress. I was the Democratic nominee for the Third Congressional District in Colorado and I had to adopt a campaign that said "Oh yes, he can." In a lot of people's minds, a man who has been burned and who is in a wheelchair may not be able to represent them very well.

In fact, one of the charges that was first leveled at me was yes, Mitchell is a nice guy and perhaps speaks well, but what is he going to do to get to vote? How is he going to get to vote for our issues? How is he going to get to the floor of the House of Representatives in time? He will not even make the votes to stand up for our issues.

Well, having been back to Washington a number of times, I explained to those good people that most freshmen Congressmen wind up in the Cannon House Office Building. Between the Cannon House Office Building and the House of Representatives is a tunnel. The tunnel is mostly downhill going toward the House. I explained to them that the only Member of Congress that was going to beat me to vote for their interests was one on a skateboard. [Laughter.]

I did not get the most votes that year, my opponent did, a very worthy fellow. Fortunately, he was retired in the next election and now we have a good Democrat back there again.

Senator **Harkin**. This is a nonpartisan hearing.

Mr. **Mitchell**. Very nonpartisan, Senator. And if Senator Weicker and some of the other Republicans were still here, I would be singing a different tune, you can be sure of it.

I talk today to groups all over the country. I speak about the fact that it is not what happens to you, it is what you do in life. It is not the circumstances of birth or the accidents or injuries or illnesses that we contract in life, it is what we do with the equipment that is given us, with the opportunities that are given us.

But unfortunately, I am one of the lucky ones. Fortunately for me, and fortunately for so many others, I had role models when I was growing up, of other people in wheelchairs. I knew you could become successful and be in a wheelchair. I had education and training before I was burned in 1971 and, as a result of an insurance settlement, was able to start a very successful business. So that when I was paralyzed, in 1975, I had wealth and I had income and I had opportunities already available to me.

But what about all of those who were not blessed with the good fortune that I have had in my life? What happens to all of those who do not have the luxury of a vehicle or an airplane or a business or means of support? What happens to those who, like the young man in Phoenix, AZ, who I visited recently, who was paralyzed on the day of his graduation from high school. But having no insurance and no money, is now in a nursing home instead of a spinal cord injury rehab hospital? What happens to him? Where does he get his education? Where does he get the tools and equipment that he will need to make himself a taxpayer, as we heard earlier, and not a tax receiver for the rest of his life?

What about all of those who, because of the absence of transportation or the absence of communication facilities, cannot even find the employer to present themselves as a qualified candidate for a job? How do they function in our society?

So I come today, Mr. Chairman, to speak for the Americans With Disabilities Act legislation. I cannot speak more eloquently than the witnesses who have proceeded me. All of them are more qualified, more capable of stating the case that all of us need to hear today.

But I would like to say to you that, while the 1970's were very much the age of the me-too-ism, of I've got mine, of all of the conflicts in this country, and while the 1980's are very much an era of great change in our society, with new technologies and new opportunities, the 1990's will be the era of creativity.

We must be creative as a society, creative in taking full use of all of our citizens and their great capabilities. As you and the Congressman have seen today, we have been presented with probably more talent than you were faced with in almost any other hearing that you may preside over. How are we going to use that talent and how are we going to realize that talent?

Mr. Chairman, I will remind you today, in my closing remark, the quote of Albert Schweitzer, who said to all humanity, "We do not live in a world all alone. Our brothers are here, too."

Please carry to your colleagues in the Senate and your colleagues in the House the message that we do not want a handout. We do not want a free ride. We just want to act normal in an amazing situation. Thank you, sir. [Applause.]

[The prepared statement of Mr. Mitchell follows:]

W MITCHELL
Denver, Colorado

Statement to the Senate Subcommittee on the Handicapped, and
the House Subcommittee on Select Education

September 27, 1988

It is often said that you can't get there from here. That seems to be the situation facing millions of Americans with disabilities. It isn't that once they get there they can't do the job. Often a lack of adequate training, transportation, communications or other factors -- discrimination being one of them -- perfectly capable and talented, but disabled, people are unable to get to a place from which they can lead productive lives. I count myself as one of the fortunate ones.

While growing up in a suburb of Philadelphia, two of my neighbors were war veterans with disabilities. One was a First World War veteran who had had both his legs amputated; the other was a man who had served in the Korean war and who had become paralyzed. Both had the benefit of training, vehicles, and accessible housing provided to them by their government. Both were able to go on to lead constructive and productive lives, contributing to their communities, and acting as role models to people like me so that later when I became disabled, I knew what could be done; I knew of the potentials and possibilities still open to me from having watched my neighbors all those years; I knew I had not come to a dead end.

When my disabilities occurred, I was able to overcome them through a combination of insurance, previous education and training, family and social support and success in business. Many others are not so lucky. Without the tools that I was equipped with, today I could very well be -- without adequate legislation to guarantee my civil rights--- among those who are tax receivers instead of tax payers.

In 1984 I ran for and won the Democratic nomination for Colorado's third congressional district. My campaign slogan was "Oh yes he can!" It was a statement to those who observed my campaign that my physical limitations were in fact, not a hindrance to my ability to represent the voters were they to send me to Washington. While my opponent received more votes than me that November, it was clear to me that both those voting for me and for my opponent did so not as a statement of my physical disability. In 1984 I asked people not to vote for me (or not to not vote for me) because of my physical limitations. I told them I was just trying to act normal in an amazing situation.

Today I come before you to ask you to give millions of others like me not a special privilege, but just the same privilege afforded to all Americans, so that all of us here, now, and the millions that will follow can enjoy the same opportunities so many other Americans take for granted every day. But how does someone -- unable to get to school because of a lack of transportation, or to get to work because of inaccessible mass transit, or even find out about a job in the absence of communications equipment -- how does that someone become a participant in the American dream?

So many of the changes we need in order to correct discrimination and barriers to full opportunities are simple but yet often ignored: such as the southwest corner of the Capitol Building plaza where the lack of a curb cut requires someone in a wheelchair to compete with automobiles in the street for access to that building. In other cases it's just a matter of oversight. For instance, the hotel at which I'm staying spent $56 million just two years ago on renovations. Yet there is not one accessible restaurant in the entire hotel.

I'm from Denver, Colorado, which has been doing a great job in making buildings and transportation more accessible. Still, many public officials continue to be insenitive to what life is like when you're unable to get a ride to work because of a broken lift on a bus or because an untrained operator driving that bus doesn't know how to manage the life.

Other times, lost opportunities can be blamed on insufficient funding for appropriate programs. One young man was paralyzed on his graduation day in Phoenix, Arizona this year but because of inadequate insurance he is in a nursing home instead of a spinal cord rehabilitation facility. That false economy may cost taxpayers literally hundreds of thousands of dollars, on just the one man, over the coming years. There are countless other examples that I know Congressman Coelho and the other sponsors of the ADA bill can make you aware of, though a simple trip home to your own states and districts and to visit with disabled persons will set the record straight: we aren't asking for a hand out. We're not even asking for a helping hand. We're just asking for the same opportunities so many Americans without disabilities take for granted and that Americans with disabilities deserve.

Senator **Harkin**. That was very eloquent. What the heck, if you cannot get into the House, how about a run for the Senate? We could sure use you here, I will tell you that. Major would like to have you in the House, too.

Again, thank you all. I just have a couple of questions that I want to ask for record purposes, and to further get some thoughts from you on this.

Judith, I just wanted to ask you, do you, and if you do, why do you believe that we can now pass legislation like the ADA act, when previous attempts to expand antidiscrimination protections to cover the private sector have been unsuccessful?

Ms. **Heumann**. I personally think that the Gallaudet experience and the 1977 demonstrations in relationship to 504 and the subsequent Development of Independent Living centers and community-based organizations around the United States, and the real true emergency of a rights movement are going to compel the United States to recognize its responsibility.

It was mentioned by one of the speakers that disability has touched every person's life. I think that what is important for us to recognize is that when we go and work with various organizations who potentially are opponents to this form of legislation, that we need to make them recognize that the discrimination that affects us is also very directly affecting their family and very likely to affect them personally.

I think that all of you have seen that in the last 20 years there has been a monumental change throughout the United States and throughout the world. Disabled people are no longer going to allow ourselves to be discriminated against. The meetings that Justin Dart is holding around the United States, I think are quite compelling. States where you never found a lot of disabled people coming out, speaking on behalf of themselves, are having 200, 300, and 400 people coming out to meetings when there is no accessible transportation, little accessibility in their homes, lack of attendant services. People are still somehow getting out to talk about why we believe it is time for us to have our rights.

That is why I think this bill is going to pass.

Senator **Harkin**. Mr. Mitchell, do you have any observations on that question? About the time being right, right now, to pass this one? You have been involved, obviously, in politics, which I was not aware of before. Would you agree with Judith that there has been enough changes, there is enough of a force, enough of a movement out there, that we have made enough minor steps that we can finally take a major step here?

Mr. **Mitchell**. Senator, I absolutely agree. Going back to the different eras I talked about, we lived in the 1950's. The 1950's were a very secure era in this country. We really were able to function on a very small part of our potential in the 1950's and still dominate the world. We were number one. We drove American cars. We led the world in every single way and we were secure in every single way, using a very small part of our potential because we had such an overabundance of resources, whether it was natural or human resources, that no one could compete with us anywhere in the world.

Today we are not allowed that luxury. Today we have to use all of America's resources to be great. The resource that exists—and I hear the various numbers of 36 million or 42 million—but a giant portion of our population that is untapped today is the resource that is going to make the difference between America falling into a second position and no longer the leader of the world, and staying number one. We have to use every single ounce of energy that we have.

Again, just look at the people you have seen this morning and they are representative, not spectacularly better than the people that they are speaking for.

Senator HARKIN. Judy, you mentioned Justin Dart. I thought I saw him earlier. Justin Dart, a great leader in this effort, was former Commissioner of the Rehabilitation Services Administration, now chairing a task force.

Ms. HEUMANN. He was here, he had to leave, Mr. Chairman.

Senator HARKIN. He may have had to leave. Tell him we said hello. I just wanted to recognize him here in the audience.

Greg, it goes without saying that not only were a lot of us watching last spring, but I think the world indeed was watching. In fact, I must tell you a story.

I just recently returned from a trip to Europe in August. I had an occasion to meet a small group of deaf individuals who were in Europe at that time. This took place in Portugal. They were with some Portugese who were deaf. It was just happenstance that I ran into them.

The first thing, when they found out who I was and where I was from, the first thing they wanted to talk about was what happened at Gallaudet University. These are people in Europe that knew of this, so it had a world-wide impact.

I just cannot tell you how proud we are of you and the student body, of Dr. Jordan, and what has transpired there.

As you know, my brother is deaf, and so I have, perhaps of all the disabilities, I am more cognizant of that than I am of perhaps others. I am aware of how deaf people have been discriminated against and how, in terms of accommodations and things.

I saw my brother last weekend, and I was staying in a hotel room and I noticed a little red light on. I wondered what that little red light was after I turned the lights out. It was to show that the smoke alarm was activated. But then I got to thinking, if I were deaf and the smoke alarm went off, I would never know it. I mean, I could tell it worked, but I could never know if it ever went off. Just another one of those things in accommodations where a small change would really help.

Let me just ask you a question about the bill, and about reasonable accommodations. How important, to ensuring equal opportunity for deaf people, is the provision of reasonable accommodations which are in the bill, reasonable accommodations? Have you had any experiences that you could relate to us?

Mr. HLIBOK. Sure. I have already given some examples about public services, how they should provide accommodations for deaf people. At Gallaudet University, that is a very good example, because they have all these accommodations for deaf people. For example, flashing lights in the rooms. There is a switch that you could flash a light. So if a visitor comes, you flash a light from the outside of the door instead of knocking. It is very important for us.

We need accessibility in order to reach out to all of the people right now. There is a wall, a barrier, between us, between the deaf and hearing worlds. We are trying to break down that wall. So far, we have been doing it little by little. Once we completely destroy that wall, that barrier, then I think that we will be able to contribute a lot more.

There are 6,000 deaf Federal employees who contribute to the Federal Government, and there are many more hearing impaired people who could contribute to the private sector, if they are given the opportunity through Government tax revenues. They would be able to use the accommodations and be contributing members.

Senator **Harkin**. Thank you. Where are you from?

Mr. **Hlibok**. New York City.

Senator **Harkin**. Thank you.

Belinda, you face many challenges as a person infected with HIV. How do you perceive the importance of this anti-discrimination legislation?

Ms. **Mason**. I think, like everybody else has already said, when you have a disability, you just have to overcome so much junk every day of your life, that having extra junk in your way is no good. I do not want to sound like a whiner about it, but it looks like to me that it would not be unreasonable to think that I could go to the cement pond with my daughter and swim and not have to have the whole community penalized for it and have to be made such an example of.

There are so many ways that we separate ourselves from each other, and as Admiral Watkins testified, people living with HIV have to overcome barriers every day that are imposed, that we have no control over, because we cannot make the research move any faster.

It is sad, but it is true, that people in agencies in the private sector, will not always do the right thing just because it is the right thing. Sometimes we have to make them. There is a lot of people in my area of the country living with HIV who face a lot more discriminatory acts than I have. One of those most important ones is jobs. People have lost their jobs.

It is enough that you got this lousy disease. It is like Congressman Coelho said, you come home from an office and you are still the same, but the whole world just shifts around you. You are not like a Kentucky basketball fan anymore. You are not a writer. You are not anything else. You turn into a person with a disease, a person with a disability. Whatever else that there was about you is just ignored.

If there are laws that make people treat you normally, then maybe they will. Maybe they will. I hope they will.

Ms. **Heumann**. Senator, I think that the law at least will give us protection. I do not think the law is going to change people overnight. But the laws, in fact, give us as disabled people the rights, and we then know that we can go out and speak to other disabled people and tell them that if these things happen to them, they should no longer turn around and leave, but there is an action that they can take.

I think actions and filing complaints and lawsuits begin to teach people right from wrong, which they have not learned in the past. I think 504 and 94-142 and many of these other pieces of legislation have begun to teach America that we are more like them. They still might not want to marry us or be with us, but they know that they cannot keep us out any longer. Most importantly, we will not let them. [Applause.]

Mr. OWENS. I think that would be a very good note to end on. I want to thank the witness and all of the witnesses that came before. We learned a great deal from you today. I hope that you understand that, just as Senator Kennedy said, we will pass this bill. It will become law. But I hope you will remember also the caution of Congressman Coelho, that it is not going to be easy.

It will not be easy to pass this bill because there are large numbers of Americans who consider themselves decent and reasonable people who, whenever you mention anything that might raise the cost of housing or public transportation, et cetera, begin to react in a mean-spirited way.

Some of these people are in very high places. In fact, one of our categories of great opposition is local administrators, local elected officials. The mayor of the city of New York sometimes conducts crusades against people with disabilities, when it comes to transportation access and housing access. They do it and appeal to the worst in people.

This we have ahead of us, and I hope you understand that. The bill now has 130 sponsors in the House of Representatives. To pass, a bill requires 218 people to vote yes. We have 130 at a point where the opposition has not yet openly manifested itself.

As we move closer toward passage, or toward the debate on the bill, you will have the people who will come forward with all the statistics to prove that it is far too costly. You will have the disabling amendments, amendments attempting to gut the heart of the bill. All those things are going to happen. We will need a great deal of support. I hope you understand that. There are difficult days ahead of us.

My final question to all of you is what can you do? In the spirit of Gallaudet, in terms of people with disabilities and the concerns of people with disabilities, there is a before Gallaudet and an after Gallaudet. After Gallaudet, the spirit has to keep moving on. The momentum is with us.

I want to congratulate Justin Dart, who is the chairman of a task force that, as I mentioned before, has been around the country He has told me that the spirit of Gallaudet lives on. It is going to escalate as time goes on. We must make sure it escalates. I hope that you will understand.

I have one specific question to the hero of Gallaudet. Gregory Hlibok. What can we expect in terms of leadership from people of your generation, from students? A lot of energy is going to be needed, a lot of continued courage is going to be needed as we push forward for passage of this legislation. Are students prepared to continue to offer leadership? Are there efforts being made to guarantee that people of your generation are fully involved in this effort, understand what the bill is about, and are going forward to help us to mobilize to get its passage?

Mr. **Hlibok**. I am sure, yes. One example, that happened last Thursday, was with 200 to 300 students at Gallaudet who took time off of their classes to go to Capitol Hill to pressure the legislature and the Congressmen to pass a bill, H.R. 4992, perhaps you have heard of that yourself?

Mr. **Owens**. Yes, I have.

Mr. **Hlibok**. I am sure that we are ready, when the time is right.

Mr. **Owens**. Thank you very much. I want to again thank all of you and tell you there are difficult days ahead. We will be closely working with you. The energy, the creativity, all that is needed to get passage of this bill, exists among you. That leadership is there and we appreciate it and will be expecting to work in partnership with you. Thank you.

Senator **Harkin**. Thank you very much, Congressman Owens. [Applause.]

I see some people want to say something. I am going to have to exercise a little bit of jurisdiction here. I would like to hear from some people just for a few minutes, but I will tell you that we have to cut this off shortly, and I will tell you why.

The buses to Gallaudet for the task force meeting will be departing from Second Street and Constitution at 1 p.m. That is now. Where is Second and Constitution? That is right outside. Traffic will be stopped until the boarding is complete, so I do have to wrap this up. I am sure the bus will be there for a little bit, for those of you, but you are very anxious to say something.

Please identify yourself for the record.

Ms. **Cooper**. I am Assemblywoman Delores Cooper, Second District Atlantic, representing the State of New Jersey and all of the New Jersey delegation. New Jersey, will you stand up, please?

Senator, on behalf of the New Jersey delegation and all of the professionals, providers, care givers, I have a little gift for you. New Jersey and you, perfect together, because we know that bill is going to pass. Am I right. [Applause.]

Senator **Harkin**. Thank you, very much. That is wonderful. And thank you for coming down.

Yes, right here.

Ms. **Shapiro**. I would like to say something. My name is Mary Shapiro. I saw "Mac and Me" and I think you should all see it because it will get more people to understand about people in wheelchairs and understand what they are going through.

Plus, I think the bill should go through because it will make the other people understand about us and all, because I went to a thing in Philadelphia, PA, I got a shirt that says "A real difference." That is a project in every state, about being a nation and about what we have and all that stuff. [Applause.]

Senator **Harkin**. Thank you very much.

Two more. This guy over here has been trying to get my attention for a long time.

Mr. **Rosenfeld**. I am Ed Rosenfeld with the Spinal Cord Injury Network, Metropolitan Washington. I would like to know who is pro and who is on the fence or just not doing anything, and we will get to work on them.

Senator **Harkin**. If you did not hear the question, he wanted to know—I did not catch your name.

Mr. **Rosenfeld**. Ed Rosenfeld.

Senator **Harkin**. Ed Rosenfeld from where?

Mr. **Rosenfeld**. The Spinal Cord Injury Network, Metropolitan Washington.

Senator **Harkin**. He wanted to know about who is not on board and who is on the fence and everything. We have a list here. I would hope that it would be made available to you someplace here, maybe going out the door or something, of all the cosponsors of the bill in the House and in the Senate.

We have 25 cosponsors in the Senate and 113 in the House. You can see we are missing 75 in the Senate and about 300 and some in the House. All I can tell you is that we will try to get these lists out to you. You should contact those who are not on the list to have them get on it as a cosponsor.

You may hear, well, it is not going anywhere this year. That is not the point. Get on it this year, you are on it, and we will get it back in the new Congress next year.

But we do have these lists and they are available to you if you just ask Bobby or someone here, we will get you the list of the cosponsors. Who is not on here is who you have to go after.

Senator **Harkin**. Yes, the woman in white.

Ms. **Stow**. I am Florence Stow from Bancroft School in Hanfield, NJ. I think that capabilities should be acknowledged just like we, treated like us, not carried down half ramps, treated just like normal people. They should have respect and should go and live where they want to, and do what we do.

They should have a great deal of respect. Thank you. [Applause.]

Senator **Harkin**. Thank you all very much for your eloquence, and for coming. Let me just say this.

This bill is not going anywhere this year. The Congress, the 100th Congress is about to adjourn. But we enter into the 101st Congress next year and the bill will be reintroduced right away.

We have a long road to go. I am not going to sit here or stand here and kid you that somehow this thing is going to get through right away. There are roadblocks and a lot of problems out there.

So what it is going to take is it is going to take persistence. A lot of persistence on my part, a lot of persistence on your part. You are the ones who can make this bill happen. You have to connect up with your friends, your families, the different agencies, organizations that you belong to, and you have got to make this your top priority.

It is going to be a tough battle. I am convinced we can do it. The history of the United States has been a constant evolution of opening more doors, of breaking down barriers, of extending basic human rights to more and more people. Sometimes we do not always live up to those words that we have in the Declaration of Independence and in our Bill of Rights. But we constantly try to live up to them. We said that all men, and I am sure they meant all women, too, if they were here today, were created equal.

And yet, for almost 100 years after, we had slavery. We did not even get the Civil Rights Act until 1964. Women did not have the right to vote until what, 1920, was it not?

But it has been a constant progress towards expanding our concept of basic human rights. But with each one of those hurdles we had to cross, it took a lot of effort, a lot of time. I am hopeful it will not take that time for this bill. We have laid the groundwork. We have made the initial steps. Now we just need to take that final step of breaking down the final barrier in our country of discrimination.

I guess I am reminded that when I think about how tough it is going to be, and how much work it is going to take, I am reminded of Rosa Parks who got off that bus in Alabama and said she was not going to ride in the back of the bus anymore. She led the bus boycott as some of you remember, at least those of you who are as old as I am. I do not know how long that bus boycott went on, but they all walked to work. They walked to their places of employment and they walked home, some of them 3, 4, 5 miles a day, rather than take the buses.

After it was all over with, they broke the back of the bus company and were entitled to sit anywhere they wanted to on the bus. When it was all over with, somecne asked Rosa Parks how she felt. She said well, "it has been a long tough battle, my feets are tired but my soul is at rest."

Let us work hard so that when we finally win this battle, we can all say together, and paraphrase Rosa Parks, our bodies are tired, but our soul is at rest.

Thank you. [Applause.]

[Additional material supplied for the record follows:]

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BEFORE THE

JOINT HEARING

SENATE SUBCOMMITTEE ON THE HANDICAPPED

HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON SELECT EDUCATION

TESTIMONY OF THE ORGANIZATION FOR USE OF THE TELEPHONE (OUT) ON SENATE BILL 2345 AND HOUSE BILL 4498

On behalf of The Organization for Use of the Telephone (OUT), I express our appreciation for the opportunity to testify on this landmark legislation. My name is David Saks. I serve as Director of OUT.

OUT is an all-volunteer non-profit national advocacy organization working on behalf of people with impaired hearing. We have focused our efforts primarily on improving telephone reception with hearing aids. Since our members have various degrees of hearing loss, we have a direct interest in the above referenced Joint Hearing. We will confine our testimony to the provisions of S. 2345 and H.R. 4498 which deal with hearing and communication.

People whose hearing impairments are to varying degrees compensated for by the use of hearing aids are the victims of discrimination in many aspects of their lives. Of the issues being addressed by this legislation, discrimination in places of public accommodation and employment are particularly critical to them. Hospital patients who find themselves in rooms with unusable telephones because the phones are not hearing aid-compatible (HAC)--or, depending on severity of hearing loss, not equipped with amplifiers or telecommunications devices for the deaf (TDD). Hotel and motel guests who, although paying for rooms with telephone service, find the same discriminatory lack of usable means of communication. Picture the hapless restaurant patron or airport customer who, upon being paged, is confronted with an unusable telephone while non-impaired passengers all around him enjoy convenient telephone communication.

Since we are especially concerned with the removal of these barriers to telephone communication, we urge the subcommittees to make more specific the provisions which bear on the use of voice telephones. Neither the Telecommunications for the Disabled Act of 1982 (Disabled Act) nor the Hearing Aid Compatibility Act of 1988 (HAC Act) remove pre-existing communication barriers, except for emergency phones and coin-operated payphones. There are an estimated 50,000,000 voice telephones in use in the United States which are not HAC, thus unusable with telecoil-equipped hearing aids. These are not touched by the two laws cited above. (See attachment A)

Many of these non-HAC phones are necessarily in places of public accommodation. We hope and believe that it is the committees' intent to remove as many of these discriminatory barriers as are within their reach. To enhance chances of this coming about, we make the following recommendations:

1. At Section 8(h)(3)(A) TYPES OF REQUIREMENTS--add "hearing aid-compatible telephones." This will assure that places of public accomodation, transportation terminals and facilities, employers and others will provide usable voice telephones to patrons, travelers and employees, thereby rectifying present serious discrimination.

2. At Section 8(h)(3)(C)--Please make stronger the language requiring assistive listening systems, particularly induction loop amplification (ILA). People who need and use telecoil-equipped hearing aids in order to hear in hearing rooms and other facilities where public business is conducted and decided upon, conference rooms, auditoria, theaters, houses of worship, etc. are denied access to these places by the absence of assistive listening systems. ILA is the least expensive of the more desirable systems and the only system which can be used without an external receiver. The listener merely flips the hearing aid switch from M (microphone) to T (telephone) and receives a clear, sharp signal. External ILA receivers are available for people who do not have telecoil-equipped aids. (See attachment B)

3. At Section 8(h)(3)(E)--delete "handsets" at end of paragraph. Amplifiers no longer are confined to handsets: one piece phones have built-in amplifiers, public payphones have case-mounted amplifiers; many phones still use amplifier handsets. The use of "telephone handsets" will limit the applicability of the provision. (See attachment C)

4. We urge you to consider some such word as "effective" or "required" or "necessary" in place of "reasonable" when used in the phrase "reasonable accommodation." "Reasonable" gives to anti-consumer regulatory agencies broad leeway for interpretation. In some cases, you will find your actual intent thwarted by convoluted interpretation which barely stays within the letter of the law. The legislation needs a more specific and stronger word than "reasonable."

In summary, we urge you to make more specific, at least as specific as other requirements, the provisions designed to eliminate communication barriers which daily face people who use voice telephones with hearing aids.

Respectfully submitted.

Organization for Use of
the Telephone, Inc.

David Saks

David Saks, Director

September 27, 1988

(Note: In the interest of economy, appendix material accompanying this statement was retained in the files of the committee.)

Senator HARKIN. The hearing will be adjourned. We will see you early next year, when we really start moving this.

[Whereupon, at 1:06 p.m., the subcommittee hearing was adjourned.]Folios 174 to 176 Insert here

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1026

OVERSIGHT HEARING ON H.R. 4498, AMERICANS WITH DISABILITIES ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON
EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

HEARING HELD IN BOSTON, MA, OCTOBER 24, 1988

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OVERSIGHT HEARING ON H.R. 4498, AMERICANS WITH DISABILITIES ACT OF 1988

MONDAY, OCTOBER 24, 1988

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Boston, MA.

The subcommittee met, pursuant to notice, at 10:13 a.m., in the Lafayette Hotel, 1 Avenue D'Lafayette, Boston, MA, Hon. Major R. Owens, presiding.

Members present. Representatives Owens, Moakley and Atkins.

Staff present. Maria Cuprill and Jillian Evans.

Mr. Owens. The Subcommittee on Select Education of the Education and Labor Committee will please come to order. I want to first begin by thanking my colleague, Congressman Chet Atkins, who has accepted temporary appointment to this subcommittee and our official hearing becomes 100 percent official as a result of that. Thank you very much for joining us this morning. Congressman Atkins, who is quite familiar to most of you, will give an opening statement later on.

Let me first welcome all of you here today as participants in a great celebration. We are here to celebrate the fact that a thorough and far-reaching piece of legislation has been introduced in the House of Representatives and the Senate. We are here to celebrate the fact that there is widespread agreement and consensus on this bill. We have strong bi-partisan support in both houses. And we also wish to highlight the fact that both of the candidates running for President have endorsed this legislation.

Our task today, and in the months ahead, is to guarantee that none of this monumental support is eroded. We must make certain that all parties understand the broad and massive support behind this bill. We know that there are strong forces of opposition waiting to ambush many of the provisions contained in this act. They will, of course, never acknowledge their deep-seated prejudices. We will hear, instead, endless complaints about the high costs of guaranteeing the rights of Americans with disabilities. We are here to clearly place upon the record some of the pain and misery caused by the failure to acknowledge these rights. We are here to document for the Nation some of the great losses the Nation suffers as a result of the failure to establish an environment which maximizes the opportunities for Americans with disabilities.

Our hearing today is an important step toward assuring that the final legislation will be as great as the present bill. If there is a clear understanding of the great empowerment movement behind this effort, Congress will act to produce a bill which is not shackled by weakening amendments, damaging compromises or gross distortions. We need your testimony in order to preserve the Americans With Disabilities Act as it is written. We all have good reason to believe that a bill will pass. But when the process is completed, we want to celebrate a final product as great as the proposal we have initiated.

The concern of today's hearing is discrimination on the basis of disability in America. The House Subcommittee on Select Education is the subcommittee responsible for independence—enhancing service delivery programs for people with disabilities, such as rehabilitation services, the Independent Living Center Program, and special education.

Today, I am here also as a proud sponsor of the Americans With Disabilities Act, H.R. 4498. I would like to take this time to congratulate and to thank the sponsors, Congressman Coelho, Senator Harkin, Senator Weicker, Senator Kennedy, and many others who also are cosponsors of this important piece of legislation.

It has been a very special year for people with disabilities. Congress recently passed legislation which extends protection under Federal housing law to people with disabilities. The Civil Rights Restoration Act, also passed by the Congress earlier this year, restored protections that had existed for people with disabilities under current federal law prior to the Grove City College versus Bell Supreme Court Decision in 1984.

But perhaps the events which have left the most lasting impression on myself and many others were those that took place at Gallaudet University in Washington, DC this spring. The paternalism and condescending attitudes which deaf people and people with all different kinds of disabilities have had to endure since time immemorial were never more apparent as when the then board chairman of the university told the students and the community that they must continue to wait for the selection of a deaf president to guide their great school. The students and faculty there empowered themselves with well organized and forceful advocacy and we now have as president of Gallaudet University the very distinguished Dr. I. King Jordan, who, like his constituents, is deaf. I believe that one day in the not so distant future we may well look back and come to see the events at Gallaudet University as the equivalent of the 1965 Civil Rights March in Selma, AL in the fight by minorities for their civil rights.

From this year onward, the history of empowerment for people with disabilities will be divided into two eras: before the Gallaudet rebellion and after the Gallaudet rebellion.

The crown jewel for the disability rights movement in the legislative arena, however, will be the enactment by the Federal Government of the Americans With Disabilities Act. This bill, which was introduced in April of this year, has attracted massive and bipartisan support, with 117 cosponsors in the House and 26 in the Senate. Not until all Americans with disabilities enjoy the full measure of civil rights protections will they truly be full citizens of the United States of America.

Not until the U.S. Government, through the passage of such legislation, makes it the law of the land that discrimination on the basis of disability will be illegal—and enforces those laws—will our society have lived up to its moral responsibilities to American citizens with disabilities.

As part of our effort to help accomplish these goals, I have created the Task Force on the Rights and Empowerment of Americans With Disabilities. It is chaired by the former Commissioner of the Rehabilitation Services Administration, Justin Dart, an extraordinarily dedicated and forceful advocate for the civil rights and empowerment of our Nation's Americans with disabilities. Among the 32 extremely distinguished members appointed to the task force are advocates representing a broad range of disabilities. I am delighted to recognize several members of the task force who are here with us today. They are already here. There will be others who will join us from time to time. We have the chairperson, Justin Dart, who will testify in a few minutes. We have a cochairperson, Elizabeth Boggs, who is the cofounder of Association for Retired Citizens of the United States. Ms. Boggs.

We have already here, Joseph Rodgers, the president of the National Mental Health Consumers Association. Mr. Rodgers.

We have Melvin Price Spivack, the executive director of National Head Injuries Foundation. He is not here, yet.

We have Commissioner Elmer Bartels. He is the representative of the Council of State Administration and Vocational Rehabilitation. Commissioner Bartels.

Marca Bristo, who is the president of Access Living and president of the National Council of Independent Living. Marca Bristo.

Dale Brown, who is a member of the President's Committee on Employment of People With Disabilities. Dale Brown.

As I said before, others will join us later. I also want to thank the National Council for Independent Living and the New England Coalition for Independent Living Centers for their great cooperation and coordination in sharing the responsibilities with respect to the witnesses for today's hearings. We certainly appreciate the effort that they have put forth.

The mission of the task force is to gather evidence of discrimination on the basis of disability in America and present its findings as promptly as possible. Justin Dart, as our first witness will soon speak to us about the reports which the task force will be preparing.

I believe that there is a considerable degree of ignorance about the nature of disability in America and the obstacles facing people with disabilities in entering the mainstream of society. Under current Federal law, for example, no protections against discrimination exist for disabled people who seek employment in the private sector, unless that employer is a recipient of Federal funds. The Americans With Disabilities Act would fill several critical voids like this one in protecting people with disabilities from discrimination.

Over 6,500 letters from 49 States have been received by the task force to date, sharing with us the pain and frustration they experience in trying to live a life of dignity. Today we hear from people in New England who, in a long tradition predating the birth of our Nation, have advocated for human independence and freedom. The involvement of so many people in the New England area in planning and executing this hearing is in splendid evidence here today, and the interest and excitement and the creative energy that has been generated in connection with this hearing and the Americans With Disabilities Act have been enormous.

I assure you that we are delighted to be here and that we are ready to listen. Your responsiveness and the significance and value you have attached to these hearings reflect the great faith that you have in the reasonableness, compassion, and readiness of your Government to act. We pledge ourselves to do everything possible to achieve a legislative result which is worthy of your trust and your faith.

[The prepared statement of Hon. Major R. Owens follows:]

Opening Statement of Congressman Major Owens, Chairman, House Subcommittee on Select Education

Let me first welcome all of you here today as participants in a great celebration. We are here to celebrate the fact that a thorough and far-reaching piece of legislation has been introduced in the House of Representatives and the Senate. We are here to celebrate the fact that there is widespread agreement and consensus on this bill. We have strong bi-partisan support in both Houses. And we also wish to highlight the fact that both of the candidates running for President have endorsed this legislation.

Our task today and in the months ahead is to guarantee that none of this monumental support is eroded. We must make certain that all parties understand the broad and massive support behind this bill. We know that there are strong forces of opposition waiting to ambush many of the provisions contained in this Act. They will, of course, never acknowledge their deep-seated prejudices. We will hear, instead, endless complaints about the high costs of guaranteeing the rights of Americans with disabilities. We are here to clearly place upon the record some of the pain and misery caused by the failure to acknowledge these rights. We are here to document for the Nation some of the great losses the Nation suffers as a result of the failure to establish an environment which maximizes the opportunities for Americans With Disabilities.

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The concern of today's hearing is discrimination on the basis of disability in America. The House Subcommittee on Select Education is the subcommittee responsible for independence-enhancing service delivery programs for people with disabilities, such as rehabilitation services, the independent living center program, and special education.

Today, I am here also as a proud sponsor of the Americans With Disabilities Act, H.R. 4498, a civil rights bill for people with disabilities which would outlaw discrimination on the basis of disability in areas such as employment, travel, public accommodations, communications, and activities of State and local government.

It has been a very special year for people with disabilities. Congress recently passed legislation which extends protection under Federal housing law to disabled people. The Civil Rights Restoration Act, also passed by the Congress earlier this year, restored protections that had existed for people with disabilities under current Federal law prior to the *Grove City College* v. *Bell* Supreme Court decision in 1984.

But perhaps the events which have left the most lasting impression on myself and many others were those that took place at Gallaudet University in Washington, D.C. this spring. The paternalism and condescending attitudes which deaf people and people with all different kinds of disabilities have had to endure since time immemorial were never more apparent as when the then board chairman of the university told the students and the community that they must continue to wait for the selection of a deaf president to guide their great school. The students and faculty there empowered themselves with well organized and forceful advocacy and we now have as president of Gallaudet University the very distinguished Dr. I. King Jordan, who, like this constituents, is deaf. I believe that one day in the not so distant future we may well look back and come to see the events at Gallaudet University as the equivalent of the 1965 civil rights march in Selma, Alabama in the fight by minorities for their civil rights.

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And not until the United States Government, through the passage of such legislation, makes it the law of the land that discrimination on the basis of disability will be illegal—and enforces those laws—will our society have lived up to its moral responsibilities to America's citizens with disabilities.

As part of our effort to help accomplish these goals I have created a task force on the rights and empowerment of Americans with disabilities. It is chaired by the former Commissioner of the Rehabilitation Services Administration, Justin Dart, an extraordinarily dedicated and forceful advocate for the civil rights and empowerment of our Nation's disabled citizens. Among the 32 extremely distinguished members appointed to the task force are advocates representing a broad range of disabilities. I am delighted to recognize several members of the task force who are here at the hearing today.

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I assure you that we are delighted to be here and that we are ready to listen. Your responsiveness, the significance and the value you have attached to these hearings reflect the great faith that you have in the reasonableness, compassion and the readiness to act of your Government. We pledge ourselves to do everything possible to achieve a legislative result worthy of your trust and faith.

Mr. OWENS. I yield to Congressman Atkins for an opening statement.

Mr. ATKINS. Thank you very much, Chairman Owens. And good morning. It is good to see so many old friends who have been so active in this State in making Massachusetts a leader on disability issues and it is so good to see so many new faces who have joined the cause of activism and advocacy.

Let me, if I can, thank all of you for making this field hearing on the Americans with Disabilities Act possible. I want to offer my very special thanks to Chairman Major Owens who has done just tremendous work in support of the disabled community as chairman of the Subcommittee on Select Education. It is really a tribute to the chairman's effort that this issue has come to the forefront of congressional consciousness. The chairman's efforts on this important piece of legislation, together with Congressman Tony Coelho, have been nothing short of spectacular.

I am particularly glad that we have scheduled this hearing in Boston because in many ways the Commonwealth of Massachusetts has been the leader in the Nation in programs for the disabled. And we have been the leader not because of public and elected officials, although they have played a very, very important role, but we have been the leader because of the disabled community in Massachusetts. Your activism and advocacy made me, when I was chairman of the Senate Ways and Means Committee, listen and respond to your needs. In so many instances, the State legislature was simply unaware of the problems people faced in the work place, in negotiating tasks of daily living, discrimination, and in public facilities and accommodations. You truly were the eyes and the ears for the legislature and the Government on this issue and we thank you for that.

And we also thank the State government and administration under the leadership of Governor Dukakis, who has done so much to respond to your needs on a continuing basis. While programs have been squeezed on the national level, Massachusetts has moved forward in accessibility, opportunity, equal rights and independence for people with disabilities.

As an example, the Governor's Universal Health Care Program has guaranteed health insurance to 84,000 persons with disabilities who did not previously have coverage. Health coverage for the disabled must be a priority on the national level even at a time of retrenchment and cutbacks in so many areas of Federal activities.

Discrimination is the daily experience for 36 million Americans. And it affects every aspect of all of our lives. Today, we live in a society that is structured in a way that unfairly denies opportunities to people with disabilities. It is time to move forward, to make real progress in areas ranging from housing, employment, recreation, transportation, to basic rights like voting and living independently.

One statistic that is particularly troubling and indicative of how far we need to come on the issue of equal opportunity is that two-thirds of all of the working-aged disabled adults are unemployed. That is an unemployment statistic that is unsurpassed for any group in our economy.

I might add that one of the experiences that we had in Massachusetts working with Commissioner Bartels was the fact that when you break down the barriers of discrimination against the disabled, when you empower them, let them empower themselves with the tools of technology and with access, that for the very small investment that the Government makes, there is an enormous return in people who go back into the work force—people who are able to make substantial contributions that are reflected in higher revenues for the State government. And it was our experience during the 6 years that I chaired the Ways and Means Committee and funded programs for people with disabilities that each and every program expansion was paid for more than two times over and many times four and five times over with increased revenues from the productive activities of people.

The Americans with Disabilities Act is an important step for the Federal Government in recognizing and leveling the barriers to opportunity for the disabled. The act prohibits discrimination on the basis of handicap in areas such as employment, housing, travel, communications and activities of State and local governments. Besides being a civil rights issue, the Americans with Disabilities Act represents a long overdue response to citizens who want to work, to live independently and to have the opportunity to reach their highest potential.

By removing discriminatory barriers, the Congress, the next President, and all of society can fulfill a promise, a promise of genuine opportunity and justice at home, in the work place, at school, at ball parks and movie theaters, in the voting booth and in every facet of daily life.

We are here today to gather information from you on how best to legislate. I am glad to see that we have a full agenda and list of witnesses. But I want to suggest that in addition to our work, in taking testimony and making it a matter of public record for our 433 other colleagues in the House, that we start today with this hearing—an important process. Because, truly, passage of this bill is dependent not so much on the activities of the Congress, but on your activism and advocacy. And with a community nationally, as active as the Massachusetts disabled community has been, I am certain that we can spread the message. That we can spread the message to our colleagues in the Congress. We need your voices. We need your insights. We need all of your energy to understand this issue and to have the Congress put this issue at the very top of the agenda when the 101st Congress convenes next January. I think it is activities like the tremendous rally that you have organized today that will make the difference, that will give Congress the ability to understand the pain that all of you face in every moment of your daily lives and the ways in which government can alleviate that pain for the benefit of all of us.

I want to thank you for your participation and thank particularly Chairman Owens for his leadership.

Mr. **Owens**. I want to again thank my colleague, Chet Atkins, for joining us today.

We have a very ambitious schedule. I am going to need the cooperation of all of you to please keep down the noise as much as possible outside. We would like to move the agenda as rapidly as possible and guarantee that everybody who is scheduled to testify will get a chance to testify today.

Our first panel consists of Justin Dart, Commissioner Justin Dart and Philip Johnston. Please note that we have been joined by a Congressman who is probably well known to most of you, Congressman Joe Moakley. We just started So, if you don't mind, gentlemen, perhaps you would like to make an opening statement or remarks, Congressman?

Mr. **Moakley**. Well, actually, Major—he is not only a congressman, he's a major. I want to thank you and your committee very much for coming to Boston to have this very, very important meeting.

As you well know, we just finished a very grueling last leg of a legislative session, and I could not think of any congressional committee wanting to do anything for the next three weeks, but sleep. So, you and your committee are really to be commended.

I am very happy to have the meeting here. A couple of years ago, I filed a bill that had a similar goal and despite all the good press and the good witnesses, it just never went anywhere. I hope that this committee, because of the outstanding task force that you have got assembled and the outstanding group that you have working so close with you will really do the job that my committee, my bill tried to do a couple of years ago. So, I would like to just sit in with you a little while this morning, before I depart, and just hear some of the testimony and to be with my outstanding colleague from Massachusetts, Chet Atkins. Thank you.

Mr. OWENS. Thank you, again, for joining us, Congressman Moakley.

Our first witness, I have already introduced him partially. And he will need no introduction, but I can assure you he will have a bit to tell about what he has been doing in his testimony: Justin Dart, the former Commissioner of the Rehabilitation Services Administration and also the chairman of our Task Force on the Rights and Empowerment of Americans With Disabilities. Justin.

STATEMENT OF JUSTIN W. DART, JR., CHAIRPERSON, TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

Mr. DART. Mr. Chairman, it is a privilege to appear before your subcommittee. And I am very happy and exceedingly proud to be here today with so many true 20th century patriots of independence like Charley Sabatier and Barbara Burnhardt, Maggy Schrieve, Duane French, John Schunarowski, and John Wensky. And, Mr. Chairman, you have already introduced my distinguished colleague members on the Task Force on the Rights and the Empowerment of Americans With Disabilities. I would like to second your recognition of these great individuals who have spent their own time and money and talents for the cause of Americans with disabilities as members of the task force.

I would like to particular recognize the hard work of our great staff: Marnie Sweet and Marcia Lee Nelson who are here today and have worked long hours and long months for the task force.

I would like to pay tribute to those volunteers who have also given their time and talents and resources to organize and finance this great people's forum today, and the chairman of this forum, organizing committee, Eric Griffin, and collaborators, Elmer Bartels, John Chappel, Bob Williams, Paul Spooner, Charlie Karr, Larry Robinson, Amy Brill, Nancy Waldren, Nancy Durken, Allen Wayne, Marie Lamont, and many others.

I would also like to recognize and to thank the distinguished representatives of the State of Massachusetts who are with us or will be with us here today. And my distinguished colleague, panel member, the Secretary of Human Services, Philip Johnston, and Charlie Crawford, the Commissioner of the Massachusetts Commission for the Blind, Barbara Jean Wood, the Commissioner for the Commission on the Deaf and Hard of Hearing, and Mary McCarthy from the Department of Mental Retardation. And representing the Department of Mental Health, Kevin Preston.

I think it is particularly appropriate that this hearing is being held in Massachusetts, a State with some of the most progressive rehabilitation and independent living services in the Nation and where the Governor and both the Senators and many of the Congresspersons have endorsed and been original sponsors of the Americans with Disabilities Act. I do not have to tell anybody in this room today about the consistent support that Senator Kennedy has given over the years to our cause.

And we are particularly honored today by the participation in this hearing of Congressman Chester Atkins and Congressman Joe Moakley. And, Congressman, we who are disabled appreciate your support of the Americans With Disabilities Act and of our rights over the years.

I would like to recognize the presence of Dr. Pat Morrisee, one of the great advocates for the rights of people with disabilities in this nation, who is representing Congressman Jeffords, who is one of the original sponsors of the Americans with Disabilities Act and a great advocate for our rights.

And most of all, I would like to commend you, Mr. Chairman, and Maria Cuprill and Bob Tate and Pat Laird of your staff who have worked tirelessly to advise and support the task force. Americans with disabilities have several good friends in the Congress like Representatives Coelho and Jeffords and Atkins and Moakley and Senators Weicker, Harkin, Kennedy, and Dole.

You, Mr. Chairman, have made a unique and historic contribution because you have emphasized that equality cannot be handed down through paternalistic systems. And that people with disabilities will never achieve full first class citizenship until they are empowered to participate fully in the Government and other decisions which control their lives. And you have supported empowerment not only in words, but in action, in the administration of Federal rehabilitation services at Gallaudet University and the introduction of the Americans with Disabilities Act. And you have created the task force on the rights and the empowerment of Americans with disabilities, including constituencies not often represented, such as Native Americans with disabilities, black Americans with disabilities, citizens with mental retardation, citizens with mental illness, citizens with AIDS and I have come to know you as a courageous champion of empowerment and equality and you have laid your career on the line for our rights. And we appreciate it.

Mr. Chairman, I would like to submit for the record an executive summary of the Task Force Findings and Recommendations as of today and I will not repeat all of that. I have prepared that for you and presented it to your staff. I would like to make a brief summary of that report and also, with your permission, to make some personal comments.

Mr. OWENS. Without objection your report will be included in the record.

Mr. DART. Thank you. With the cooperation of congressional staff, task force members, staff and volunteers, and virtually the entire disability community, I have presided to date at over 59 public forums in 50 States, the District of Columbia, and Guam; attended by more than 6,700 persons with disabilities, their families, advocates, and service providers. I have also made task force issue presentations to numerous other meetings attended by more than 10,000 members of the disability community. The task force has collected and is in the process of analyzing several thousand documents submitted by citizens and organizations outlining discrimination and other barriers which limit the activities of people with disabilities and also proposals to eliminate those barriers.

The task force has no public funding or private grants. Special recognition is due task force members, staff, and volunteers and the literally thousands of patriotic citizens and organizations in every State and territory who have contributed services, money, and time to make the democratic system work. The task force has found overwhelming evidence that in spite of great progress in the area of disability during the past few decades, millions of Americans with disabilities are still subjected to massive discrimination in all significant aspects of life, including education, employment, communication, transportation, public access, insurance, recreation, and access to vital health, legal, and other services.

Our very promising pioneer services for people with disabilities are severely restricted by lack of funds, fragmentation, bureaucratic and regulatory limitations, obsolete public attitudes, and inadequate community access and support systems. Existing disability rights laws are poorly implemented and enforced. Millions of Americans with disabilities suffer unconscionable infringement of their human rights, segregation, unemployment, poverty, and physical and psychological deprivation. The task force believes that the more than 36 million Americans with disabilities will never achieve their full potential for equal participation in the productive mainstream of society until they are fully protected by comprehensive civil rights legislation. And they are empowered to participate fully in the Government and other decisions which control their lives.

America cannot afford either the moral or economic costs of maintaining ever increasing millions of its potentially productive citizens in unjust and unwanted dependency. Investments in the rights and productive independence of all people with disabilities have proven to be immensely profitable to every citizen and to the Nation as a whole.

The task force recommends that Congress enact an effective enforceable form of the Americans With Disabilities Act. The task force recommends that the Congress continue to move toward a full spectrum of effective services, protection and support systems designed to empower all Americans with disabilities to fulfill their potential to be productive citizens of the first class. Mr. Chairman, a personal note: I am shaken to the depths of my being by the holocaust horror of the discrimination, segregation, and deprivation of which I have become aware. I have had to reflect deeply on my personal responsibilities in this matter and the responsibilities of the disability community and the Nation. More than 200 years of hard sacrifices by our forefathers and, especially by the people in this room here today, have brought us to the threshold of a great victory for human justice.

We here today have a profound responsibility to complete that victory. And we are responsible to tens of millions of people with disabilities in America and throughout the world, in this and in future generations. And we are responsible to millions of potentially proud productive human beings who exist today in the 20th century as virtual outcasts from the mainstream of society: jobless, homeless, penniless, hopeless. And we are responsible to hundreds of thousands of our fellow citizens who die, literally die, years and decades before their time.

Available to us are the resources of the richest, most technologically advanced culture in the history of mankind and we have no excuse to fail our oppressed colleagues, and we have no excuse to fail our children's children.

Mr. Chairman, we solicit your continuing support and that of the Congress and the executive branch, but we also know that the final responsibility lies with us, with the members of the disability community. We must empower ourselves to exercise full and equal participation in the decisions of government and society. We must empower ourselves in the democratic process, in all parties and with all major candidates. And we must demand that our parties and our candidates support ADA empowerment and full and effective services.

Above all, we of the disability community must unite. We have no excuse to sacrifice our historic responsibilities to self-indulgent, self-destructive squabbling among ourselves. All people with disabilities, families, advocates, and service providers are natural allies. We all have the same ultimate goals. We have no irredeemable enemies. We have only enemy attitudes. Let us not seek scapegoats. Let us seek solutions.

Like our founding fathers, like Ghandi, Martin Luther King, we must utilize the power of love and the power of reason and the power of truth to overcome our differences and our apathies and to unite in common dedication to the cause of democracy and human justice. And we must unite and reach out to thousands and millions of our colleagues to join us in creating a tidal wave of positive advocacy that will establish the rights and the empowerment of people with disabilities in the consciousness and in the law and in the everyday life of this Nation. We must unite 36 million Americans with disabilities and all who love justice to declare with one voice that 200 years is long enough for Americans with disabilities to wait for the promises of the Declaration of Independence and of the Constitution to be kept. And that we will wait no longer. ADA, now. Empowerment, now. Services to be fully human, now. I thank you.

[The prepared statement of Justin W. Dart follows:]

Task Force on the Rights and Empowerment of Americans With Disabilities

Executive summary of reports, findings and recommendations as of October 24, 1988.

More than 6,700 persons with disabilities, families, advocates and service providers attending 59 task force forums in 50 states have presented overwhelming evidence that:

In spite of great progress in the area of disability during the past few decades, millions of Americans with disabilities are still subjected to massive discrimination in all significant aspects of life, including education, employment, communication, transportation, public access, insurance, recreation and access to vital health, legal and other services.

Our very promising pioneer services for people with disabilities are severely restricted by lack of funds, fragmentation, bureaucratic and regulatory limitations, obsolete public attitudes and inadequate community access and support systems.

Existing rights laws are poorly implemented and enforced.

Millions of Americans with disabilities suffer unconscionable infringement of their human rights, segregation, unemployment, poverty, and physical and psychological deprivation.

The Task Force believes that:

The more than 36 million Americans with disabilities will never achieve their full potential for equal participation in the productive mainstream of society until they are fully protected by comprehensive civil rights legislation and empowered to participate fully in the Government and other decisions which control their lives.

America cannot afford either the moral or economic cost of maintaining ever increasing millions of its potentially productive citizens in unjust, unwanted dependency. Investments in the rights and productive independence of all people with disabilities have proven to be immediately profitable to every citizen and to the Nation as a whole.

The Task Force recommends that Congress:

Enact an effective, enforceable form of the Americans with disabilities act.

Continue to move toward a full spectrum of effective services, protections and support systems designed to empower all Americans with disabilities to fulfill their personal potential to be productive citizens of the first class.

Mission.—The Task Force on the Rights and Empowerment of Americans With Disabilities was established on May 2, 1968 by Congressman Major R. Owens, Chairman of the House Subcommittee on Select Education. Composed of 31 distinguished representatives of major segments of the disability community, the Task Force is mandated to collect information and to make recommendations which will assist Congress as it considers the historic Americans With Disabilities Act, and other legislation designed to implement the rights of America's more than 36 million citizens with disabilities.

The Task Force believes that Americans with disabilities will never be able to achieve their full potential for equal participation in the productive mainstream of society until certain basic truths are understood and acted upon by the nation:

1. Disability is a universally common characteristic of human life; people with disabilities have the same inalienable rights and the same inalienable responsibilities as other people. 2. Equality cannot be handed down by paternalistic systems; people with disabilities must be empowered to participate fully in the government and other decisions which control their lives. 3. America cannot afford either the economic or the moral cost of maintaining ever increasing millions of its potentially productive citizens in unjust, unwanted degrading dependency; experience has demonstrated conclusively that investments in the equality and productive independence of people with disabilities will be immediately profitable to all citizens and to the nation in terms of both money and quality of life.

Activities to date.—The Task Force has held four meetings. With the cooperation of Congressional staff, Task Force members, staff and volunteers and virtually the entire disability community, the Chairperson has presided over 59 public formus in 50 States, the District of Columbia and Guam, attended by more than 6,700 persons with disabilities, their families, advocates and service providers. He has also made Task Force issue presentations to numerous other meetings attended by more than 10,000 members of the disability community. The Task Force has collected and is in the process of analyzing several thousand documents submitted by citizens and organizations outlining discrimination and other barriers which limit the activities of people with disabilities, and proposals to eliminate those barriers.

Findings to date.—While there is general recognition that there has been great progress in the area of disability during the past few decades, there is also overwhelming evidence that people with disabilities still suffer massive discrimination, segregation and deprivation which results in unconscionable injustice to millions of individuals, and unconscionable moral and economic costs to the nation. 1. Devastating discrimination and other barriers still exist in all significant areas of life, including education, employment, communication, transportation, public access, recreation, insurance and access to vital services. 2. Pioneer independence and productivity oriented service providers have struggled valiantly to achieve excellent initial results in certain areas, but are unable to meet all the needs of our rapidly increasing disability population due to obsolete public attitudes, regulatory and bureaucratic limitations and lack of adequate funding, authority, structure and community access and support systems. 3. The rights of citizens with disabilities are inadequately protected in numerous areas, and too many protections which are provided by law remain largely unenforced. There is a clear mandate for vigorous action to implement and enforce existing and future laws and regulations. 4. Testimony in the forums seemed to reflect virtually unanimous support by the active disability community for the Americans With Disabilities Act and for a continuum of effective services and support systems designed to empower all people with disabilities as fully equal and productive participants in the mainstream of society.

Preliminary recommendations.—The Task Force recommends Congress: 1. Move decisively to enact an effective form of the Americans With Disabilities Act. 2. Provide aggressive national leadership in the affirmative employment and other meaningful involvement of people with disabilities in roles of significant responsibility. 3. Continue to move toward a full spectrum of effective services and support systems for all people with disabilities. 4. Give particular attention to ensuring the effective implementation and enforcement of rights and services legislation, to providing affordable, quality educational opportunities for all children, youth and adults with disabilities and to enabling all people with disabilities to secure adequate, affordable medical and other insurance coverage.

The task force wishes to acknowledge the magnificant support it has received from numerous members and staff of Congress, particularly Task Force founder Congressman Major Owens and the members and staff of the House Subcommittee on Select Education, Senators Tom Harkin and Lowell Weicker and the members and staff of the Senate Subcommittee on the Handicapped, and all the sponsors of the Civil Rights Restoration Act, The Fair Housing Act Amendments of 1988, the Technology-related Assistance for Individuals With Disabilities Act and the American With Disabilities Act, including Congressman Tony Coelho, Silvio Conte, and James Jeffords, and Senators Edward Kennedy, Robert Dole and Paul Simon. The Task Force has no public funding or private grants. Special recognition is due Task Force members, staff and volunteers, and the literally thousands of patriotic citizens and organizations in every state and territory who have contributed services, money and time to make the democratic system work.

Mr. OWENS. We are pleased to have Mr. Philip Johnston, the Secretary of the Executive Office of Human Services. Welcome, Mr. Secretary.

STATEMENT OF PHILIP JOHNSTON, SECRETARY, EXECUTIVE OFFICE OF HUMAN SERVICES

Secretary JOHNSTON. Thank you, Mr. Chairman. It is a pleasure to be here. And it is a particular pleasure to follow my colleague on the panel, Mr. Dart, who has described for you and for all of us in the most powerful and eloquent language that I think I have heard on this topic what the stakes are regarding this legislation. I want to express my appreciation to you, Mr. Chairman, for your leadership and to Congressman Atkins and Congressman Moakley. All three of you have been leaders in this area at the Federal level. Our two Massachusetts Congressmen, Jim Moakley and Chet Atkins have been leaders here in the State. Congressman Atkins is somebody with whom I worked and our commissioners worked very closely when he was chairman of the Senate Committee on Ways and Means in the State legislature, and I do not think that there is anyone in the State who has done as much to support independent living by disabled people as Congressman Atkins.

We have a number of Human Services commissioners who work for us, for Governor Dukakis here who are going to be testifying before the committee over the next hour or so. I would like to do two things. First, I have a statement which I understand you would like to have read, by Governor Dukakis, who feels very, very strongly about this legislation and that is a brief statement. And then I have a brief statement that I would like to read on my behalf as Secretary of Human Services.

First, I would like to read Governor Dukakis' statement regarding this legislation: "The Americans With Disabilities Act of 1988 is a major step forward in protecting the civil rights of people with disabilities. Building on the principles of section 504 of the Rehabilitation Act and the newly enacted Fair Housing Amendments, the act would provide comprehensive protection of the basic civil rights of people with disabilities.

"Protecting these fundamental civil rights has been the cornerstone of my policies as Governor and will be a major focus of my administration when I am elected President. It is unacceptable that in the United States, two out of three disabled adults are out of work. As President, I will work to provide incentives for people with disabilities to find meaningful jobs, jobs with a future that offer an opportunity to remain independent and self-sufficient. And we must make transportation more accessible, because without adequate transportation, people with disabilities will not be able to get to their jobs. We need to work with every community across the country to create more accessible transportation. Too often, the fear of losing health insurance keeps people with disabilities out of the work force. I recently signed a law that will make health insurance available to every man, woman and child in Massachusetts. A special provision of the law guarantees coverage to disabled workers. As President, I will work to extend this health security to all people in our country who are mentally and physically disabled.

"This basic right of security should also extend to the Social Security benefits upon which so many disabled citizens rely. When the Reagan administration attempted to throw 500,000 disabled people off the Social Security roles without due process a few years ago, I ordered a moratorium in Massachusetts and developed an ineligibility standard that became the basis for national legislation to prevent such injustice in the future.

"As President, I will continue to show this kind of leadership and defend the rights of Social Security recipients.

"As Governor of Massachusetts, I have worked to create a system that recognizes that we must not only prevent discrimination against people with disabilities, obviously, as a first priority, but we must also work diligently to make housing, jobs, health care, transportation and other critical services accessible. We have built a network in Massachusetts of independent living centers that help people with disabilities to live as self-sufficiently as they possibly can. The philosophy of independent living has shaped all of our work for people with disabilities. Our services for early intervention, special education for young children, and the Turning 22 law that provides a transition plan for every child leaving special education at the age of 22.

"My administration developed the Nation's first program for people with head injuries. We worked with consumers in the private sector to develop a wide range of community-based housing models for people with physical and mental disabilities. And we strengthened the authority of the Architectural Access Board.

"In 1985, I proposed a balanced plan to strengthen services for people with mental illness, including new hospitals and expanded community care and housing. We have opened 11 counseling outreach and treatment centers for Vietnam veterans. We are improving health care services to older veterans. And in all of these initiatives we have had the very, very strong support and commitment from members of the Massachusetts Legislature.

"I believe that the top domestic priority for the next President of the United States must be to build a society that offers genuine opportunity to every citizen, including the nearly one in five Americans who have some form of physical or mental disability.

"The Americans with Disabilities Act will provide a legal standard against which all our efforts can be judged. As President, I will work with the Congress to enact it and I will commit my administration to developing policies and programs that reflect its principles.

"Working together, government, disabled citizens, and the private sector, we can build a new future of equality, independence and dignity for everyone with disabilities in the United States."

[The prepared statement of Gov. Michael S. Dukakis follows:]

STATEMENT BY GOVERNOR MICHAEL S. DUKAKIS, AMERICANS WITH DISABILITIES ACT

The Americans With Disabilities Act of 1988 is a major step forward in protecting the civil rights of people with disabilities. Building on the principles of section 504 of the Rehabilitation Act and the newly enacted Fair Housing Amendments, the Act would provide comprehensive protection of the basic civil rights of people with disabilities. Protecting these fundamental rights has been the cornerstone of my policies as Governor and will be a major focus of my administration when I am elected president.

It is unacceptable that in the United States today, two out of three disabled adults are out of work. As President, I will work to provide incentives for people with disabilities to find meaningful jobs—jobs with a future that offer an opportunity to remain independent and self-sufficient. And we must make transportation more accessible because without adequate transportation, people with disabilities won't be able to get to their jobs. We need to work with every community across the country to create more accessible transportation.

Too often, the fear of losing health insurance keeps people with disabilities out of the work force. I recently signed a law that will make health insurance available to every man, woman and child in Massachusetts. A special provision of the law guarantees coverage to disabled persons. As President I will work to extend this health security to all people with disabilities.

This basic right of security should also extend to the social security benefits upon which so many disabled citizens rely. When the Reagan Administration attempted to throw 500,000 disabled people off the social security rolls without due process, I ordered a moratorium in Massachusetts and developed an eligibility standard that became the basis for national legislation to prevent such injustice in the future. As President, I will continue to show this kind of leadership and defend the rights of social security recipients.

As Governor of Massachusetts, I have worked to create a system that recognizes that we must not only only prevent discrimination against people with disabilities, but must also work diligently to make housing, jobs, health care, transportation and other critical services accessible.

We have built a network in Massachusetts of independent living centers that help people with disabilities to live as self-sufficiently as they can. The philosophy of independent living has shaped all of our work for people with disabilities—our services for early intervention, special education for young children, and the turning 22 law that provides a transition plan for every child leaving special education. My administration developed the Nation's first program for people with head injuries; we worked with consumers and the private sector to develop a wide range of community-based housing models for people with physical and mental disabilities; and we strengthened the authority of the architectural access board. In 1985, I proposed a balanced plan to strengthen services for people with mental illness, including new hospitals and expanded community care and housing. We have opened 11 counseling, outreach and treatment centers for Vietnam veterans. We are improving health care services to older veterans.

I believe that the top domestic priority of the next president of the United States must be to build a society that offers genuine opportunity to every citizen—including the nearly one in five Americans who have some form of physical or mental disability.

The Americans With Disabilities Act will provide a legal standard against which all our efforts can be judged. As President, I will work with Congress to enact it and I will commit my administration to developing policies and programs that reflect its principles. Working together—Government, disabled citizens, and the private sector—we can build a new future of equality, independence, and dignity for everyone with disabilities in the United States.

TESTIMONY OF PHILIP W. JOHNSTON, SECRETARY OF HUMAN SERVICES, COMMONWEALTH OF MASSACHUSETTS

Thank you for giving me this opportunity to express my enthusiastic support of the Americans With Disabilities Act of 1988. I have with me a prepared statement from Governor Dukakis that I would like to enter into the record.

The Americans With Disabilities Act will for the first time in statute protect the basic civil rights of every disabled citizen of the United States. As such it is the most far-reaching piece of legislation affecting people with disabilities since section 504 of the Rehabilitation Act of 1973. The principles embraced in this act have guided the programs and policies of the Dukakis administration and we sincerely hope the act will be passed this session.

As an administration we have long recognized that people with disabilities are a legitimate minority who have faced discrimination on many fronts and have a fundamental right of access to the same benefits as all citizens. Our policies and programs reflect a strong commitment to prevent discrimination while serving to make access to jobs, transportation, housing, and health care a reality for the widest range possible of disabled citizens.

We have been significantly influenced by the independent living movement and its philosophy of consumer control in the design and implementation of programs. All of our efforts have been partnerships between government and disabled citizens—partnerships which have allowed us to offer services that are truly responsive to the needs of disabled people.

I would like to cite a few of our initiatives that are specially relevant to the Americans With Disabilities Act. When he took office in 1983, Governor Dukakis issued Executive Order 246 prohibiting discrimination against people with disabilities in the executive branch. This order parallels section 504 in that it reflects on activities in government. The Americans With Disabilities Act would extend these protections to disabled citizens in every area of their lives and reinforce our ability to enforce this requirement in all of our agencies.

Despite Federal cutbacks under the Reagan administration, we have actively worked for a housing program to provide thousands of new units of accessible housing Statewide. The fair housing amendments were an important first step toward ensuring that public and private housing meets all accessibility criteria set out by State and Federal law. The Americans With Disabilities Act will do much to further ensure that all people with disabilities have equal access to housing in the increasingly tight market.

Jobs are another area where the Americans With Disabilities Act will play a critical role. In America today, two out of three disabled adults are unemployed. The Dukakis administration is tackling that in Massachusetts by making people with disabilities the main focus of our job creation and job training programs. Building on the success of ET, which has placed over 50,000 welfare recipients into good jobs, we are striving to ensure that people with disabilities in Massachusetts have access to jobs in the private sector and the support they may need to do those jobs. The passage of the Americans With Disabilities Act could spur the Federal Government to invest more in programs like supported employment and to target JTPA and other Federal programs specifically to training and placement of disabled people.

Finally, health security is critical to the lives of disabled citizens who may be discouraged from seeking work because they are afraid of losing Federal or State health coverage. We in Massachusetts are proud to be the first State in the Nation to guarantee health coverage to every citizen. Two special provisions in the law cover children with disabilities and working disabled adults. The passage of the Americans With Disabilities Act would set a standard for insurers and offer incentives in health insurance programs to allow disabled citizens to live and work as independently as possible.

We, in Massachusetts, are proud of our accomplishments to ensure access and equity to people with disabilities. With a strong Federal law, we will be able to move into new areas of advocacy and program development as a State.

I strongly urge that you recommend the act to committee and that you work to pass this essential and long overdue piece of legislation. People with disabilities have every right to have the same opportunities available to them that are available to any American.

Mr. Johnston. That is the Governor's statement. Now, I would like just very briefly to read my own statement. I am going to abridge this a little bit and I will give you copies of the statement, itself.

As an administration in Massachusetts, we have long recognized that people with disabilities are a legitimate minority who have faced discrimination on many fronts as Mr. Dart has so eloquently pointed out and who have a fundamental right of access to the same benefits as all citizens. Our policies and programs in the State reflect a strong commitment to prevent discrimination while serving to make access to jobs, transportation, housing and health care a reality for the widest range possible of disabled citizens.

It is very, very important in the discussion this morning to understand that in Massachusetts, we have been significantly influenced—the Governor has been influenced, I have been influenced and, as Congressman Atkins indicated, virtually every member of the legislature has been influenced, by the independent living movement and its philosophy of consumer control in the design and implementation of programs. All of our efforts have been partnerships between government and disabled citizens, partnerships which have allowed us to offer services that are truly responsive to the needs of disabled persons. I would like to cite a few of our initiatives that might be helpful to the committee and to the Congress that are specially relevant to the Americans With Disabilities Act. When he did take office in January of 1983, for the second time as Governor, Michael Dukakis issued Executive Order 246 which prohibits discrimination against people with disabilities in the executive branch. That order parallels section 504 in that it reflects on activities in the Government.

The Americans With Disabilities Act would extend these protections to disabled citizens in every area of their lives and would reinforce our ability to enforce this requirement in all of our agencies.

Despite Federal cutbacks under the Reagan administration, we have actively worked for a housing program to provide thousands of new units of accessible housing statewide. The Fair Housing Amendments were an important first step toward ensuring that public and private housing meets all accessibility criteria set out by State and Federal law. The Americans With Disabilities Act will do much to further ensure that all people with disabilities have equal access to housing in what is admittedly a tight housing market not only in this region of the country, but in most regions.

Jobs are another area where the Americans With Disabilities Act will play a critical role. Our administration is tackling that in Massachusetts by making people with disabilities the main focus of our job creation and job training programs. Building on the success of our Employment Training Choices Program in the welfare department, which has placed over 50,000 welfare recipients into decent jobs during the last few years, we are now striving to ensure that people with mental and physical disabilities in our State have access to jobs mainly in the private sector and that they have the support that they may need to do those jobs.

The passage of the ADA could spur the Federal Government to invest in programs like "Support and Employment," and to target JETPA and other Federal programs specifically to training and placement of disabled people.

Finally, health security is critical to the lives of disabled citizens who may be discouraged from seeking work because they are afraid of losing Federal or State health coverage. I might just point out that in hearings across the State that were held a year and a half ago around our Universal Health Insurance legislation, the most moving testimony that we heard was from people who were physically and mentally disabled who said, "We want to go to work, but we can't because of this disincentive in private insurance policies which really force us to stay home and remain eligible for Medicaid."

But we are proud, now, of having enacted this legislation to be the first State in the Nation to guarantee health coverage for every single citizen in Massachusetts. Two special provisions, as I mentioned earlier in the law, covered children with disabilities and working disabled adults. The passage of the ADA would set a standard for insurers and would offer incentives in health insurance programs to allow disabled citizens to live and to work as independently as possible.

I strongly urge that you recommend the act to the full committee and that you work to pass this essential and long overdue piece of legislation. People with disabilities have every right to have the same opportunities available to them that are available to the rest of us in this country. Thank you very much.

Mr. Owens. Thank you very much, Mr. Secretary. Both of you two distinguished witnesses. We will enter upon the record your full statements and we do want you to stand by. We would like to invite you back as the committee continues its deliberations next year on these bills. There are many questions that we need to have answered, especially, Mr. Secretary, your position places you in a position to help us a great deal with the problems of adequate enforcement and just how far the Government is willing to go. And to Commissioner Dart, we certainly want to thoroughly review the summary report. And you implied—you did not imply—you stated in your testimony that even a person as knowledgeable as you—and you are one of the persons in the country who is most knowledgeable about the problems faced by people with disabilities, you were shocked to find how tremendous the problem was, how terrible the problem was across the Nation. I think further documentation of that and discussion of that on the record will be very much in order. And we would like to invite you back at a time when we can go into it in more detail.

Thank you very much.

We have a very full agenda here. At this point, we are going to have to move to the clock and time each of the panelists from here on out. I think you have about 5 minutes, each panelist from here on. The next panel consists of Commissioner Elmer Bartels of the Massachusetts Rehabilitation Commission; Commissioner Barbara Jean Wood of the Commission for the Deaf and Hard of Hearing; Commissioner Charles Crawford, Massachusetts Commission for the Blind; Mary McCarthy, and Kevin Preston.

[Pause.]

Mr. Preston is not here.

Well, I think you have heard my enunciation of the ground rules which we all understood. In order to get the greatest number of people in today, we have to limit it from here on out to about 5 minutes. So, please proceed, Commissioner Bartels.

STATEMENT OF ELMER C. BARTELS, COMMISSIONER, MASSACHUSETTS REHABILITATION COMMISSION

Mr. Bartels. Thank you, Mr. Chairman. I am pleased to appear before the distinguished panel in the company of my fellow commissioners and my fellow disability advocates to support the Americans With Disabilities Act. I am also particularly pleased that Congressman Atkins was able to join the committee for purposes of this hearing to assure that it would, in fact, be an on-the-record hearing.

The Americans With Disabilities Act legislation embodies the policies that address some very fundamental and important problems that prevent clients and participants in our vocational and independent living rehabilitation programs and 36 million other citizens from being contributing citizens in providing their talents and efforts at work and in the community life in this great America.

Two hundred and twelve years ago in Philadelphia, 56 men signed the Declaration of Independence which set forth the basic promises to all of us, the fundamental principles of our American society. That is: "We hold these truths to be self-evident, that all men are created equal and that they are endowed by their Creator with certain inalienable rights that among those are life, liberty, and the pursuit of happiness." And that is what the Americans With Disabilities Act is all about.

The promises of that first American document remain unfulfilled for many of the 36 million citizens with disabilities who share the ideals and aspirations on which our country is founded.

A major difference between persons with disabilities and other individuals is the number and complexities of the barriers we face in trying to work, to live, and to achieve our dreams of life, liberty, and the pursuit of happiness.

We have begun to eradicate some of the physical barriers which keep people who use wheelchairs from entering our public buildings and using public facilities that able-bodied people take for granted.

We have a Federal-State vocational rehabilitation and independent living program that are nationally available and serve over 950,000 people with disabilities annually and enable 226,000 of them to go to work each year.

Federal vocational education grants support State and local efforts to prepare 490,000 students with disabilities for employment.

Hundreds of thousands of children with disabilities are in special education programs and we have a patchwork of laws and policies which precludes some kinds of discrimination against some people with disabilities and require some government programs to provide effective services for this population to include reasonable accommodations. These are good beginnings, but I must stress: These are only beginnings. Far too many people with disabilities lack access to the great American Dream and real opportunities for work and community participation which remains unrealized.

Here in Massachusetts, the policy of civil rights for people with disabilities is not new. In fact, they have been enacted and implemented into a patchwork fashion in several States to encompass some of the rights and activities that are protected under the Americans with Disabilities Act.

Our own State of Massachusetts under the leadership of our Governor has pioneered the civil rights policies that have broadened the opportunities and options available to people with disabilities. The first principles of State disability policy were established in 1980 by amending the Massachusetts Constitution. Article 114 states that:

> No otherwise qualified handicapped individual shall, solely by reason of his handicap be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth.

We are proud of that 1980 amendment which recognized the basic civil rights of people with disabilities and enhanced the proud history of our State constitution.

As the State director of vocational rehabilitation in Massachusetts, I am very frustrated by the institutional racism with respect to disabilities that I have seen within our Federal Government. Over the last 8 years, the administration has in every turn proposed to mitigate against the independent living and vocational options and civil rights of people with disabilities.

To see our representatives go before congressional committees and say that the vocational rehabilitation program is not cost effective is one very damaging act that was taken and does not help us out in the State to provide meaningful vocational rehabilitation for people with disabilities.

To see our President veto the Civil Rights Restoration Act that was so important to us as people with disabilities is very discouraging, both as a person with a disability and as an administrator who is trying to help people with disabilities live independently.

Mr. OWENS. Mr. Bartels, could you wind up? Your bell has rung.

Mr. BARTELS. We know the concepts and policies with laws to protect the civil rights of citizens with disabilities. All we need to do is to get about the business of passing those through the ADA. Thank you, Mr.Chairman.

[The prepared statement of Elmer C. Bartels follows:]

TESTIMONY OF COMMISSIONER ELMER C. BARTELS, MASSACHUSETTS REHABILITATION COMMISSION

I am pleased to appear before this distinguished panel in the company of my fellow Commissioners and my fellow disability advocates to support the Americans With Disabilities Act. This legislation embodies policies that address some very fundamental problems that prevent clients and participants in our rehabilitation programs and 36 million other citizens from contributing their talents and efforts at work and in community life and sharing in the Great American Dream.

1. *Barriers to The American Dream.*—112 years ago in Philadelphia 56 men signed the Declaration of Independence, which set forth the basic promises to all of us, the fundamental principles of our American society.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among those are life, liberty and the pursuit of happiness."

The promises of that first American document remain unfulfilled for many of the 36 million citizens with disabilities who share the ideals and aspirations on which our country is founded.

A major difference between persons with disabilities and other individuals is the number and complexity of barriers we face in trying to work, to live and to achieve our own dreams of life, liberty and the pursuit of happiness. We have begun to eradicate some of the physical barriers which keep people who use wheelchairs from entering our public buildings and using public facilities that able-bodied people take for granted. We have federal-state vocational rehabilitation and indepedent living programs that nationally serve over 950,000 people with disabilities and enable 226,000 of them to go to work each year. Federal vocational education grants support state and local efforts to prepare 490,000 students with disabilities for employment. Hundred of thousands of children with disabilities are in Special Education programs and we have a patchwork of laws and policies which preclude some kinds of discrimination against some people with disabilities and require some government programs to provide effective services for this population through reasonable accommodation.

These are good beginnings, but only good beginnings. Far too many people with disabilities the American Dream and real opportunities for work and community participation remain unrealized. Government programs and services are now more accessible to people with disabilities. More needs to be done in terms of compliance. Opportunities within the private sector, by and large, are still not covered by law. Social barriers and negative attitudes continue to create serious barriers to the kind of work and opportunities which are available to people with disabilities. Prejudice and stereotypes about the capabilities of people with various types of disabilities restrict where they can live, where they can eat and socialize, how they communicate and get information in this media-driven society, and other fundamental activities in work and community life. Too many people are limited in their lives and dreams by social customs and practices, based on attitudes that many activities are impossible for people with disabilities.

2. *A Response: The Americans With Disabilities Act.*—The Americans With Disabilities Act embodies policies that are designed to address those negative attitudes and exclusionary practices by creating a climate of possibilities for people with disabilities in both the private and public sectors. The most important feature of this legislation is its involvement of the private sector in opening up our society so that people with disabilities have better access to work and ordinary activities. It is a broad civil rights law that prohibitis discrimination on the basis of handicap in employment, housing, public accommodations, travel, communications, and activities of State and local governments.

The Act covers employers engaged in commerce who have 15 or more employees; it also prohibits discrimination by housing providers covered by Federal fair housing laws; transportation companies; those engaged in broadcasting or communications.

The Act prohibits discrimination in public accommondations covered by Title VIII of the Civil Rights Law—hotels, motels and restaurants that are involved in interstate commerce.

It specifically defines discrimination, including various types of international and unintentional exclusion; segregation; inferior or less effective services, benefits or activities; architectural, transportation, and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

It also specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 which prohibit discrimination by federal contractors and by state and local governments receiving federal grants. All regulations issued under those sections will remain in full force and effect.

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Enforcement procedures are modeled on other civil rights laws and include administrative remedies, a private right of action in Federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of Federal funds.

3. *State Civil Rights Policy: The Massachusetts Experience.*—These policy concepts are not new. In fact, they have been enacted and implemented in a patchwork fashion in several states to encompass some of the rights and activities that are protected under the Americans with Disabilities Act. Our own state of Massachusetts, under the leadership of Governor Dukakis has pioneered civil rights policies that have broadened the opportunities and options available to people with disabilities here.

The first principles of state disability policy were established in 1980 by amending the Massachusetts Constitution. Article 114 states that: "No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth."

We are proud of that 1980 amendment which recognized the basic civil rights of people with disabilities and enhanced the proud history of our state Constitution, which is one of the oldest Constitutions in the nation and provided the model for the Federal bill of rights.

In 1983 the Massachusetts Legislature enacted Chapter 533 to prohibit employment discrimination on the basis of handicap. It further guarantees qualified individuals the right to fair treatment in employment situations by placing upon both private and public employers the duty to make reasonable accommodations so that a person with disabilities can perform the essential functions of a particular job. The Massachusetts anti-discrimination law is being vigorously enforced by our state civil rights agency.

In 1984, Governor Dukakis issued Executive Order 246 to implement Article 114. That Executive Order further strengthens the commitment of the Commonwealth to equal access for people with disabilities. Its broad mandate states that: "Non-discrimination and equal opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts in all of its decisions, programs and activities. To that end, each executive officer serving under the governor, and all state employees shall rigorously take affirmative steps to assure equality of opportunity for handicapped individuals in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth."

Under this order all state agencies have developed procedures for assuring non-discrimination and affirmative action in employing individuals with disabilities. State contractors for construction, goods and services may not discriminate and must undertake affirmative action programs to provide equal access for individuals with disabilities. The Executive Order affects all public education facilities and programs, as well as health care and private educational facilities licensed or chartered by the state. It prohibits housing discrimination and requires adoption of affirmative action procedures to assure that individuals with disabilities in state financed or subsidized housing are not segregated or otherwise limited in their access to these publicly supported services.

In addition, Massachusetts has developed strong programs that support the independence and productivity of persons with disabilities, including the state-federal vocational rehabilitation programs, a network of independent living centers, a personal care attendant program that helps persons with severe disabilities continue to work, and other services provided to persons with the disabilities by the Massachusetts Rehabilitation Commission, the Commission for the Blind, and the Commission for the Deaf and Hard of Hearing, and our Departments of Mental Health and Mental Retardation. The Commonwealth also provides advocacy and policy leadership on behalf of people with disabilities through the Office of Handicapped Affairs.

The Massachusetts experience shows that civil rights policies, together with services, can expand the options available to people with disabilities. But Massachusetts is only one of the fifty states. We want to share our vision of the American dream and ideas about how the barriers to its achievement can be eliminated so that people with disabilities have equal opportunities all across this nation.

4. *Section 504: The Beginning of Federal Civil Rights Policy.*—Federal civil rights policy is not new. Ever since the 1964 Civil Rights Act, people have discussed expanding those laws to assure the basic civil rights and access of people with disabilities to housing, employment, and public accommodations. Fifteen years ago, the Rehabilitation Act of 1973, was enacted as the first law that expressly recognized the civil rights of people with disabilities. That landmark policy has been a principle that guides the current efforts of people with disabilities to gain access to govern-

ment services in employment, education, transportation and housing. But neither Section 504 nor its companion measures in Title V were enacted or implemented without a struggle. In 1972 Senator Hubert Humphrey and Congressman Charles Vanik introduced a bill to amend the Civil Rights Act of 1964 in order to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs.

Introducing his bill, Senator Humphrey stated: "The time has come when we can no longer tolerate the invisibility of the handicapped in America. . . I am insisting that the civil rights of 40 million Americans now be affirmed and effectively guaranteed by Congress. . .

These people have the right to live, to work to the best of their ability—to know the dignity to which every human being is entitled. . . . Millions of young persons and adults who want to learn a trade, work like other people, and establish their self-worth through a paycheck are barred from our vocational training programs and from countless jobs they could perform well. And yet we have sufficient statistics clearly demonstrating the benefits to the national economy and the investment return of income tax revenues resulting from vocational rehabilitation and job placement for these citizens. Where is the cost-effectiveness in consigning them to public assistance or "terminal" care in an institution?"

Senator Humphrey's concerns were shared by key members of the House Committee on Labor and Education and the Senate Subcommittee on the Handicapped who were considering reauthorization of the federal-state vocational program through the Rehabilitation Act of 1972. A bipartisan group, including Senators Cranston, Javits, Randolph, Stafford and Williams and Congressmen Brademus and Quie, supported the application of civil rights policies to prohibit discrimination against people with disabilities. Their staff members redrafted the legislative concept first proposed by Senator Humphrey and Congressman Vanik and added three other sections as Title V of the Rehabilitation Act of 1972. Title V required affirmative action in federal employment (Section 501); created the Architectural and Transportation Barriers Compliance Board to enforce the 1968 Architectural Barriers Act (Section 502); required private companies doing business with the federal government to use affirmative action in employing and promoting qualified persons with disabilities (Section 503); and prohibited discrimination on the basis of handicap in programs receiving federal financial assistance (Section 504.)

The 1972 Rehabilitation Act was unanimously voted through Congress without discussion of Title V, but was pocket vetoed by President Nixon on October 27, 1972. The President justified his action on the basis of fiscal constraints and objections to certain administrative provisions of the Act. Demonstrations by people with disabilities, who were attending the annual conference of President's Committee on Employment of the Handicapped, were a prelude to the self-advocacy that was critical to passage and implementation of this landmark civil rights legislation.

The Rehabilitation Act was reintroduced with Title V intact and passed overwhelmingly by the Congress. The President again vetoed it and his veto was narrowly sustained by a four vote margin in the Senate. On May 23, 1973 a revised version of the Rehabilitation Act was introduced into Congress. The revisions affected program and administrative provisions but did not change Title V. The Rehabilitation Act was finally signed into law on September 26, 1973.

Next, there were lengthy delays in developing regulations to implement the law. In June, 1975 disability advocates filed litigation in federal court, seeking a ruling that would force the Department of Health Education and Welfare, to issue regulations. (Cherry v. Matthews) The Court ruled that HEW was legally obligated to issue regulations, but declined to specify a date. During the Spring of 1976, the debate and discussion about the approach to and scope of the 504 regulations continued in senior staff offices of HEW. Disabled activists demonstrated in Secretary Matthews' office. A draft regulation was published in a notice of intent to publish proposed rules on May 17, 1976 to obtain public comment during the next sixty days. By early January, 1977 the regulations were finalized. As President Carter took office and appointed Joseph Califano as HEW Secretary, the regulations were delayed once more for review. In early April three hundred people with disabilities staged a sit-in in the Secretary's office, while demonstrations were held at each of the ten HEW Regional Offices around the country. Finally, on April 28, 1977, nearly three years after Section 504 was enacted, model regulations were signed by Secretary Califano and promulgated by the Department of Health Education and Welfare. Secretary Califano hailed the long awaited regulations, stating: "The 504 Regulation attacks the discrimination, the demeaning practices and the injustices that have afflicted the nation's handicapped citizens. It reflects the recognition of the Congress that most handicapped persons can lead proud and productive lives, despite their disabilities. It will usher in a new era of equality for handicapped individuals in which unfair barriers to self-sufficiency and decent treatment will begin to fall before the force of law."

After the 1978 amendments to the Rehabilitation Act mandated non-discrimination in programs directly operated by the federal government in addition to the state and local programs which were federally funded, the federal agencies slowly followed HEW and issued their own 504 regulation to mandate non-discrimination and reasonable accommodation. During the last two years, federal agencies have again begun to amend their 504 regulations. This time the federal 504 regulations follow the Department of Justice model regulations which include restrictive judicial interpretations of Section 504. That model limits the efforts which agencies and programs must make to accommodate disability-related needs of their employees with disabilities and as well as program efforts to serve consumers as well as program efforts to serve who have disabilities.

5. *The Courts and Civil Rights for People With Disabilities.*—Judicial interpretations of 504 have also restricted its scope. First there was the *Davis* case in 1979 in which the U.S. Supreme Court ruled that a community college in North Carolina did not violate Section 504 when they refused to admit Ms. Frances Davis, who had a hearing impairment, to their nursing program. The Court reversed an appeals court decision which had ruled that Section 504 required her admission with accommodations to her disability. The Supreme Court left open to HEW the role of clarifying and interpreting the statutory mandate, and determining the meaning of the phrase "qualified handicapped person", and the regulatory provisions for "reasonable accommodation" of such an individual's disabilities. Next there was *Conrail* v. *Darrone* in 1984. In that case the Supreme Court unanimously ruled that employment protections of Section 504 are not limited to federally funded employment programs, but cover all federally assisted programs.

The Supreme Court's *Grove City* ruling, issued in 1984 on the very same day of the *Conrail* decision, restricted the interpretation of Title IX of the Civil Rights Act, which parallels the regulatory provisions used to enforce Section 504. That ruling limited civil rights requirements of Title IX for federally funded programs to the specific university program receiving federal funds. The Court held that Section 504 did not require a college or university to follow the non-discrimination and reasonable accommodation policies in non-federally funded programs simply because some students or a single program in the school received federal funds.

It took nearly four years for Congress to enact the Civil Rights Restoration Act and then to overrule the President's veto in order to reaffirm the intent of Congress that all operations and activities of an organization that receives federal funds be made accessible and operate on a non-discriminatory basis. Meanwhile the 1985 Supreme Court Ruling in *Choate* v. *Alexander* held that the state of Tennessee Medicaid program which limited the duration of hospital stays which would receive reimbursement, thereby making it more costly for people whose medical conditions required longer hospitalization did not violate Section 504. The ruling upheld the State Medicaid regulations as a valid exercise in cost containment which only incidentally affected the number of days of care received by people with disabilities.

6. *Conclusion.*—We know the concepts and policies for laws to protect the civil rights of citizens with disabilities. The continuing struggles around Section 504 demonstrated just why it is necessary to enact and implement a very clear Congressional mandate endorsing a comprehensive policy that guarantees the civil rights of people with disabilities. No confusion, no obstacles, no backsliding should be permitted to block this legislation. We know that any law is not self enforcing and that continued efforts to educate and press for policy implementation and support will be necessary. But it's worth it. The community of people with disabilities is united in support of the Americans With Disabilities Act. We need the law and we need leadership with the courage and commitment to make the American Dream a reality for the 36 million people with disabilities who live in this great country. We need it now.

Mr. OWENS. Thank you.

Commissioner Wood.

STATEMENT OF BARBARA JEAN WOOD, COMMISSIONER, MASSACHUSETTS COMMISSION FOR THE DEAF AND HARD OF HEARING

Ms. Wood. I should explain that I have a voice interpreter this morning with me. I would like to extend my warm welcome to all of you to Massachusetts. We at the Massachusetts Commission for the Deaf and Hard of Hearing are a brand new agency that was set up 2 years and 3 months ago as a result of Governor Dukakis's recognition that a support system was necessary in order to make employment, housing, and transportation and a long list of community services accessible to deaf and hard of hearing persons.

To begin with, for people with hearing impairments, there are a total of 36 million persons with disabilities. Twenty-two million are people with a hearing loss. We are the second largest population of disabled persons. And our barrier, most obviously, is one of communication.

I am very aware that this act was a result of the work of the National Council of the Handicapped and the report that resulted in the idea for this piece of legislation. With some disappointment that I felt that the council didn't pay adequate attention to specifying issues related to communication accessibility. However, this bill did impress me. From time to time, it pointed out communication issues. And it really is the first piece of legislation in my 15 years' experience and involvement with disability issues to see that term, "communication accessibility." So, I found that quite thrilling and am in full and wholehearted support of this bill.

I would like to see more commitment, though, from the national council and from everyone to take a look at the issues of communications accessibility and how it can truly be enforced.

In the description of the bill, under section 8, the regulations, it mentions and calls on Architecture and Transportation Barrier Compliance Board to mandate minimum guidelines for accessibility of buildings, vehicles and so forth, especially for all Federal agencies listed therein.

In the past, there has been weak input in the area of communications accessibility. And this time, it is extremely important that it be included and the leadership being taken to understand that communication is not just the provision of interpreters such as we have this morning, but entails a wide range of communication accessibility devices to make Federal services accessible.

I strongly recommend the inclusion of these Federal agencies, including education to these and health and welfare in order to do a better job in developing these guidelines and regulations in the area of communications.

I can share through written testimony the rest of my ideas with you, but I am in full support of what the Governor testified and my fellow commissioners have and will testify. The weaknesses have not been legislative. It has been administrative. And there is a strong need to have a recognition for the importance of support services to make us independent in all of the areas listed in the bill. Thank you so much.

Mr. Owens. Thank you, Commissioner.

Commissioner Crawford.

STATEMENT OF CHARLES CRAWFORD, COMMISSIONER, MASSACHUSETTS COMMISSION FOR THE BLIND

Mr. CRAWFORD. Good morning, Mr. Chairman, Congressman Atkins, from a very good district in which I live, and Congressman Moakley. Five minutes is a very short time, so, I guess I'll have to be a real fast talker.

I guess that the first thing I need to say is that I want to first of all extend my appreciation to the Congress of the United States. It is the Congress that did pass the Vocational Rehabilitation Act, section 504, the Civil Rights Restoration Act, the Assistant Technologies Act and the list can go on, including the Civil Rights Act of 1964 as I mentioned before.

There is no other accolade greater than the acts of a Congress. I think the acts of this Congress have been especially helpful to the disabled of this country. We are about to move into probably the most premiere of all efforts that the Congress can make. I certainly appreciate the opportunity to testify today.

Governor Dukakis through his leadership in Massachusetts along with the good and sensible legislature of the Commonwealth have been able to implement a number of different laws in our State which have provided great protection for the disabled in this country. But, now, it is time to look at the national level. I guess the way I can summarize the discrimination that has happened to blind people in this country, in fact, across the centuries is a matter of equating those discriminatory acts with the people we join in being protected by the ADA.

What difference, I would ask, is the change from persons who were beaten to death because of their disabilities in the assumption that the evil spirits would leave them, to slaves who were beaten to death because they happened to be black and viewed by their persecutors as people who are lesser than they—four-fifths of a man, was it?

What difference, I would ask, between the disabled person who is told that, "You can't have credit because you don't have a driver's license when you can't see." And, certainly, you wouldn't want to be giving driver's licenses to people who can't see, I would hope, and a woman who is told that, "Because you might get married and have a baby or be a single mother, you can't have credit." Or a black who is told that, "Because of your situation where you have to produce this or that," unnecessary documentation to get credit, "do you need to get that credit."

What difference, I would ask, in the transportation of a person who is told to: "Sit on the back of the bus," in Atlanta to a disabled person who is told, "You can't ride on this plane because there is another disabled person here already." As proposed, I might add, by the current administration's Department of Transportation Regulations.

What difference, I would ask, is the provision of governmental services to blind persons when those services rest upon print notice that the person cannot read and then hears later on that she did not call us up or talk to us about that particular problem, versus the governmental discrimination of the past, I would happily add, in many cases for women and for blacks.

What difference, would I ask, happens to the disabled persons, again, who through the centuries have been isolated, put in cages outside of medieval cities to be shown as separate from the rest of the people versus blacks who were, again, put into slavery and into camps and even gays and lesbians who were crucified because of their practices.

What difference, I would ask finally, is there between the classes of people who have been discriminated against in their pain with the rest of the disabled society? For far too long and for far too many centuries, disabled people have felt the pain of discrimination, of being held separate, as being looked at as different, as somehow being viewed as lessor.

Pain is not exclusive to the disabled community. There are blacks, there are women, there are people who have different practices in life or conditions in life unfortunately who have been viewed, again, as lessor than others; but these folks have felt the same pain that disabled people feel today.

I guess if there is one last statement that I could make, and I realize that I do not have much time, it is that I personally have felt the discrimination, the isolation, the sense of helplessness and the sense of no ability to relate to other people because they have shut me out.

I know that feeling and I would hope that this moment, at least for this time, at least in this Congress and at least in this country, we will stop the winds of discrimination that as I said in the beginning have blown across the centuries against people whose only choice in life is to try and make it and make it with others. That at least at this point in our time we can in fact have a society in which we do work with others toward the common good.

Thank you, and I appreciate this opportunity to testify.

Mr. OWENS. Thank you, Mr. Crawford. Excellent timing. [Laughter.]

Commissioner McCarthy.

STATEMENT OF MARY McCARTHY, COMMISSIONER, DEPARTMENT OF MENTAL RETARDATION

Ms. MCCARTHY. Good morning, Mr. Chairman. Thank you very much. My name is Mary McCarthy. I have the distinct privilege to testify this morning in my capacity as Commissioner of the Massachusetts Department of Mental Retardation.

We in Massachusetts are grateful to you and to your committee for the outstanding work that you have done on this issue and particularly to Congressman Atkins and Congressman Moakley for their longstanding staunch advocacy for the rights of people with disabilities.

It is appropriate and exciting that this hearing is being held in Massachusetts. One hundred and forty years ago, this Commonwealth was the first government to acknowledge people with disabilities and to establish services to enable those individuals to achieve their fullest potential.

We were also the first State in the Nation to have a special education law, the first State in the Nation to develop a bureau of transitional planning, to assist individuals with disabilities and their families, to plan for life after a free and appropriate education and to have access to needed supports. And in the past year, we were the first government in the Nation to address the discrimination against people with disabilities in health care coverage.

Massachusetts has come a long way in the last 140 years, but our Nation has not come quite so far nor quite so fast. Sections 503 and 504 of the Rehabilitation Act of 1973 were a beginning in terms of the Federal Government identifying discrimination against persons with disabilities. The regulations which resulted from that act offered strategies for addressing correction in the case of Federal recipients.

Senate bill 2345 and House Resolution 4498 set out to provide for equal protection under all laws for the 35 million citizens who experience a disability. However, the actual benefit of these proposals is not limited to persons with disabilities. They extend to their families, their friends, their neighbors and to all of society. Discrimination is rampant and, for the most part, unintentional. I do not imagine that any of us here today would ever use a business in our local community which prominently posted a sign declaring the establishment off limits to persons of color or to women or to people who do not speak businesses. Yet, there are many businesses, rental properties, employers, transportation systems and public accommodations which are architecturally inaccessible. The vast majority of businesses do not provided TTD's for deaf and hearing impaired consumers who use them.

It is rare to come across an employer who has an affirmative action plan which includes people with mental retardation as potential employees.

People with mental retardation are often discriminated against not just in services, but sometimes in the way in which services are provided. Only 8 months ago, just a few miles from this room, children with a variety of disabilities were about to be excluded from participation in little league baseball, solely because of those disabilities. When the association reconsidered its position on the issue, the board determined that professionals would be required to accommodate the needs of these children. It took some time before the people of Massachusetts and an inspirational outpouring of public concern and outrage could convince Little League of America that parents are often more skilled than a medical professional in meeting the needs of their child. That is true for the rest of the little league. Why not for players who are physically and mentally challenged.

It will take some time before the nation at large believes the needs of people with disabilities are not that different from the needs of people who are not disabled. The daily concerns of the 19,000 people served by my agency are not that different from my own, although their challenges are far greater.

Society at large has resisted the idea and the reality that people with disabilities should be full members of our community. Citizens with disabilities are not yet entitled to the same rights and protections from our government as other citizens. There is discrimination through exclusion, through oversight and through the best of intentions. These kinds of discrimination are not prohibited under Federal law at present and that is not only shameful, but contrary to the very precepts of our Constitution and our heritage as a nation.

I sincerely hope that the Congress of the United States will act to address and to solidify the rights of the people that we serve. The reality is that when we recognize and embrace the values of those who are too often perceived as the least valued in our society, we all benefit. And freedom and dignity are strengthened. I believe the legislation before you today can accomplish that task. Thank you very much, Mr. Chairman.

Mr. OWENS. Thank you, Commissioner McCarthy.

I think all of you are highly placed public servants. You are in the executive branch of government. I do not know enough about the situation to know it in detail, but some of you might even be politicians.

Ms. MCCARTHY. No, sir. [Laughter.]

Mr. OWENS. Can you make a comment on what we can do as we prepare to mobilize to get this bill passed. We know the primary arguments that are going to be offered are related to cost. They are going to continue to talk about the extra costs, the high cost. What can we do systematically to get ready for that and how can you help us to get ready to answer those questions about the barrier of cost, the prohibitive cost. We are going to hear a lot of talk about the threat to increasing the deficit if we go ahead with this bill. How can we prepare for that and how can you help us? Would you each like to comment?

Mr. BARTELS. Mr. Chairman, I think over the years, we have shown that when accessibility features were included in the building of public buildings opened to and used by the public, that the incremental costs was really minimal. And it is a matter of applying those principles to buildings and events and adjudication situations: you build them in on the front end and the costs are minimal.

Mr. OWENS. Do you have tables and charts and all kinds of examples we can bring forth? Models?

Mr. BARTELS. Well, I think we have shown that in terms of building. There are documents that are shared by the President's Committee on Employment of People with Disabilities that document that.

Another place I think is in vocational rehabilitation and independent living where we provide a reasonable level of services that cost less where people can live independently in the community than it costs to keep people in dependent settings within nursing homes, public health hospitals and institutions.

Mr. OWENS. Any other comment?

Mr. CRAWFORD. Could I quickly say that I think that the application of technology for disabled persons will bring down the cost of a number of accommodations. For example, with the blind community, it is possible through microcomputer networks and braille production to produce accessible materials and with very little cost to that. And I would add that if we view this as a situation which would take some time to implement—and I think that is important for us to acknowledge—that over a period of time, it is possible to build in along with the regular cost of whatever the item might be, the accessibility features so that those costs do not confront us all at one time. And I guess my last comment on that would be that John Kennedy said that: "Every trip of a 1,000 miles begins with a single step." Well, I think we can start that now.

Ms. McCarthy. I think, if I may, Mr. Chairman: Three thoughts in response to that question. The first is, it certainly has been from our experience that if one is talking about building and construction, it is the afterthought that is extremely expensive, something that has to be built back onto. I think we certainly have got to get to a point where we simply take for granted as a matter of things that we do in terms of building that we have handicap accessibility.

Second, I think that both Commissioner Bartels and Secretary Johnston touched on the notion of taxes paid by individuals who are finally granted access to job opportunities. And that, of course, comes with decreased reliance on perhaps some public assistance monetary programs.

The third, as I think Commissioner Bartels also mentioned, segregated settings are far more expensive than settings that all of us are able to participate in. I think with the opening up of opportunity, we move further and further away from a reliance on very restricted and costly and expensive and specialized kind of environments because people are able to take advantage of those opportunities.

Mr. Owens. Commissioner Wood.

Ms. Wood. By electing President Dukakis—[Laughter.]

[Applause.]

And allow me to elaborate in the area of communication. The weakness is enforcement and commitment among the right people in the right places to work together in order to figure out a cost effective well run enforcement system that will do it.

Mr. Owens. Congressman. Question?

Mr. Moakley. No. I am very taken with the testimony here today. And you have all done your homework. I know many of you on the local level and I am very happy that you do represent the Commonwealth of Massachusetts. I am very happy with your remarks this morning. Thank you.

Mr. Owens. Thank you very much, members of the panel. And I hoped you understand the gist of my question. We do not want to have a single question come up in the Congress that we are not prepared to answer ahead of time. Thank you.

Our next panel is Eric Griffin, the vice president for external affairs, National Council of Independent Living; Charles Sabatier; William Cavanaugh, the executive director of Ad Lib, Inc.

Mr. Owens. Let me remind you, again, that we will be happy to have your written testimony for the record. And we need not dwell on that. You may make any comments above and beyond that testimony, if you wish. We will start with Mr. Griffin.

STATEMENT OF ERIC L. GRIFFIN, VICE PRESIDENT, EXTERNAL AFFAIRS, NATIONAL COUNCIL ON INDEPENDENT LIVING

Mr. Griffin. Mr. Chairman, it is indeed an honor to come before you, again. An honor because I have this opportunity once again to speak on behalf of the National Council of Independent Living and the New England Coalition of Independent Living Centers and for my own center for independent living, Independent Services, and 35 million people in this country with disabilities who have been shut out and who want into the marketplace and who want into the labor force.

Mr. Chairman, my testimony this morning will be brief. I bring to you this morning over 1,000 expressions from individuals with disabilities in the form of petitions and disability and discrimination diaries which attest to the everyday experience and the profound nature and the breadth of the discrimination that people with disabilities face throughout their lives.

I bring to you over 1,000 expressions in the form of a petition which states: Whereas there are more than 35 million individuals in this Nation whose basic life activities are limited in some significant way by physical disabilities, mental impairments, and though the effects of age and other disabilities and whereas forced segregation and dependency of millions of individuals with disabilities in this country constitutes a gross violation of their constitutional and basic human rights and an increasingly unaffordable drain on public and private budgets and a significant failure of the Great American Promise of liberty and justice for all.

Therefore, be it resolved that the undersigned advocates for justice in each of the States urge the Congress to immediately enact and the President to sign the Americans with Disabilities Act of 1988 which will effectively guarantee all persons with disabilities equal protection under the law and protection against discrimination on the basis of handicap.

Mr. Chairman, I also come before you as one of those 35 million people and one who over three decades has faced the discrimination that is spoken of and spoken to in these petitions and by these thousand people. I come to you as one of those 35 million people, one who was denied a public education until age 18, one who has been put through the back door, and kept out of the front door and segregated even if you could get in. I come to you as one of those people who has been kicked off the airplane and not allowed on the bus. I come to you as one of those 35 million people who ask that your courageous attempts in coming here today be carried forth into the next session of Congress where we will work with you to ensure passage of the Americans With Disabilities Act. Thank you, sir.

[Samples of Diaries submitted by Mr. Griffin follow:]

DISABILITY DIARY—GLORIA GRABERT

I went to Forest's School for his P.P.T. In order for me to park close enough to an entrance, I had to park in the school bus zone since there was no handicapped parking. I had to struggle up a very steep flight of stairs with Laura (2 years old).

I came home totally exhausted, my knees were killing me with pain. I'll end up with another week of tendonitis for this visit. (Repeated 5 times in 1½ years).

I found out at my last P.P.T. they could have sent us around the back of the school to an elevated sidewalk. The reason was the door's entrance was too heavy and there was no handicapped parking.

Jan's classroom is on the 2d floor at her Magnet School. I have to climb up another pair of stairs to get into her classroom. They have offered to have me meet in the office but I want to see her classroom. There is no elevator in the building.

This year 1987-88 at Jan's Magnet School I had to deal with a very big elementary school. They put the handicapped parking at the other end of the school away from the principal's office and auditorium. One of the handicapped parking slots at the back of the building usually has an illegally parked car in it.

The principal locked the door near the handicapped parking the night of the P.T.A. Spring Festival. Allen had to push me all the way around to the back of the school. The kids had to walk in the driveway. I was afraid we were going to get hit. Allen then had to lift up the wheelchair up the custodians, stairs. Only if the car hadn't been in that handicapped slot in the back or the principal wouldn't have locked the door or the administration build the promised ramp!

I can't use my scooter at Forest's and Heidi's school this year. Their ramp is a loading dock. The handicapped parking slot isn't 15 feet wide, only a normal parking spot.

PROBLEMS ENCOUNTERED BECAUSE OF MY HANDICAP

Date, Jan. 8, 1988.—Obstacle Inability to enter a restaurant because of stairs: Fort Meyers, Fl.

Jan. 22, 1988.—I had to crawl on my all fours to get into a swimming pool Fort Meyers, Fl.

Feb. 5, 1988.—Impossible to use my wheel chair on my own power due to gutters. My wife is asthmatic and unable to lift said chair.

March 17, 1988.—Unable to use a sightseeing bus due to absence of a lift.

May 28, 1988.—While attending my 55th College Reunion at Middlebury College I was unable to attend several events because of barriers such as stairs.

ELEANOR WIGFALL'S DIARY

There are a few places I can go by myself, having arthritis and a hip replacement, I am unable to get up from a low seat. It would be a help if there could be one or two high seat chairs in certain places for such people. I find even in my orthopedic doctor's office, all chairs are one level.

I cannot ride a public bus because the steps on and off are too high and the buses rarely stop at the curb.

Most public places should have a ramp, I went to a graduation, I was left off in front of the entrance of the public school, I had to wait until my husband came to help me up the high steps. Even a railing would have helped. The same goes for many churches.

But what hurts me most is not being able to shop in some of the better stores. The food markets have carts that I can hold on to and also stores like Bradlee's and Caldor's are accessible. But places like G. Fox, J.C. Penny's and Jordan Marsh do not.

I can understand because it probably would take prestige away from the store.

I also feel that the medicine instructions on the wrappers or inside the bottle should be much bigger. Some of my friends have poor sight and a mistake could be made.

PRINTED IN THE SEPTEMBER 30, 1988 MARTHA'S VINEYARD NEWSPAPER

"At first, it seemed to be a parade down Beach Road in Vineyard Haven late Friday night—a woman wearing a silver spangled hat riding in a wheelchair bedecked with two American flags followed by a police car and a long line of traffic.

Police said they followed the handicapped woman from the Martha's Vineyard Hospital to Pier 44 because she had missed the earlier boat and had to return to New Bedford that evening."

September 23, 1988 was to be a day that I, and quite a few other innocent people, would long remember!!! From the end of May through the first part of October; nearly every Sunday I take the Schamonchi, the Martha's Vineyard Ferry, for the ninety-minute ride to that island. I used to debark and just ride in my electric wheelchair around the island. Usually I drove three miles to Oak Bluffs Center where I'd visit the Camp Meeting Grounds with its beautiful Tabernacle and roam around the shops and the docks. On one of these tours about eight weeks ago I discovered the Island Queen, the ferry that runs between Oak Bluffs and Falmouth. This ferry's summer schedule allowed me to board the Schamonchi in New Bedford for her 1:00 P.M. voyage to the Vineyard. The Schamonchi docked in Tisbury. I would then drive my chair the three miles over to the Island Queen, and wheel on board for her 3:30 crossing to Falmouth which took 45 minutes. The ferry would then turn right around and come back to Oak Bluffs, landing me shortly after 5:00 with more than an hour and a half for me to make the half-hour trip back to the Schamonchi before her first trip back to New Bedford at 6:45 P.M.

When the fall schedules went in to effect, I checked them very carefully. The Schamonchi's trips Fridays, Saturdays, and Sundays were the same as during the summer, but the Island Queen left at 4:00 instead of 3:30 which still gave me plenty of time to drive back to the New Bedford ferry since the Falmouth ferry still came right back from Falmouth. I tried it on Sunday, September 18th, and everything worked out just fine! Now on Sunday, September 25th, I had somewhere else I wanted to go; so I decided I take my boat rides on Friday.

I checked before I left home and made sure the Island Queen had a 4:00 sail. All went well until I got to Falmouth, and I was waiting for the ferry to start back. It had been a very rough ride over, so I didn't think much about it when they tried the boat (they never did that before). As time went by and it was getting close to 5:00, I suddenly realized that no people were getting on, the engines were quiet, and I was all alone on the back deck of the Island Queen. I started calling and nobody came! Then my chair got jammed in the doorway as I tried to get back in the main part of the boat!! Finally a crewman heard me and came up from the engineroom. He freed my chair and informed me that the Island Queen, on Fridays, did not *START* back to Oak Bluffs until 6:00 P.M. arriving at 6:45!!! That was the time I should be boarding the Schamonchi, which would be three miles and half an hour away by chair!!! What was I to do? I could get off at Falmouth, which is on the mainland, and try to find someone from home with a truck to pick me up, but that would be very hard to find. I was quite sure that on Fridays the Schamonchi ran a late trip, so I decided to return to Oak Bluffs and pray that I was right!!! Another crewman tried to help by going ashore and phoning the police in Oak Bluffs to ask if they could meet me with a van, but they said they didn't know me! By the time we reached Oak Bluffs, the Island Queen had radioed the Schamonchi to make *CERTAIN* that the New Bedford ferry did indeed have one more round trip that night. The last boat would leave Tisbury at 10:45!

Now my problems were, first, to find a place to stay for over three hours now that the sun was about to set; and, second, to get word to my helper who was meeting me at the 8:30 boat to tell her that I would not be on it! The Martha's Vineyard Hospital is about three-quarters of the way back to the Tisbury dock, so I high-tailed it down there! I had to use my headlights before I got to the hospital, but I made it by a little after 7:00. I asked if I could use a phone and was shown a pay phone, but I said that I couldn't use it without help. Then I was sent to the receptionist in the Emergency Room. She was very helpful and phoned my home where my girl had gone to feed my three kitties and pick up my car with its tiny trailer (just big enough for my chair). As luck would have, Denise had gone early and had already left for the 8:30 ferry! So the receptionist called the New Bedford dock to ask them to tell Denise that I had to take the last boat back. At first that the lady said she couldn't do that; but, when she found that I was "the lady in the wheelchair," she was more than willing to do it! She even called back to reassure me that Denise would meet the 12:30 A. M. ferry!!!

Three hours is a long time to have to wait with nothing to do. I rode around the parking lot outside and the corridors inside the hospital over and over again and watched the lady at the desk doing her work. By the way I went to the bathroom before I left home at about 11:30, and I cannot go by myself, another *minor* problem! The only thing I can feed myself are Combos because they are so hard I don't crush them, but I didn't dare even eat them because I did not want to start my metabolism going to create more problems!

Now that I was in the hospital the receptionist was not about to let me ride my chair back to the dock alone, headlights or no headlights! She phoned the police, and they said they'd take me back to the ferry. When two officers, a man and a woman, arrived a little after 10:00; they thought my chair folded up so they could put me and it in their cruiser. I told them they had to have a van with a lift (I had seen four of them in the hospital's parking lot) because my chair was very heavy and would not collapse. Then my new friends in blue decided to call an ambulance to take me! Now that vehicle is kept two miles away in West Tisbury, and it was getting *LATE*!!! They told me they could hold the boat if they had to, but I wanted to get *HOME*!!! I suggested that I would be safe driving my chair if the cruiser car went ahead of me. That is the way the ambulance saw us take off, a cruiser with flashing lights, me in my chair with my head and tail lights on, and another police car bringing up the rear!!! What a sight at 10:35 P. M. going over the bridge into Tisbury and on to the dock, a ride of under ten minutes!!! I wonder what the other drivers were thinking as they had to go around us. The officers were very kind and gentle with me!!! In fact the lady cop even kissed me good-bye. The Schamonchi was coming into the harbor as I drove onto the dock. The crew put me in my usual spot on the aft deck where I finally ate my Combos and enjoyed the beautiful full moon on the way back to New Bedford. By the way I was the only passenger on board on the return trip! My midnight helper, who was quite worried when she didn't find me home (Denise's brother did phone her after she came in), gave me my supper at 1:40 A. M.!!! What a day!!!

Diary of Mary Low Wilcox, Jewett City, CT

Public Law 94-142 was not in existence when I was child. Therefore I was not properly educated to prepare me for employment.

Because I was not able to support myself, I subsequently went to DUR. The counselor who was working with me to see I was too disabled for employment. She also said if my condition improved come back to her. This is a gross discrimination by DUR.

During a visit to Boston, I was refused entry into Boston Garden, because they were under construction and fire regulations would not permit wheelchairs to enter. Contractors or whom ever is in charge should provide contengencies that would accommodate wheelchair users. Also that no fine or safety obstacles to impede their access, whenever the general public is permitted to enter.

My name is Chester R. Phillips, I presently live in a convolesent home. My address is 15 Preston Road, Jewett City, CT 06351.

I have been discriminated against by them not allowing me to eat in the dinning room with other patients, because I cannot feed myself. Also some meals are served to me earlier than the other people.

In order for me to go out at night, I must request my friends to help me undress if we should come back after 9:00 p.m.

I personally feel that no person who has a handicap and is of sound mind and has the ability to care for himself mentally but not physically, should be able to live in their own apartment out in the community. With provision of personal care attendants, we cannot get this service because of a lack of funds and benefits, so people would rather go to work at a McDonalds restaurant.

This letter is being written by my friend, as I'm unable to write, since I have Spastic Cerebal Palsey.

After several living arrangements of which one was which segregated housing, where neglected by lack of meals, and PC as so most days I had to stay in my pajamas. There is probable cause to believe people were taking overdoses of drugs in possible suicide attempts. These incidents were covered up by management.

Living in a convalesent home has caused me to feel useless, hopeless and they demean means. So I have become a passive person, and running scared.

Disability Diary Lynne Albrecht

Problems people have with persons with disabilities.

1. Over protectiveness.
2. In restaurants you don't act like yourself around people.
3. You feel inferior.
4. People try too hard not to upset you.
5. You are not too sure of yourself.
6. People push the physically handicapped too hard.

Caseworker Woodmancy

Applicants: Louise Pierpont,[1] Elizabeth Baker (mother).

Initial application for Pierpont—June 1988 followed by visit from case worker Woodmancy 2 weeks later. Case worker became aware that Mrs. Baker shared home and he had to come back 2 weeks later for Baker's application. At these times many forms were signed for medical releases from MD's but DAR case worker kept coming up with new items to nit pick about. All such items could have been resolved with MD's by phone or one or two pieces of correspondence.[2] Also questions to Mrs. Baker i.e. Who is the president of US? What is todays date? How old are you?

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[1] All Pierpont records, personal and medical are in computer because of SSID application from every MD who was made to reply 2nd time w/some info for Woodmancy file. Also in computer is fact that Elizabeth Baker, my mother resides at this address with me. Woodmancy also told it is in her title #19 records.

[2] The info taken on last home visit should have been taken on the first visit. Seems like because Mondays are field days a place has to be chosen to justify gadding about to.

Here is an 85 year old frail feeble lady who is obviously disconserted by a strange man at 9 a.m. in the morning. He had been here on three or four other occasions, could have cleared up any business with him but made a point of returning and posing quiries of many kinds i.e. How many hours per day chores person needed? How much expected to pay same? What would they do etc. etc.?

All above understandable and not objected to but it was all drawn out so long over these four visits, it became stressful and literally raised our blood pressure and made us ill and made us wait for our chore person.

The 20 hours per week for chore person was based on—relative who works 9-5 in office, coming in 2 hours Monday-Friday plus 3 each Saturday and Sunday. No suggestion was made that a second person might come in a few hrs daily in addition to the 20 hour person. Common sense would indicate meal preparation—dinner—and cleaning up kitchen is 2 hours daily by itself. Laundry, bed linen changing, vacuuming, kitchen floors etc. would be substantial addition to 20 hours. I helped calculate 20 hours weekly under stress and confusion omitting many items.

We went without necessary help for 2½ months due to bungling paper shuffling [3] culminating with last straw, when on final—hopefully—case worker's visit he got up to leave without the main thing he came for—a Xerox of my SSI check. (This also is in computer.)

Had it not been for the kind and diligent intervention of Mr. Joseph Maltese, my mother and I could be dead before our case was determined. Louise B. Pierpont.

Mr. OWENS. Thank you. And I assure you that we will note for the record your description of the petition. The petitions will be kept on file.

Mr. Sabatier, did I pronounce your name correctly?

Mr. SABATIER. Yes, you did. Thank you, Mr. Chairman. Actually, you pronounced it correctly, which is incorrectly because nobody ever pronounces it that way. [Laughter.]

STATEMENT OF MR. CHARLES SABATIER, NORWOOD, MA

Mr. SABATIER. Every time I have an opportunity to speak about disability issues, I am reminded that the word "disability movements" is a euphemism for independent living movement or what I refer to as the people's citizenship movement. That is all to say that people are looking for in this bill. I think the bill is well written and will do a lot to bridge the gaps needed.

I cannot help, too, but remember the writings of the Supreme Court decision about the *Brown* v. *Board of Education* in 1954 when speaking about segregation of our children in the public school systems in this country. It was said that segregating anybody for any reason robbed those people being segregated in their hearts, in their minds and souls, to such a degree that can never be undone. I think that that is what this movement is all about.

We are being segregated everywhere. We are being mistreated. We are being treated as second-class citizens, irregardless of whether it is transportation, education, housing, unemployment. We are facing discriminators who would choose to have us go elsewhere. So, we face many of the same types of hardships that other minority groups are facing in this country. I think segregation is, itself, a disease. And all of the problems that we here in committees like this—words about transportation or housing or what have you, are really symptoms of a disease in this country. And it is my opinion that that disease has truly retarded this nation. And if this Nation's reputation was based upon its treatment of disabled people or minorities, they would certainly rate something less than great.

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[3] When both of us were notified of approval for application, there were six separate forms sent us—3 each. All Pierponts could have been in one envelope, same with Baker's. Instead there were six envelopes posted. At 25¢ each, $1.50 spent, would have saved State $1.00. Multiply this by many applicants and State could save substantially. Furthermore, carbons we received were almost totally illegible.

And until the segregated people are truly mainstreamed into our society, we will not reach our greatness that we have the potential to do.

I believe that the disease is caused by arrogance, ignorance and sometimes outright stupidity. I think that just in the past few years, I have personally been discriminated against. There is not a person in this room who is disabled who has not been personally discriminated against. A few years ago, I was arrested on an airlines simply because I refused to sit on a blanket, a blanket that they thought was devised to evacuate me in the event of a survivable crash. In fact, it was a policy that the airlines had invented to make sure that I, as a wheelchair user, a paralyzed person, did not soil their upholstery. To me, that was dehumanizing and it was just another one of those things that robs people of their dignity and their self-respect, their humanness and their sense of self-worth.

Every single day, we face that. We face our discriminators whether it is coming to this building this morning and going to the front door and being instructed to come through the driveway to get here—now, that may not be much to the guy standing at the front door, but if I were black and if I were instructed to come through the driveway to get here, it might mean something. Or, if I as a Jewish person, was instructed to come through a separate entrance, there is no need for that. But those are the kinds of things that continue to rob disabled people.

I got more than my legs robbed from me in an accident—not an accident. I was shot in 1968. But in every single day, we are being robbed little by little, inch by inch. That is what this movement is all about and that is what this act is all about: To rectify that wrong. And those thieves are out there. They continue to rob from us. What is unfortunate is that many of us have not developed a defense for that. We do not know how to even recognize those thieves. They are like pickpockets. Sometimes we get robbed of our dignity, our self-respect, we swallow insults on a daily basis to continue to get along in our society.

For instance, this summer, if I chose to the Great Woods Concert a few miles away, I would have to accept the personal insult of being separated from my wife as the price of admission to the concert. And the person that makes that decision is the usher. Nobody should have that right. Whether I am separated 1 inch, 1 foot, or 100 miles is segregation. It is that segregation which the Supreme Court was talking about in 1954 and it is that kind of treatment that we have got to stop in 1988.

The idea is that they created a seating zone for disabled people. They are creating policies based upon what is expedient, whether than taking a humanistic approach to policy making. And it is those types of things I think that are our biggest problems today. It is the system. It is those people who enforce and implement the laws that are doing bad jobs. We have got a lot of good laws on the books that are not being enforced because we do not have people that have been educated to the point that they understand how to rectify our problems. They create policy based on expediency to overcome oversights. Thank you for the opportunity.

Mr. OWENS. Thank you. Mr. William Cavanaugh.

STATEMENT OF WILLIAM CAVANAUGH, EXECUTIVE DIRECTOR, AD LIB, INC.

Mr. CAVANAUGH. Thank you. I have been a consumer of the mental health system in the State of Massachusetts and I have been a past patient of Northampton State Hospital. While a resident of this psychiatric institution, I witnessed on a daily basis abuses and day-to-day treatment that only in the mildest terms would be referred to as discriminatory. Abuse and disregard for the basis human rights of people who suffer from mental illness occurs all too often to be ignored. We who suffer from mental illness are no less deserving of non-discriminatory treatment and protection than others enjoy.

In the few cases I know of, when abusive treatment practices and human rights violations are proven, all too often limp excuses or technical rationales are presented and accepted as a defense to the incidence and dilute the consequences administered to the guilty parties.

One such incident that comes to mind is that of a Mr. Vincent Veletia who suffered from a debilitating form of mental illness. In desperation, his guardians admitted Vincent to a private psychiatric institution that often used adversive therapy techniques as a treatment response to certain behaviors. Vincent suffocated and died when a full sensory deprivation hood was placed over his head. Attached to the hood were earphones which emitted constant white static noise. Vincent's hands were handcuffed behind his knees, forcing him to remain bent over at the waist.

Authorities saw this act not as murder, but as an authorized treatment procedure that failed.

Vincent's guardians had signed the paper allowing the facility to administer such treatment. This seemed to make things acceptable. The administrator who designed the treatment procedure that the staff administered to Vincent that resulted in his death was not found guilty of anything. Nor were the staff. Instead, the institution's administrator received a substantial voluntary settlement for damage to his reputation reportedly suffered by bad publicity.

Since 1975, when my illness stabilized, I have worked as a professional in the field of human services. Much of the past 13 years has been spent in a direct care capacity to persons who suffer from mental and physical disabilities. I have heard of, witnessed, shared and personally experienced many cases of discrimination based on disabilities. Many instances of discrimination to persons with disabilities is of a stigmatizing nature, generally damaging to the particular disability group referred to, often administered by the video, audio and written media.

Other discriminatory practices are sanctioned by law or traditional policies and regulations. One such example is the accepted practice of insurance firms being allowed to practice discriminatory policies that regularly deny medical insurance to individuals who are disabled based on possibilities of medical needs. Others are blatant discriminatory practices such as the time a friend of mine, Michael, whose disability is cerebral palsy attempted to go to a movie with me only to be denied admittance by the theater manager who said that Michael presented a liability risk.

I am currently the executive director of an independent living center which aids individuals with disabilities to live independent lives. I daily work with and for individuals with disabilities who have waited far too long for legislation that clearly spells out that they are first class citizens worthy of every right to fair, equal and non-discriminatory treatment. The right not to be discriminated against can and should be insured by the enactment of the Americans with Disabilities Act of 1988. On behalf of the thousands of individuals with disabilities who live in my service area, Berkshire County in western Massachusetts, the hundreds of individuals I know and especially for the Vincents and Michaels who cannot speak for themselves, I ask you and your colleagues to enact the Americans with Disabilities Act of 1988. Thank you for your time and attention.

Mr. **Owens**. Thank you.

I want to thank all of you and particularly Mr. Eric Griffin for the tremendous amount of help we received from him in arranging these hearings here today. I also want to say that the calendar, the timetable that many of you received, we are way behind on it. And we are going to cut down on the lunch time in order to get to the schedule. We do not want to have to reduce below 5 minutes the time that each speaker has. We are here to hear from you, to have individual documentation from you, and we do not want to cut that time. So, we are going to cut down on the lunch hour and try to get back on schedule that way. Thank you, again, all of you.

Our next panel is Linda Pelletier, Emeka Nwojke, and Ted Kennedy, Jr. Mr. Don Levine can join this panel.

You may begin, Ms. Pelletier.

STATEMENT OF LINDA PELLETIER, BOSTON, MA

Ms. **Pelletier**. I am really glad to be here and to be able to speak to you today. I wanted to say that I have been disabled all my life. And everyone thinks that—you do not realize that you get discriminated against when you were born disabled, but you do. And I am tired of being discriminated. It really affects every aspect of my life. Sometimes, you do not really see it for it is until afterwards. But, you know, everything I do—I will give you a few examples. I have gotten evicted from my apartment two times already in the last 8 years. I am not on the street homeless, fortunately, but both cases were really discrimination because people do not like to take section 8. They like to take rich people who can pay the bigger rent. So, each time that I got evicted, they either blamed it on my chair or some other thing that was not really, really true. But it was there and it was discrimination.

My last time I got evicted, I brought them into court because they had harassed me for about 8 months before I got evicted. I brought them into court and I asked to get damages and I won. But I still left. But it was so humiliating. It was very hard to live that way. So, you know, I feel that people who are disabled, you know, they have a real hard time to get housing. Even though we have section 8 and all the provisions, the landlords do not like it. They would rather get the real money from rich people that can give it all at once.

In other words, I have gotten discriminated against—and even when I go out for recreation, at one time I went out with some people from Boston University where I go. And we went out to eat at a restaurant here in Boston. I went with her and another boy was with us, too. When we arrived, they refused to serve us alcohol—me and this other boy, because we were in wheelchairs. They said that we might fall out if we did not have seatbelts on. And we did have seatbelts on, but that is not the point. So, we all got out and Mr. Duscham was there from University Hospital and we all got out and we walked out. But I was the only person, again, that carried it out and went to the NTAD and I brought a case against them. And we got on Eye Witness News, too. I won that case, too. I got money from them. But they refused to even go on the air to make anything right. The manager would not call me. I have been discriminated against and really otherwise—like to get my education, it has been a fight all the while. I met before we had the disability bill at Mass Rehab when I started to go to college, it was hard. My rehab counselor at that time, back in 1970, he did not want to take on my case because I was too disabled and I would make a lot of work for him. I had to go to a home-to-school intercom at the time because the in-schools were not accessible. And he did not want to take on the extra work. So, he turned down my case and I had to write to Ted Kennedy who helped me to get back on Mass Rehab.

And even now, I have gone to Boston University and I am working on my Ph.D. in rehab counseling. But I am not able to really do my whole dissertation yet because I cannot get a computer and I cannot type too well, you know, I can write real good, but I cannot get my thoughts down on paper. So, I have been trying to get a computer for about 3 or 4 years any way I can. Now, it is real hard to have an equal opportunity to be able to communicate more easily than to put my thoughts down on paper.

Now, one more thing I wanted to leave you that every time that I worked—because I have worked at different jobs. And I have gotten a lot of discrimination in that area. Like one time, I worked at a rehab agency—well, I worked at two or three rehab agencies. At one, I worked for 4 years and then they got someone new and they said that because I could not drive I could not carry out the proper schedule. Then there was a rehab agency I worked for about 2 years. They said I could not go on working because I could not access their computer and they could not adapt it for me. So, it is just very, very frustrating. And, also, every time I worked, I had a real problem with SSI because I go in and out and on and off of the system. And whenever I worked, they make it hard for me. They really are crying to me for working because I get into big problems about overpayment, you know. I owe about $7,000 in overpayment for the different times that I have worked and that they did not handle it properly, SSI. I have got to pay that now.

And it is hard. I do get tired of fighting the system, but I will continue to fight. The way that I do it is I go to court whenever I can. When I feel that I am in the right, I will go to court to carry out the fight because that is the only thing that many people will really listen to and support. I will still fight to the day I die. It is a real long hard fight. And I thank you all for what you have brought here.

Mr. **Owens**. Thank you.

Mr. Nwojke. Did I pronounce that right?

STATEMENT OF EMEKA NWOJKE, ASSISTANT DIRECTOR, NORTHEAST INDEPENDENT LIVING PROGRAM

Mr. **Nwojke**. Can you hear me?

Mr. **Owens**. Yes.

Mr. **Nwojke**. Good morning, honorable Major, Major Owens. And I am glad you are here today. My name is wrongly spelled so that is why you could not pronounce it. My name is Emeka Nwojke and I am a resident of the State of Massachusetts.

I became disabled 5 years ago because of a car accident. I am the president of the Northeast Independent Living Program in the State of Massachusetts. I am also a strong member of the National Council of Independent Living. Right now, I am the chairperson of the NCIL. I strongly believe in the Constitution of the United States which promises freedom and independence for all within the Nation.

I take the stand of all people who think that you, the lawmakers, must be proactive to think about generations ahead of us, to think about tomorrow, to think about children coming after us. What can we do to better understand? So, today, I know you are here to think about making our environment barrier-free, affording us the opportunity to have a choice of full citizenship. I am glad to tell you that it is still the black man that has given us this chance. It was a black man that spoke for the freedom of people in America. So, it does touch my heart to see you sit there and listen to us testify about discrimination.

I have been educated to the point to know that the best way to aggrieve my discriminations in society is to go to court or go to what is called in Massachusetts, MCAD: Massachusetts Commission Against Discrimination.

I went to the courtroom one day and I want to share my experience with you about going to court. First of all, I could not get into the building because there were about 500 steps to get in there. Then I called for the security guard to help me, who happened to be a policeman. He told me there was an entrance at the back door for the handicapped people. I have no problem being called handicapped. The problem I have is being able to be a participant of that system.

I readily agreed and I went to the back door. I went to the back door and there were three more stairs for me to get over to be able to ring a bell to announce my arrival so that somebody would come and open the door and maybe let me in. I was not able to do that. So, I was at the back door for an hour waiting for somebody to come back so I could call for help. This is the court system that is supposed to give me a fair hearing. It took me 2 hours to get in. Then, finally, when I got in, that is where the story started. Tables

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have got to be moved. People have to be called from far out of State to come and help me get into the courtroom. The judge could not even wait for me. On arrival, he or she could have seen me. And when he finally saw me in the courtroom, he could not look at me because of my wheelchair. My wheelchair took the attention of the court to listen to me. "How are we going to be able to get a wheelchair into the courtroom? How are we going to be able to position you? What do you want?" This and that.

I said, "I am the fellow you called in to be heard, not my wheelchair. Why do you have a problem with me being here?"

So, by the time I left that courtroom, I was already in tears. The employees of the courtroom came back to me and told me, "You are not the norm. You are not the normal person we see every day. So, do not worry about this." I do not want sympathy. I want empathy. I want an opportunity to participate. I do not want you to sympathize with me. I do not want you to treat me special. When we talk about discrimination, it is far beyond just locking me out of doors or telling me to go around to the back door or the back seat in a car or a bus. It is the elimination of dignity associated with being a human being that I am talking about. The Americans With Disabilities Act will help to make the dream for most of us be relative. Thank you for listening to me.

Mr. OWENS. Mr. Levine.

STATEMENT OF DONALD LEVINE, PRESIDENT OF BARRY INDEPENDENT LIVING ASSOCIATION, RHODE ISLAND

Mr. LEVINE. Thank you, Mr. Chairman. I am Donald Levine and I am the president of Barry Independent Living Association in Rhode Island. In 1952, when I was 15 years old, I was hurt in a diving accident, breaking my neck at a high level leaving me paralyzed from the neck down. That has been about 37 years ago.

The following things have happened that I consider discriminatory. In 1975, I was denied a powered wheelchair because I was told that I would not get enough use out of it. I was also denied a ramp to use the powered wheelchair, so, my parents had to build one. After the State sent someone out to verify that the ramp had been built, I received the wheelchair.

I requested further education by the Rhode Island Vocational Rehabilitation in 1979. The reason for denial was given that they did not see any reason for getting off the rolls of the Social Security Administration.

As an alternative, they said they would give me a hydraulic lift for a van that I had at the time and no education. The result was I had to take the ramp and to sign a paper stating that I would not bother the Rehabilitation Program in the State of Rhode Island, again. I do make the statement that this happened in 1979.

I have asked repeatedly for an accessible bathroom through vocational rehabilitation, denied one because I was not able to prove that I would be able to go back to work within a year. The Independent Living Division of Vocational Rehabilitation also denied me an accessible bathroom because they added my parents' Social Security in with mine and said that I was financially ineligible. Hence, I had nothing but bed baths for the past 36 years.

I was ordered to appear at the Social Security Administration 1982, 1983, 1984, to verify that I am still disabled. I will be disabled. On February 24, 1988, SSI launched a full investigation into my financial status. I was told that I was not entitled to the money I had saved in excess of the $1,900 and the $1,500 burial insurance that I could have.

Personally, I really do not know if you can be buried for $1,500, today. I made a comment as to that and somebody had mentioned in jest: a plastic bag.

I was told that I could not save for things like taxes, the insurance on my van, a vehicle to replace the one I now have when it wore out. I was told that I could not have a ramp—save for a ramp or anything else. They ordered my father to remove my name from savings accounts, that I had no information as to—he had put my names on the accounts. I was forced to get written statements from banks, from bank officials saying that this had been done. After completing the SSI, an employee named—I do not know if it is right to name her name or not—Mrs. Matsic, called my father, who is 77 years old and is in ill health, and was made to swear that my name was taken off these moneys that I had no information before that they were there and insinuated that they were placed in other accounts.

On April 13, 1988, I was sent a list of alleged overpayments beginning September 9, 1985 and was notified that SSI payments and benefits would end in May 1988. On April 19 and April 20, I visited three banks and obtained statements——

Mr. **Owens**. Mr. Levine.

Mr. **Levine**. Yes.

Mr. **Owens**. We have to stop at this point. We have run over a little. We would be happy to assist you in getting the rest of your statement in writing, in a form to submit to the committee so that we have the full benefit of your total testimony.

Mr. **Levine**. Thank you very much.

[The prepared statement of Donald Levine follows:]

My name is Donald Levine. I live in Providence, RI, and serve as Pres. of the PARI Ind. Living Center. I am considered developmentally disabled because I became disabled at the age of 15 due to a diving accident in 1952 in which I broke my neck leaving me a C-3/C-4 level quadriplegic for the past 37 years. The following things have happened to me that I consider to be discriminatory:

1975.—Denied a powered wheel chair—was told I would not get enough use from one and I did not have a ramp. So, my family built a ramp and I got a powered chair after the state sent someone out to verify that a ramp had been built.

1979.—I requested further education by R.I. Vocational Rehab. Program. The reason for denial was given as they didn't see any need for it because they couldn't foresee me getting off the rolls of Social Security. As an alternative they said I could have a hydraulic lift for my van provided that I sign papers agreeing never to bother them for anything else.

I have asked repeatedly for an accessible bathroom. Vocational Rehab. denied one because I could not prove that I would be fully employed within one year. The Independent Living Division of Vocational Rehab. also denied me an accessible bathroom because they added my parent's Social Security in with mine and said that I was financially ineligible. Hence, I have had nothing but bed baths for the past 36 years.

I was ordered to appear at the Social Security office in 1982, 1983, and 1984 to verify that I am still disabled.

On 2/24/88, SSI launched a full investigation into my financial status. I was told that I was not entitled to save any money above the $1900 savings and a $1500 burial policy and that I could not save for things such as vehicle insurance, city taxes, repairs to vehicle, replacement of vehicle, replacement of wheelchair ramp or anything else.

They ordered my father to remove my name from savings accounts belonging to him that I didn't know he had. I was forced to get written statements from bank officials saying that this had been done. After complying, an SSI employee named Mrs. Matzick called my father who is 77 years old and in ill health and made innuendos that he may have concealed the money in other places.

On April 13, 1988, I was sent a list of alleged overpayments beginning 9/1/85 and was notified of SSI payments and benefits ending in May 1988. On April 19th and 20th I visited 3 banks and obtained signed statements from bank officials as to balances in my accounts.

I also had to compile a list of my expenses from 2/1/88 to 4/18/88 including everything from my telephone bills to toothpaste. I also had to fill out an overpayment questionnaire.

On May 5, 1988 I received a notice of reinstatements to SSI with a lower amount of check from $51.50 to $42.75.

On May 31, 1988 I received a notice dated 5/18/88 cancelling my Medicare Benefits and reducing my SSDI check from $381.00 to $331.00.

On May 24th I received a notice dated May 22nd giving me orders to pay back $959.36 in SSI overpayments.

I had already applied for a waiver. Another notice, also dated May 22nd and received May 25th denied waiver of overpayment. I requested a hearing which was held on June 22nd.

I received notice that the state would pick up payment of Medicare Part B again as of 5/88.

On June 29th I received a notice that the hearing on June 22nd had found me without fault in incurring over-payment and that over-payment had been waived.

I received notice dated 8/1/88 that SSI check would be reinstated as of 9/1/88 except for a reduction of $3.59 per month because of interest received on a statement savings account.

All of the new laws and rules are all well and good, but they are useless to the disabled community in everyday living until they are filtered down to us, who live each day of our lives as disabled American citizens.

Mr. OWENS. Thank you very much for testifying, all three of you. I would like to ask just one question. Ms. Pelletier—did I pronounce that correctly?

Ms. PELLETIER. Pelletier.

Mr. OWENS. Pelletier. You have repeatedly won in the cases that you fought. I am sure you are tired of fighting and should not have to fight each step of the way in terms of the basic kinds of rights that you are pursuing. Do you see—in the draft legislation of the Americans With Disabilities Act—do you see relief? Is there in that bill the mechanism which will permit you the opportunity of not having to fight so hard as an individual, but have some mechanism for helping you to secure your rights in an easier way? Or does that bill also fall short of having the kind of assistance—provide the kind of assistance you need to get your rights enforced and enforce the law?

Ms. PELLETIER. Yes. I think it is a very good bill and it covers a lot of areas. But I think it will help with people's attitude in that whole attitude problem. It will take time, even with the law.

Mr. OWENS. You think the bill is very important in changing people's broad attitudes.

Ms. PELLETIER. Yes, but it will take time to change the attitudes.

Mr. OWENS. Do you see the mechanisms, some means of getting relief from some of the problems that you are facing? Both of you indicate problems with our own Government—that people in the Social Security Administration are the enemy and their attitudes. And I think we certainly can move on that right away. We should

not have to wait for the passage of this legislation. But other than that, do you see relief in the bill from some of these problems?

Mr. LEVINE. I think so, as long as it filters down fast enough to the individuals because statements are made that things are written in stone, that they cannot be changed. And, in fact, they are being changed everyday.

One other statement, if I may take just 10 seconds to finish that statement I made before: The end result of the SSI meetings that I had over this past year, they are still withholding, as being small, $3.59.

Mr. OWENS. Thank you very much.

Mr. LEVINE. Thank you.

Mr. OWENS. Our next panel, I think Mr. Kennedy is here, now, Ted Kennedy, Jr.; Bonnie O'Day, executive director, Independent Center of Hampton Roads, Norfolk, VA. It is a little bit outside of the New England area, but is Ms. O'Day here? John Nelson from Washington, DC.

As I have said before to previous panels, please understand that your written testimony can be submitted today or within 10 days of this hearing, so, you do not have to cover everything that you have in writing or you can also add some ideas later on in writing if you wish. We will begin with Mr. Kennedy.

STATEMENT OF TED KENNEDY, JR.

Mr. KENNEDY. Thank you, Mr. Chairman, it is my pleasure that you brought this hearing here to Boston this morning. I want to welcome you to our city. You are among friends here. I think it is particularly appropriate that we are here in Boston which many people refer to our city as the Cradle of Liberty. I think it is particularly appropriate here because I think that is why we are here today.

The fact is that there are millions of people who want their liberty. Our Constitution, we just celebrated not too long ago our 200th anniversary of our Constitution. And, yet, there are literally 30 or 40 million people, depending on what statistics you look at, who still do not have their independence.

The American Revolution was about independence. It was about self-determination. It was about making decisions for ourselves. And that is the reason that we are all here today is because for too long, people have made decisions for us. We have policies in our country that make decisions for us, that do not allow people with disabilities their self-determination.

Congress has recognized that there is discrimination that exists in our country. Congress recognizes that. They recognize that discrimination exists against people who are not white. They recognize that discrimination exists against women. So, too, it is not unusual that people with disabilities are calling to be recognized and protected by those same ideas that have applied to other minority groups.

I think that the one thing that makes our country great is our diversity. Our country has been called a melting pot. I think that we should be proud of our diversity. That is what makes us great. That is what makes us strong. And I have always contended—and I didn't come here, as you can tell, with any set of prepared remarks, but it is not our physical or mental condition that constitutes our, quote, handicap. But society. And just as society has created these barriers, both attitudinal and architectural, so it is that society can dismantle these barriers. That is why we are here. And that is why I am proud to be here testifying here today. Thank you.

Mr. **Owens**. Thank you. Ms. O'Day.

STATEMENT OF BONNIE O'DAY, EXECUTIVE DIRECTOR, INDEPENDENT CENTER OF HAMPTON ROADS, NORFOLK, VA

Ms. **O'Day**. Thank you. My name is Bonnie O'Day. And in addition to being the executive director of the Independent Center in Norfolk, VA, I am the chairperson of the NCIL Civil Rights Task Force. The primary mission of this task force is the passage of the ADA.

The Civil Rights Act of 1964 was a major piece of legislation which began to address the civil rights of blacks and other minorities in this country. This piece of legislation was a milestone in insuring that blacks and other minorities had the opportunity for equality and self-determination. Although this process is not complete, the legislation did bring to light the second-class status of minority persons in this country in the areas of transportation, housing, et cetera. With the passage of this legislation, the tide began to turn and the status of minority persons in this society began to change.

What is the status of persons with disabilities in our society? Seventy-nine percent of persons with disabilities are unemployed, although 73 percent of us want to work. Approximately 45 percent of us have incomes of less than $5,000. The drop-out rate of disabled persons from our high schools is approximately 50 percent greater than our non-disabled counterparts. For the most part, disabled persons in our society are the poorest of the poor, uneducated and unemployed. There is currently no comprehensive piece of civil rights legislation that protects us from discrimination in terms of transportation, employment, communication, housing and physical access.

On a more personal basis, sometimes the discrimination that I have experienced as a blind person has been unintentional and, thus, can be easily overlooked and forgiven. But sometimes this discrimination has been extremely blatant.

One of the most blatant discriminators I believe in our society is the airline industry. Approximately 3 years ago, I was going to an independent living conference in Kansas City when I was seated in an exit row. Airline policy states that blind persons should not be seated in exit rows because of safety reasons, although there is no actuarial evidence to suggest that blind persons are less safe in evacuating airlines in case of emergency. I was forcibly removed from the plane along with the other passengers and the flight was subsequently cancelled. When the airlines were contacted by the media, they did not admit that they made a mistake, that their regulations and policies needed to be looked at. However, they stated that I had requested this seat because I wanted to stage a demonstration and obtain some media coverage since I was new in town and wanted to make a name for myself.

Sometimes bureaucrats and policy makers do the bare minimum in terms of implementing existing legislation. One of the most poignant examples of this occurred at the University of Virginia this summer. This university was founded by a man named Thomas Jefferson, whose principles stood for equality and freedom for all. It is ironic that UVA's buildings are still not accessible, even though the laws requiring accessibility have been in existence for approximately 15 years.

Franz Stielfried was an advocate, a person in a wheelchair who advocated for accessibility in all areas of Charlottesville. Those of us in Virginia watched Franz grow in terms of knowledge, independence and his own personal independence. One day while he was traveling to UVA to advocate with them to make one of their main buildings accessible, he encountered an intersection without a curve cut. This forced him to traverse a very dangerous grassy area next to a 50-foot drop. He did this safely only to encounter another intersection which was inaccessible. As he was trying to lower himself over the curb, he lost control of his wheelchair and fell to his death 50 feet below. The time for passage of the ADA is now. It is a matter of life and death for many of us. For many of us like Franz it is a matter of survival. Thank you.

Mr. OWENS. Thank you. Mr. Nelson.

STATEMENT OF JOHN NELSON, WASHINGTON, DC

Mr. NELSON. Thank you very much, Chairman Owens, for being here and allowing me to speak. I am speaking as a person who has faced almost daily discrimination because of my disability for approximately 22 years. I think it is impossible for anyone in this room to recount every type of discrimination that they have faced individually. One of the most blatant pieces that I have faced was in 1975, a recent graduate of the University of Vermont, a university that was relatively barrier free because of a fully tenured professor who was a paraplegic who told them how up front they could make themselves accessible and prevent having to correct the situation later at a relatively low cost through preplanning.

After receiving a degree in education, I went through seven interviews the following summer. Three were 3 hours long. Very substantial interviews. I was told by the Essex Junction School System that they were not hiring me because I used a wheelchair. I suspected it in other situations, but in that one, they actually said this was the reason, which kind of surprised me.

I went to the Office of Civil Rights and filed a complaint. Over a year of investigation and Mr. Boeing, the regional head, said that he would not support my complaint because he did not think that I had a valid case. That the regulations were not signed by Califano and, well, the employer probably did not realize that they could not discriminate, that they had received Federal funds. This was just, I thought, impossible. And, now-a-days, it should be impossible that similar situation would happen.

The legislation that you are looking at passing will expand that. Hopefully, in 10 years from now, how it is crazy that in transportation, housing and many of the very important areas of people with disabilities, that people would discriminate. That is where we have to be in a couple of years.

When we looked at housing—my wife and I recently moved to Washington, DC, from Massachusetts. She spent 3 weeks trying to find accessible affordable housing in Washington, DC and northern Virginia. Much of northern Virginia, brand new housing, Crystal City and so forth, had accessible apartments once you got to them, but you had to go in through the garage, you could not go in through the front door. I will not live in a building I cannot go in through the front door. We were fortunate to find housing, but it was a real search. That should not be.

In the areas of transportation, I, personally, face discrimination in getting on trains, getting on planes. In fact, not allowed to get on some planes because I did not have an able bodied person traveling with me, even though I had attendants on either end of the flight. Buses, there are far, far the exception instead of the rule when you find accessible buses.

Metro transport, I find in Washington, is really very nice; but, unfortunately, Washington, San Francisco, are examples of exceptions. You can name quickly and not fill all of our fingers the cities in this country that have accessible metro transportation.

You talk about cost. The problem is that there are too few people with disabilities in the work force, not too many. I but think of coffee this morning when I think of cost benefit. The lid to the coffee cup at McDonald's down in the mall had braille on it so a blind individual could read whether it was decaffeinated or not decaffeinated. McDonald's had, with a little preplanning, put this as part of their mold in molding a coffee cup lid and at no additional cost.

Now, if you had gone ahead and brailled every coffee lid, you would have a fantastic cost. And that is the difference that you're looking at. Through preplanning, you can eliminate a barrier as opposed to trying to correct that barrier, at a tremendously low cost.

I urge the current Congress to demonstrate the foresight, courage and commonsense demonstrated that by Congress previously that have passed the Civil Rights Act and the Rehab Act of 1973 and its amendments. Thank you very much.

Mr. OWENS. Thank you. I want to thank all three of you. Ms. O'Day, you mentioned you are the head of a task force and I did not catch the name of it.

Ms. O'DAY. It is the National Council on Independent Living, Civil Rights Subcommittee.

Mr. OWENS. Thank you. And Mr. Kennedy, we did note that I think you serve on the President's Committee on Employment of the Handicapped.

Mr. KENNEDY. Yes. They have just recently changed their name to the President's Committee on Employment of Persons with Disabilities.

Mr. OWENS. Thank all of you.

Mr. KENNEDY. Thank you very much, Mr. Chairman.

Ms. O'DAY. Thank you.

Mr. **Owens**. Again, we are very appreciative of the tremendous outpouring we have here today, people as witnesses and members of the audience. I would like to say to the members of the audience that have been here for a while, there are people outside who would like to get in and I would like for you to consider going—changing places with some of the people who would like to get in—going downstairs to the lower lobby where this hearing is there on a video device with captions and they have refreshments downstairs in the lower lobby, also. So, if you do not mind exchanging with some people who have not been inside, we would appreciate it.

I would like to also move quickly to our next panel. We continue to fall behind, so, I am going to ask that the time will be set at 4 minutes now, instead of 5, because we continue to fall behind schedule and we do not want anybody to leave here without having a chance to testify.

The next panel consists of—can you move as quietly as possible so we do not lose time?

Alan Telker, Ilona Durkin, and Eugenia Evans.

Ms. **Telker**. It is "Ellen."

Mr. **Owens**. I am sorry. Ellen Telker.

Just one moment, Ms. Telker.

Mr. **Owens**. Are you all from Connecticut?

Ms. **Telker**. That is correct.

Mr. **Owens**. Ms. Telker.

STATEMENT OF ELLEN TELKER, ATTORNEY AT LAW, MILFORD, CT

Ms. **Telker**. Good morning. As a person unable to read print or drive, I am subjected to discrimination because of lack of transportation and inadequate media in print and in forms which I am able to use. The provisions of the Americans With Disabilities Act of 1988 would be important in remedying some of these problems.

State and local municipalities do not make many materials available to a person who is unable to read print. Often, I attend seminars and workshops and receive printed materials. If tapes are available, they come afterwards. They may never come or they may come so long after the event that they are no longer timely Speakers at such events will often refer to the printed material by page numbers, but they do not read what they are talking about so that a person who is unable to read does not receive the full benefit of the event.

At such a public meeting, a reader cannot help because if someone reads the material, the noise that they make by reading it aloud or even softly disrupts other individuals' ability to listen to what is going on. Although the newsletter of the Connecticut agency serving the blind is published in braille, I often receive letters from them which are in print. Even this hearing was not publicized in a manner which was accessible to those who do not read print. None of the magazines or newsletters that I get announced it and my radio reading service did not carry a spot.

I know of at least one courthouse in New Haven where the elevators do not have tactile markings and I am sure there are many others. Literature from such places as hospitals, hotels, in airlines, describing the safety and other information necessary to use these places is not available in a medium which can be read by a person who does not read print. Also, this applies to forms for applying for many benefits. Therefore, a person who is not able to read may have to sign something without understanding what they are signing or even if it is read not really understanding it adequately because it is usually done so very quickly.

After I wrote up my testimony, I thought about voting. When I go into a voting booth, I have to rely on someone else to tell me which lever to pull. The other big problem that I face is transportation. A person who is unable to drive must rely on alternate means. Unless you live in a very, very large city, public transportation is minimal. In my city, the door-to-door service operates fewer hours than does the regular bus. Because we do not have as much as we need, even if you call in advance, you may not be able to get a ride when you want.

My local chapter of the Connecticut Council for the Blind is looking for a way to get a group of us from the New Haven area up to Hartford on a Saturday for our semi-annual convention next month. And, so far, we have not been able to find anything.

I urge that the Americans With Disabilities Act be passed because it will provide a means for beginning to redress some of these problems. Thank you very much.

[The prepared statement of Ellen M. Telker follows:]

TESTIMONY OF ELLEN M. TELKER

As a person who is unable to read print or drive because of a visual impairment, I am subject to discrimination because of inadequate transportation and lack of materials which I am able to read. The provisions of the Americans With Disabilities Act of 1988 are important to me because they would help to remedy these problems.

State and municipal agencies do not make print materials available in media which is accessible to persons with visual impairments. I have attended workshops and seminars sponsored by state agencies specifically for persons with disabilities where I was given print material. If tapes are provided, they always are sent after the event. They may never come, or they may come so long after the event that they are no longer timely. Often at such seminars or workshops speakers will refer to specific sections of the printed material by page number. However, they do not read the material they are talking about so that a person unable to read print cannot receive the full benefit of their talk. At a public meeting a reader cannot help since the noise made by reading material aloud or even softly is disruptive for other participants. Although its newsletter is available in braille, even the agency serving the blind in Connecticut sends out letters in print.

Even this hearing was not publicized specifically for print handicapped individuals. None of the magazines or news-letters I get in braille or on tape announced it. Nor did my radio reading service carry a spot.

I know of at least one state courthouse (in New Haven) which does not have tactile markings on its elevator panel, and I am sure there are many others. My bank provides raised line checks and brailled statements, but I chose it precisely because it is the only bank in Connecticut that does this. Such things as literature given to patients entering hospitals, safety information distributed in airplanes and in large hotels and applications for various types of public assistance are almost never available in media which a nonprint reader can use. Therefore, a blind person may sign releases, consent forms or applications for assistance without understanding or adequately considering the ramifications of the act, possibly waiving important legal rights. When such things are read or explained it is usually done so quickly that it is not helpful. Nor are bus and train schedules accessible to print handicapped individuals.

Lack of transportation is the other problem faced by visually impaired persons. Since blind people are unable to drive, they must find other means of transportation. Unless one lives in a large city, public transportation is minimal. In my city the door to door service runs fewer hours than do the regular buses. Because we need more than we have, it is not always possible to get a ride when it is needed even if I call well in advance. My chapter of the American Council of the Blind is looking for a van to get us from the New Haven area to Hartford for our semiannual convention next month on a Saturday, and so far we have not found one.

On behalf of people who do not read print, I urge that the Americans with Disabilities Act of 1988 be passed. Particularly Sections 4 and 5 of the Act would provide a basis for seeking redress for some of the discrimination which presently occurs.

Mr. OWENS. Thank you. Ms. Durkin.

STATEMENT OF ILONA DURKIN, ROCKY HILL, CT

Ms. DURKIN. Thank you. My name is Ilona Durkin. I am representing the 4,500 people who sustain head injuries each year in Connecticut and countless other people with disabilities who need the protection ADA can provide.

Families within our organization are often told in the hospital to let their loved one die because he or she is going to be a vegetable following injury. This fatalistic attitude pervades how people are treated after they leave the hospital as well.

For example, children with traumatic brain injury are often treated as though they have a learning disability, mental retardation, behavioral, emotional problems, or a combination of all. And that is because that is convenient for the schools. It is what they are used to and, so, that is what they provide.

Ignorant professionals segregate these children in special education classes. They do not receive the education mandated by Public Law 94-142. Gutting of the Federal monitor's office has virtually neutralized enforcement of this law.

Vocational rehabilitation excludes adults with severe long-term disability. They are excluded from jobs because support services such as job coaches are unavailable. Slurred speech or staggering gait are often reasons why people are denied jobs.

Many, many adults with traumatic brain injury are in the wrong place. They are living with aged parents, languishing in nursing homes, being inappropriately medicated in psychiatric facilities, or jailed because of aberrant behavior. Or, they are homeless. And of an interesting aside, our homeless people are kicked out of the homeless shelters if they can even get in because of the inaccessibility of many of them. Proper supervised living situations do not exist for this population.

State agencies discriminate against people with traumatic brain injury because of their disability. Officials deny service because the individual cannot follow through, use good judgment, demonstrate initiative or be socially appropriate. These problems are common outcomes of head injury.

Traumatic brain injury is not recognized within the Social Security Act as a discrete disability. Therefore, many adults with traumatic brain injury do not get treatment. Only 1 in 20 people with TBI currently get the services they need. This population is not adequately funded and is not getting equal protection under the law.

People have rights. Our country is based on principles guaranteeing these rights. Let us make sure all our citizens can secure them. Let us support ADA. Thank you.

[The prepared statement of Ilona Durkin follows:]

PREPARED STATEMENT OF ILONA DURKIN, CONNECTICUT TRAUMATIC BRAIN INJURY ASSOCIATION, INC.

My name is Ilona Durkin. I am representing the 4,500 people who sustain head injuries each year in Connecticut and countless other people with disabilities who need the protection ADA can provide.

Families within our organization were often told in the hospital to let their loved one die because he or she was going to be a "vegetable" following injury. This fatalistic attitude is also pervasive in how people are treated after they leave the hospital.

For example:

1. Children with TBI are often treated as though they have a learning disability, mental retardation, behavioral and emotional problems or a combination of all. Ignorant professionals segregate those children in special education classes. They do not receive the education mandated by Public Law 94-142. Gutting of the federal monitors' office has virtually neutralized enforcement of the law.
2. Vocational rehabilitation excludes adults with severe long term disability. They are excluded from jobs because support services such as job coaches are unavailable. Slurred speech or staggering gait are often reasons why people are denied jobs.
3. Many, many adult with TBI are in the wrong place. They are living with aged parents, languishing in nursing homes, being inappropriately medicated in psychiatric facilities, or jailed because of aberrant behavior. Or—they are homeless. Proper, supervised living situations do not exist for this population.
4. State agencies discriminate against people with TBI because of their disability. Officials deny service because the individual cannot follow through, use good judgment, demonstrate initiative, or be socially appropriate. These problems are common outcomes of head injury.
5. TBI is not recognized within the Social Security Act as a discrete disability. Therefore many adults with TBI do not get treatment. Only 1 in 20 people with TBI currently get the services they need. This population is not adequately funded and is not getting equal protection under the law.

People have rights. Our country is based on principles guaranteeing those rights. Let's make sure all of our citizens can secure them.

Mr. OWENS. Thank you. Ms. Evans.

STATEMENT OF EUGENIA EVANS, HARTFORD, CT

Ms. EVANS. Good morning, Chairman. My name is Eugenia Evans and I represent not only myself, but members of ADAPT, Americans Disabled for Public Transportation. I would like to bring to the attention of the committee that we feel one of the most corrigious forms of discrimination that occurs daily when a disabled person tries to use a public bus. Few buses are lift-equipped and ones that are are rapidly broken down. Not all bus-line times of departure are available to passengers. I have waited for hours while many buses, not lift-equipped, pass me by. When a lift-equipped bus did arrive, the lift was broken.

I do not feel that it is too much to ask to have the public transportation system that is available to use when I want to use it and is reliable. I urge the committee to vote for passage of the ADA so that the public transportation will be forced to be accessible for all people.

Mr. OWENS. I want to thank you all for joining us here today from Connecticut. And I think our next panel also consists of people who have come in from Connecticut: Mr. Patrick Palotto, the editor of the Bridgeport Telegram; Edie Harris, North Franklin, CT; Linda Hanscom, also North Franklin, CT.

Ms. HARRIS. It is Edith.

Mr. OWENS. There is a correction on the name?

Ms. **Harris.** My name is Edith. Ms. Hanscom is not here.

Mr. **Owens.** Mr. Palotto, you may commence.

STATEMENT OF PATRICK PALOTTO, EDITOR, BRIDGEPORT TELEGRAM, BRIDGEPORT, CT

Mr. **Palotto.** I thank the committee for extending to me the opportunity to share some of my views regarding the need for civil rights for persons with disabilities.

I am a resident of Milford, CT. I have been employed by the Post Publishing Company in Bridgeport, CT, for 41-plus years as an editor, the last 31 years as editor of the Sunday Post.

My credentials for addressing the Americans with Disabilities Act are these: I have just completed my third 1-year term as president of the Easter Seal Society of Connecticut, having served on its board for 10 years. I am a past president of the Easter Seal Rehabilitation Center of Eastern Fairfield County, having served on its board a quarter of a century. I am past chairman of the Kennedy Center, having served on its board 8 years. The Kennedy Center originated with parents and friends of retarded citizens to provide workshop training and job opportunities in addition to residential facilities for retarded persons.

I take pride in the fact that during my chairmanship, I was able to lead the board to broaden the agency's scope and provide an umbrella of acceptance and service to all persons with disabilities other than retardation, alone. I serve on the advisory board of Goodwill Industries of Western Connecticut. I serve as chairman of the Mayor's Commission for Persons With Disabilities in Bridgeport. I serve on the Business Advisory Council for Projects With Industry, a program to evaluate, train, and place persons with disabilities. Therefore, I can react to concerns of persons with disabilities and their families that over the years have been shared with me as editor on a newspaper to whom they have appealed to seek counsel, support, and time and time again find their problems exposed through the media because I feel strongly about issues and abuses.

Often, I have listened to complaints of an abridgement of civil rights, especially in cases of persons with dually diagnosed disabilities, wherein the person is shuttled from one agency to another because case managers have a restricted mandate to stay within the confines of their stated mission objectives of service.

These dually diagnosed need a civil rights component that specifically addresses their needs, that advocates for identification and clarification of their disabilities, and that finds the resources they need to achieve growth and independence. I am concerned that some service providers in the private sector, although they receive money from the Government, are reacting to the new competition in the field of physical, therapeutic rehabilitation by violating the charge of their mission, the charter charge being that the doors of the agency be open to all persons with disabilities, regardless of the inability to pay, because these private providers still have the 401C privilege to solicit community funds.

I would encourage the sponsors of the Americans With Disabilities Act to incorporate as part of its civil-rights directive an ongoing evaluation of th charters and the records of these private service providers that as long as they receive Government funding, that they fulfill the obligations to the patients they register for their assistance.

Mr. OWENS. Mr. Palotto, the bell sounded. You could not hear it. You can submit your testimony.

Mr. PALOTTO. Yes.

Mr. OWENS. Your written testimony we will be very happy to hear.

Mr. PALOTTO. Thank you for listening to me.

[The prepared statement of Patrick Palotto follows:]

PREPARED STATEMENT OF PATRICK PALOTTO

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I serve on the Advisory Board of Goodwill Industries of Western Connecticut.

I serve as chairman of the Mayor's Commission for Persons With Disabilities in Bridgeport.

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I can react to concerns of persons with disabilities and their families that over the years have been shared with me as an editor on a newspaper to whom they have appealed to seek counsel, support and, time and time again, find their problems exposed through the media, because I felt strongly about issues and abuses.

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These dually diagnosed need a civil rights component that specifically addresses their needs, that advocates for identification and clarification of their disabilities and that finds the resources they need to achieve growth and independence.

I am concerned that some service providers in the private sector, who are supported with government funding, are reacting to the new competition in the field of physical therapeutic rehabilitation by violating the charge of their mission: the chartered charge being that the doors of the agency be opened to all persons with disabilities, regardless of the inability to pay, because these private providers still have the 401C privilege to solicit the community for charitable support of its programs.

I would encourage the sponsors of the Americans With Disabilities Act to incorporate as part of its civil rights directive an on-going evaluation of the charters and the records of these private service providers that, as long as they receive government funding, that they fulfill the obligations to the patients that register for their assistance.

Happily, because our economy in Connecticut has prospered in recent years to a level where the demand for manpower has been so great that opportunities have been provided and are continuing to grow for persons with disabilities, including many who because of the severity of their disabilities were rejected as poor risks for employment.

Today, the list of success stories in evaluation, training and placement of persons with disabilities is lengthening. This is all due to the foresight of Congressional leaders who heard advocates for the program and responded with the resources to make it work and create a new pool of independent members of society who contribute faithfully to its wellbeing. Without these new people in the workforce, many small businesses would have been jeopardized to the point of ceasing to function.

Now with so many persons with disabilities in the workplace, there is a need for guaranteeing them their civil rights as employees: that they are equitably compensated, that they are fairly protected with the usual benefits for their health and retirement, but above all that they are humanely treated in their work environment.

This Americans With Disabilities Act should have in place a section specifying ways and means for breaking down attitudinal barriers. I am not an idealist who would believe everyone can be cured of biases and discriminations. But I am a realist who believes that action, properly taken, can overcome attitudinal barriers so that the environment in which persons with disabilities work can be so harmonious that the morale of all in the workplace is heightened.

Fairfield University, a Jesuit school, in my area has placed several persons with disabilities in its workforce. To assure their acceptance as valued employees by other workers, the university is creating a model program to educate its supervisors in how to understand, treat and manage people with limited abilities. The university's leadership believes strongly that if supervisors are properly educated about disabilities, limited abilities and specific needs of workers, and the supervisors in turn educate their other workers, then the environment and the morale will create harmony and lead to greater productivity.

I look forward to the results of the model program and will ask the university to share them with you.

That is my primary concern, that this act mandate action toward dissolving attitudinal barriers with a network of leaders and advocates in place to extend civil rights into the workplace. The cost could be minimal to taxpayers, if institutions such as Fairfield University and agencies already providing the services are encouraged to serve these ends.

I endorse the enactment of the Americans With Disabilities Act and, if the committee in its wisdom agrees with the views that I have stated today, any amendments that reflect those positions.

Mr. OWENS. Edith Harris.

STATEMENT OF EDITH HARRIS, COORDINATOR OF VOLUNTEERS DISABILITIES NETWORK OF EASTERN CONNECTICUT, INC., NORTH FRANKLIN, CT

Ms. HARRIS. I would like to thank you for inviting me here to speak. Americans With Disabilities Act is an important issue. I would like to speak on transportation for disabled people, particularly in relation to job opportunities and concentrating on Connecticut where I live and work.

All across the country, government and private agencies are training disabled people for gainful employment, but a corresponding emphasis has not been placed on guaranteeing dependable accessible transportation to and from the job. This unmet need exists both in the cities, where I was formerly the transportation coordinator for an independent living center, and in the rural areas, where I work now. It is, of course, cruel to raise people's hopes with job training, only to have them be turned down on a job because of lack of transportation. It is also not cost effective for those who can read only the bottom line.

I am sure that you are all familiar with the way in which APTA, the American Public Transit Association, blocked the 504 improvements by refusing to lift-equip buses, saying that disabled people would not ride public transit anyway. How could they possible know that when there was nothing accessible to ride?

Another contributor to 10 lost years was the UMTA committee which decided to reward any bus company which could build the lightest possible bus and include a very heavy bus lift. This resulted in the Grumann bus, of which 280 were purchased by the Connecticut Department of Transportation. Over 150 parts had to be replaced in each bus, with the step-lifts a dismal failure.

Although this bus and lift were described by the Connecticut official in charge of the purchase as state-of-the-art, decisionmakers in a Seattle area decided to hold out for higher quality bus. In the same timeframe, they developed their own specifications for lifts and buses and purchased lifts that have proven very beneficial and are still being used 10 years later along with the buses. Public transit in Seattle has improved for all riders as service for disabled users has steadily expanded.

It would appear that local option only works in areas where the transit agency already has a commitment. In Connecticut, the Department of Transportation, which operates the major bus service in three cities and controls the funding for other bus service has to be dragged into the 20th century. The key DOT official said in 1985, "Why can't all the handicapped people live in one place and work in one place? It would make it easier for us."

Although we have tried to explain the concept of independent living on many occasions, they still have trouble understanding. I have attempted to improve Connecticut's transportation opportunities for disabled riders since 1975 when I started to work with a regional planning agency called the Capital Regional Council of Governments. At their meetings, both elected and government officials acknowledged that you could not get from one town to another in the 29 regions of Connecticut as the Dial-a-Ride bus did not cross town lines. They promised regional transit. And promised. And promised, year after year. But in 1983, 13 years later, regional transit still does not exist.

If you live in West Hartford, a community of over 60,000 people, and want to go to work, even if it is in the same town, or attend a college, Dial-a-Ride will not take you even though they have four vans because they do not want an ongoing commitment. The same is true of every town in the capital region, except Hartford, which takes you to work for 3 months. After that, you are on your own. So, if you are considering paratransit, remember that regulations must require that disabled workers and students must be able to ride it or it is not really a working system.

In Minneapolis, where the city chose paratransit over lift-equipped buses as a way to get disabled people to work, it became known to disabled and quickly developed a 30 percent turn down—does that mean that my time is up?

Mr. Owens. Yes. You may finish your sentence.

Ms. Harris. I think that was the end of the sentence.

Mr. Owens. I would like to have your written testimony.

Ms. Harris. Yes. I left copies at the desk.

[The prepared statement of Edith Harris follows:]

ADA PUBLIC HEARING
LAFAYETTE HOTEL
BOSTON, MASSACHUSETTS
OCTOBER 24, 1988

TO: U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON SELECT EDUCATION

FROM: EDITH HARRIS, COORDINATOR OF VOLUNTEERS
DISABILITIES NETWORK OF EASTERN CT., INC.
R.F.D. 2
NORTH FRANKLIN, CT. 06254

RE: AMERICANS WITH DISABILITIES ACT

I WOULD LIKE TO SPEAK ON TRANSPORTATION FOR DISABLED PEOPLE, PARTICULARLY IN RELATION TO JOB OPPORTUNITIES, AND CONCENTRATING ON CONNECTICUT, WHERE I LIVE AND WORK. ALL ACROSS THE COUNTRY, GOVERNMENT AND PRIVATE AGENCIES ARE TRAINING DISABLED PEOPLE FOR GAINFUL EMPLOYMENT, BUT A CORRESPONDING EMPHASIS HAS NOT BEEN PLACED ON GUARANTEEING DEPENDABLE ACCESSIBLE TRANSPORTATION TO AND FROM THE JOB. THIS UNMET NEED EXISTS BOTH IN THE CITIES, WHERE I WAS FORMERLY THE TRANSPORTATION COORDINATOR FOR AN INDEPENDENT LIVING CENTER, AND IN THE RURAL AREAS, WHERE I WORK NOW. IT IS, OF COURSE, CRUEL TO RAISE PEOPLE'S HOPES WITH JOB TRAINING, ONLY TO HAVE THEM HAVE TO TURN DOWN A JOB BECAUSE OF LACK OF TRANSPORTATION. IT IS ALSO NOT COST-EFFECTIVE, FOR THOSE WHO CAN READ ONLY THE BOTTOM LINE.

I AM SURE THAT YOU ARE ALL FAMILIAR WITH THE WAY IN WHICH APTA, THE AMERICAN PUBLIC TRANSIT ASSOCIATION, BLOCKED THE 504 IMPROVEMENTS BY REFUSING TO LIFT_EQUIP BUSES, SAYING THAT DISABLED PEOPLE WOULDN'T RIDE PUBLIC TRANSIT ANYWAY. HOW COULD THEY POSSIBLY KNOW THAT, WHEN THERE WAS NOTHING ACCESSIBLE TO RIDE?

ANOTHER CONTRIBUTOR TO TEN LOST YEARS WAS THE UMTA "COMMITTEE" WHICH DECIDED TO REWARD ANY BUS COMPANY WHICH COULD BUILD THE LIGHTEST POSSIBLE BUS, INCLUDING A VERY HEAVY BUS LIFT. THIS RESULTED IN THE GRUMANN BUS, OF WHICH 280 WERE PURCHASED BY THE CONNECTICUT DEPARTMENT OF TRANSPORTATION. OVER 150 PARTS HAD TO BE REPLACED IN EACH BUS, WITH THE STEP-LIFTS A DISMAL FAILURE.

ALTHOUGH THIS BUS AND LIFT WERE DESCRIBED BY THE CONNECTICUT OFFICIAL IN CHARGE OF THE PURCHASE AS "STATE OF THE ART", DECISION-MAKERS IN THE SEATTLE AREA DECIDED TO HOLD OUT FOR HIGHER QUALITY. IN THE SAME TIME FRAME, THEY DEVELOPED THEIR OWN SPECIFICATIONS FOR LIFTS AND BUSES, AND PURCHASED LIFTS WHICH

HAVE PROVED VERY DEPENDABLE AND ARE STILL BEING USED, TEN YEARS LATER, ALONG WITH THE BUSES. PUBLIC TRANSIT IN SEATTLE HAS IMPROVED FOR ALL RIDERS, AS SERVICE FOR DISABLED USERS HAS STEADILY EXPANDED.

IT WOULD APPEAR THAT LOCAL OPTION WORKS ONLY IN THOSE AREAS WHERE THE TRANSIT AGENCY ALREADY HAS A COMMITMENT. IN CONNECTICUT, THE DEPARTMENT OF TRANSPORTATION, WHICH OPERATES THE MAJOR BUS SERVICE IN THREE CITIES, AND CONTROLS THE FUNDING FOR OTHER BUS SERVICES, HAS TO BE DRAGGED INTO THE 20TH CENTURY. THE KEY DOT OFFICIAL SAID, IN 1985, "WHY CAN'T ALL THE HANDICAPPED PEOPLE LIVE IN ONE PLACE AND WORK IN ONE PLACE? IT WOULD MAKE IT EASIER FOR US." ALTHOUGH WE HAVE TRIED TO EXPLAIN THE CONCEPT OF INDEPENDENT LIVING ON MANY OCCASIONS, THEY STILL HAVE TROUBLE UNDERSTANDING.

I HAVE ATTEMPTED TO IMPROVE CONNECTICUT'S TRANSPORTATION OPPORTUNITIES FOR DISABLED RIDERS SINCE 1975, WHEN I STARTED TO WORK WITH THE REGIONAL PLANNING AGENCY, CALLED THE CAPITOL REGION COUNCIL OF GOVERNMENTS. AT THEIR MEETINGS, BOTH ELECTED AND GOVERNMENT OFFICIALS ACKNOWLEDGED THAT YOU COULDN'T GET FROM ONE TOWN TO ANOTHER IN THE 29-TOWN REGION, AS DIAL-A-RIDES DIDN'T CROSS TOWN LINES. THEY PROMISED REGIONAL TRANSIT _ AND PROMISED AND PROMISED, YEAR AFTER YEAR, BUT IN 1988, 13 YEARS LATER, REGIONAL TRANSIT STILL DOESN'T EXIST.

IF YOU LIVE IN WEST HARTFORD, A COMMUNITY OF OVER 60,000, AND WANT TO GO TO WORK, EVEN IN THE SAME TOWN, OR ATTEND COLLEGE, DIAL-A-RIDE WON'T TAKE YOU, EVEN THOUGH THEY HAVE 4 VANS, BECAUSE THEY DON'T WANT AN ONGOING COMMITMENT. THE SAME IS TRUE OF EVERY TOWN IN THE CAPITOL REGION EXCEPT HARTFORD, WHICH WILL TAKE YOU TO WORK FOR THREE MONTHS. AFTER THAT, YOU'RE ON YOUR OWN. SO IF YOU'RE CONSIDERING PARATRANSIT, REMEMBER THAT REGULATIONS MUST REQUIRE THAT DISABLED WORKERS AND STUDENTS MUST BE ABLE TO RIDE OR IT'S NOT REALLY A WORKING SYSTEM.

IN MINNEAPOLIS, WHERE THE CITY CHOSE PARATRANSIT OVER LIFT-EQUIPPED BUSES AS A WAY TO GET DISABLED PEOPLE TO WORK, IT BECAME KNOWN TO DISABLED PEOPLE, AND QUICKLY DEVELOPED A 30% TURNDOWN RATE BECAUSE THERE WERE SO MANY POTENTIAL RIDERS. IN ADDITION, DISABLED WORKERS HAD TO BE READY ONE HOUR EARLY FOR PICKUP, AND OFTEN ARRIVED AT WORK ONE HOUR LATE. HOW CAN YOU DEVELOP GOOD WORK HABITS OR EXPECT TO BE PROMOTED IN A JOB IF THE TRANSPORTATION IS UNDEPENDABLE? IN CONNECTICUT, WORKERS HAVE HAD TO

QUIT THEIR JOBS AND GO BACK ON PUBLIC ASSISTANCE AFTER YEARS OF FRUSTATION AT RYING TO GET TO AND FROM WORK WITH A SYSTEM WHICH WASN'T FUNCTIONING.

THE FEDERAL GOVERNMENT, AND IN CONNECTICUT ALSO THE STATE GOVERNMENT, IS POURING A LOT OF MONEY INTO RIDESHARING, WHERE UP TO 12 RIDERS SHARE A VAN, BUT HAVE TO WORK IN THE SAME AREA AND LEAVE WORK AT THE SAME TIME. AS OF NOW, THERE ARE NO ACCESSIBLE VANS IN THIS PROGRAM, EVEN THOUGH THE DISABILITY ISSUE WAS FIRST RAISED IN 1980, WHEN THE RIDESHARE GROUP GOT THEIR FIRST BIG FEDERAL GRANT, WITH THE PROMISE THAT THEY WOULD NEVER ASK FOR MORE. THEIR BUDGET HAS TRIPLED, ALTHOUGH THE NUMBER OF ACTUAL RIDERS IN THE PAST YEAR REMAINED THE SAME. WHEN A LOCAL NEWSPAPER QUESTIONED THE DIRECTOR ABOUT THE LACK OF ACCESSIBILITY, HE SAID, "WE DON'T HAVE TO COMPLY, BECAUSE WE JUST DO MARKETING". FINDING A WAY NOT TO COMPLY IS NOT WHAT CAN BE REGARDED AS COMMITMENT.

THERE IS A LEGISLATIVE BODY IN CONNECTICUT CALLED THE CONNECTICUT PUBLIC TRANSIT COMMISSION WHICH HOLDS HEARINGS AROUND THE STATE, AND SAYS IT IS INTERESTED IN REGIONAL TRANSIT, BUT AFTER YEARS OF TESTIFYING AT THEIR HEARINGS, DISABLED RIDERS HAVE DECIDED JUST TO SEND IN THE PREVIOUS YEAR'S TESTIMONY, SINCE NO ACTION EVER SEEMS TO TAKE PLACE TO IMPLEMENT SUGGESTIONS WHICH HAVE BEEN MADE.

UNFORTUNATELY, BECAUSE THESE ORGANIZATIONS EXIST, AND HAVE BUDGETS, IT CREATES AN ILLUSION OF PROGRESS, AND UNTIL RECENTLY, MANY PUBLIC OFFICIALS ASSUMED THAT SOMEONE WAS RESPONSIBLE FOR ACCESSIBLE TRANSPORTATION. ONLY AFTER WE WENT FROM BLOCKING BUSES TO RALLYING WITH OVER 200 DISABLED RIDERS ON THE CAPITOL LAWN, DEMANDING BETTER TRANSPORTATION, DID WE GET THE ATTENTION OF LEGISLATORS, WHO PASSED BILLS IN THE LAST LEGISLATIVE SESSION THAT WILL BE HELPFUL. ALL BUSES PURCHASED IN CONNECTICUT MUST HAVE LIFTS: SENSITIVITY TRAINING WILL BE REQUIRED OF BUS DRIVERS, AND A CITIZEN ADVISORY BOARD (OPPOSED BY THE DEPARTMENT OF TRANSPORTATION) WILL GO INTO EFFECT IN JANUARY.

ONLY 30 OR 40 OF THE LIFTS IN THE 280 BUSES WHICH WERE PURCHASED BY CONN/DOT ARE CONSIDERED BY THE MANAGEMENT TO OPERATE, AND DUE TO THEIR PLACING A LOW PRIORITY ON LIFT MAINTENANCE, EVEN THOSE ARE OFTEN UNABLE TO FUNCTION. SEATTLE, ON THE OTHER HAND, HAS TWO REQUIREMENTS WHICH ARE ESSENTIAL FOR A SYSTEM TO WORK PROPERLY.

THEY PLACE A HEAVY EMPHASIS ON BUS AND LIFT MAINTENANCE, WITH EVERY LIFT CYCLED AT NIGHT WHEN THE BUS COMES IN AND IN THE MORNING, WHEN THE BUS GOES OUT. WHEN THIS PROCEDURE WAS SUGGESTED TO CONN/DOT OFFICIALS, THEY SAID IT WOULD take THEM "WAY OFF SCHEDULE". HOW IS SEATTLE ABLE TO STAY ON SCHEDULE, ALONG WITH OTHER BUS OPERATIONS WHICH HAVE PAID ATTENTION TO MONEY-SAVING MAINTENANCE?

THE OTHER THING WHICH SEATTLE DOES IS TO CONSTANTLY TRAIN AND RETRAIN ITS BUS DRIVERS, AND APPARENTLY THIS MUST BE PART OF ANY FUNDING PROVIDED BY THE FEDERAL GOVERNMENT, REQUIRING THAT DISABLED RIDERS BE INVOLVED IN THE TRAINING. IS IT BECAUSE WE HAVE VOLUNTEERED TO ASSIST WITH THE DRIVER TRAINING FOR NOTHING THAT WE HAVE NOT BEEN ASKED? IN THAT CASE, WE WOULD BE GLAD TO BE PAID. MANY CONNECTICUT BUS DRIVERS DO NOT KNOW HOW TO OPERATE THE LIFTS, AND SEVERAL HAVE STARTED THE BUS WHILE THE WHEELCHAIR-USER IS STILL GETTING LOCKED IN, AND THE WHEELCHAIR IS ROLLING AROUND IN THE AISLE.

THE CONNECTICUT DEPARTMENT OF TRANSPORTATION COMPLAINS CONSTANTLY ABOUT THE COST OF TRANSPORTING DISABLED RIDERS, BUT NEVER COMPLAINS ABOUT THE BILLIONS AND BILLIONS OF DOLLARS THEY CONTINUE TO PUT INTO BUILDING NEW HIGHWAYS WHICH CREATE MORE TRAFFIC. ONLY RECENTLY, THEY STARTED TO SPEND OVER 6 BILLION DOLLARS TO BEGIN TO MAINTAIN THE ALREADY EXISTING ROADS AND BRIDGES.

OUR NEEDS COVER A TINY FRACTION OF THEIR BUDGET, BUT WITHOUT A TOUGH FEDERAL LAW WITH REGULATIONS WHICH ARE MONITORED FOR COMPLIANCE, MANY WILL DO THEIR BEST TO AVOID SPENDING EVEN THAT TINY FRACTION WISELY.

THANK YOU FOR YOUR ATTENTION AND FOR YOUR HELP. GOOD LUCK IN YOUR EFFORTS.

Mr. **Owens**. Did you say that Seattle held out for a different bus or for the same Grumann bus that was improved?

Ms. **Harris**. But they asked for better quality lifts.

Mr. **Owens**. The same bus with better quality lifts.

Ms. **Harris**. Right. And their lifts are still working and ours are not. But you go back to Denver, and Denver already had taken the same buses that we did, the Grumann flexibles, but because they were dedicated to and helping the disabled transportation, they provided maintenance for those buses and worked out a system where they could be fixed so they would not break down. The Connecticut company just rose those up and welded them and decided, "To hell with it."

Mr. **Owens**. Thank you.

Ms. Linda Hanscom.

STATEMENT OF LINDA HANSCOM, CHAIRPERSON, AMERICAN DISABLED FOR ACCESSIBLE PUBLIC TRANSPORTATION, NORTH FRANKLIN, CT

Ms. **Hanscom**. Good afternoon. My name is Linda Hanscom. I am chairperson of ADAPT of Connecticut. ADAPT stands for Americans Disabled for Accessible Public Transportation. I am also the community educator for the Disability Network of Eastern Connecticut, an independent living center.

I have been disabled my entire life and I have dealt with discrimination my entire life. I am here today to ask for your support in passing the Americans With Disabilities Act. Discrimination is everywhere for people with disabilities.

I would like to share a few examples from my own experience. I live in a small town 11 miles outside of Hartford. Before I worked at the Disability Network, I was a computer programmer at a major insurance company in Hartford for almost 3 years. Although there are frequent buses and several van pools that go into the city, all of them are inaccessible. As a result, I spent thousands of dollars every year in paying someone to drive me to and from work in my own van. During the time I worked with this company, I asked over and over that the ladies' room be made accessible. For years, they claimed they were having meetings to discuss this issue. In the meantime, I was to continue to ask a coworker to escort me to the bathroom.

The final straw was when I found out that despite excellent reviews and one of the highest outputs of work, I was the lowest paid programmer in my category.

Housing is another example. Finding an affordable apartment in Connecticut is difficult enough. Finding an affordable first-floor apartment that can meet my needs simply by adding a ramp is nearly impossible. After searching for months, I finally did find such an apartment. After doing a credit check and all, the owner called and we made an appointment to sign the lease. When I went to sign the lease, the owners said they had changed their minds about renting to me because I was in a wheelchair and they felt this would increase their liability. I told them discrimination in Connecticut was against the law. I did not know at the time and, unfortunately, neither did they, that single and two-family homes were exempt. In other words, legally, they had every right to discriminate against me because I use a wheelchair.

We agreed at the time that if I could prove that they had no extra liability, I could rent the apartment. I did prove this to them and I live in that apartment today. My last example has to do with my son's school. My son is 7 years old and does not have a disability. His school is two blocks from our home. The only entrance I can get into is the entrance to the gym. To get to the administrative offices, the nurse's office or my son's classroom requires using the elevator. This would not be a problem except that you need a key to use the elevator. I contacted the principal of the school and then the superintendent trying to get a key. They both told me they had no legal obligation to provide me with a key. I told them I wanted access to the school just like any other parent and I could not understand what the problem was. Their lawyers sent me a letter stating that for security purposes they could not allow me to have a key.

It does not make any sense to me that able-bodied parents have access to their children, but to give me access to my child is a security risk.

In closing, I repeat: Discrimination against people with disabilities is an everyday occurrence. The Americans With Disabilities Act is necessary and long overdue. Thank you for listening.

Mr. OWENS. Thank you. And, Mr. Palotto, just one quick question. The situation that you pointed out were agencies that have responsibilities not living up to those responsibilities. Do you think that we have covered this in this act or is there something that should be added to make certain that that kind of situation is corrected?

Mr. PALOTTO. I feel strongly, knowing of a particular situation in Bridgeport, that the act should have some enforcement. That agencies that accept Federal funds or State funds should follow through with their charter. It says, "Serve people with disabilities." And I do not think they—as long as they have that charge and that mission—they should get involved in for-profit operations.

For instance, setting up a building with offices for doctors, setting up exercise programs for the banking community. Things like that, I think, have taken that agency far away from providing the services they should provide for people with disabilities.

Mr. OWENS. Thank you very much.

Mr. PALOTTO. Thank you.

Mr. OWENS. Our next panel: Mr. Bill Knight, Oakville, CT; Ken Beachman; Ed Preneta, Director of Connecticut Disabilities Development Office.

It is unfortunate. We continue to fall behind time. And we are now in the 4-minute schedule. So, I apologize and welcome you to submit any additional testimony in writing.

You may begin, Mr. Knight.

STATEMENT OF BILL KNIGHT, CHAIRMAN, GREATER WATERBURY CONSUMER ACTION FORUM

Mr. KNIGHT. Thank you, Mr. Chairman. My name is Bill Knight and I am the chairman of the Greater Waterbury Consumer Action

Forum which is a disability rights organization based in Waterbury, CT.

Our organization consists of persons with disabilities, family members, friends, advocates, and others who are interested in disability issues. It is the goal of our group to enhance the quality of life for persons with disabilities living in the greater Waterbury area. And it is on their behalf, as well as my own, that I stand here today to testify in support of the Americans With Disabilities Act.

At one point in the development of the rehabilitation profession, it was felt that the needs of persons with disabilities could best be served in institutional settings. Although I will concede to you that there are some educational services that go on in these institutions, but it is my opinion that these services are woefully inadequate and a segregated society is established due to institutionalization.

Through the natural evolutionary process of the rehabilitation profession, it is now in an era whose focus is on deinstitutionalization and mainstreaming. But there seems to be sharp differences in terms of the definitions between textbook theories and implemented community strategies for integration.

In my hometown, the powers that be feel that they are providing an opportunity for integration and community involvement by the provision of a paratransit system to deal with the needs of mass transportation for the disabled.

Municipal governments fail to realize that by the provision of this paratransit system that they are totally defeating the purpose of integration and it is my opinion that persons who are forced to use this service are no better off than when they were institutionalized.

I think it would be much better for local governments in conjunction with State departments of transportation to provide the necessary resources such as wheelchair lifts which would enable the independence of all its ridership.

Another major issue of concern to persons with disabilities is that of employment. I am dismayed at the lack of opportunities for employment for persons with disabilities. The State of Connecticut made a major investment in my future by providing me with the necessary resources to obtain my bachelor's and master's degree in therapeutic recreation. On receipt of my degrees, I found it very difficult to gain employment in my chosen field. My family was very supportive of my desires and drove me to many interviews. They also shared my frustrations as the rejection letters came in the mail.

In closing, I would like to say that the Americans With Disabilities Act needs to be passed for a multitude of reasons. It has been my experience that people tend to put the emphasis on the word disability on the wrong syllable. They tend to see us as less capable and less able, which is a perception that needs to be immediately rectified. And I urge the passage of this bill in the strongest terms. Thank you very much.

[The prepared statement of Bill Knight follows:]

Prepared Statement of Bill Knight

My name is Bill Knight and I am the chairperson of the Greater Waterbury Consumer Action Forum which is a disability rights organization based in Waterbury, Connecticut. Our organization consists of persons with disabilities, family members, advocates, and others who are interested in disability issues. It is the goal of Consumer Action Forum to enhance the quality of life for people with disabilities in the Waterbury area and it is on their behalf as well as my own that I stand before you today to testify in support of the American With Disabilities Act.

At one point in the development of the rehabilitation profession it was felt that the needs of the disabled could best be served in institutional settings. Although I will concede to you that some educational services are provided by institutions, but it is my opinion that these services are woefully inadequate and a segregated society is established due to institutionalization.

Through the natural evoluntionary process of the rehabilitation profession it is presently in an era who's focus is on mainstreaming, and deinstitutionalization which I heartily endorse. But there seems to be sharp differences in terms of definition of textbook theories and implemented coummunity strategies of integration.

In my hometown in Connecticut the powers that we feel is that they are promoting integration and community involvement by providing a paratransit system to deal with the needs of mass transportation for persons with disabilities. However, in doing so municipal governments fail to realize that by providing a paratransit system totally defeats the purpose of integration and in my opinion persons with disabilities are no better off than when they were institutionalized.

Although public transportation is a major issue that needs to be addressed in terms of providing quality service to the disabled, so is employment. I am dismayed at the lack of employment opportunities for an individual with a disability. The State of Connecticut made a major investment in my future by providing me with the necessary resources to go to college to pursue a Bachelors and a Masters Degree in Therapeutic Recreation for which I am grateful, however, upon receipt of my degree it was very difficult for me to get a job in my chosen field. My parents drove me to many interviews and my family was very supportive of my desires. They also shared my frustration as each rejection letter came to me in the mail.

In conclusion, I would like to say that I feel that the passage of this legislation is necessary for a multitude of reasons. It has been my experience that society puts the emphasis of the word disability on the wrong syllable. They tend to look at our limitations and in doing so forget that we also have abilities and that the disabled have the same hopes and dreams as everyone else and this perception of being less able and less hopeful needs to be immediately rectified.

Mr. OWENS. Thank you, Mr. Knight.

Mr. Beachman.

STATEMENT OF KEN BEACHMAN

Mr. BEACHMAN. Hi. I would like to first of all thank this distinguished panel for an opportunity to be heard in front of you. I feel that my testimony is valuable due to the fact that it gives examples of how even very minor disabilities can affect an individual.

I was born with specific learning disabilities and one of the results of that was that growing up, I was rather uncoordinated in my movement. And due to that fact, in seventh and eighth grade, I was verbally and to a much lesser degree, physically abused while in seventh and eighth grade. And due to the fact that that was such a common-day occurrence, the vast majority of nights during that time, I would go to sleep praying very fervently that I would not wake up the next morning.

And when I would wake up the next morning, many times I would be crying and rather harshly pounding my pillow due to the fact that I again would be forced to go through another day of so much pain.

Another example of how I was discriminated against due to my specific learning disabilities that I was born with was the fact that I, in college, my U.S. History I professor said that in order to assist me in a compensatory technique so that I could better get through his course, he agreed to allow me to take his essay tests orally.

And, despite the fact that I very successfully completed all the work required for the course and many times contributed brilliantly during class discussions, when I was finished with the course, he very fervently refused to give me a grade as the academic dean. And my fellow professors tried very hard to persuade him to give me a grade. He sort of smiled back at them and said, "If I am forced to give Ken a grade, I'll be more than happy to give him an F." And due to that fact, I did have to repeat that course, again.

And another example of discrimination is due to a very minor head injury that I sustained a few years ago. When the smog levels get very high, I have to wear a surgical type antipollution mask. And a few individuals have walked up to me and said, "Gee, if you are that sick, you and people like you should not be allowed outside." And I feel this along with the first area of discrimination that I mentioned in seventh and eighth grade could both be greatly reduced due to the educating of the general public that would come about as a successful result of the passage of the Americans With Disability Act.

Another example of discrimination, I feel, was after my head injury. For a while, I was totally unable to read and understand what people were saying, except for a few words at a time. And, due to that fact, if I was in a public place and at times would have to use the restroom facilities, I wouldn't know which was the men's room and which was the ladies' room. And the way that I figured out how to do that was that I would wait until somebody used either one or the other and then, depending upon which sex went in there, I would then either use it, you know, if a man went in there or use the other one if a lady went in the other one. And I feel that as some restrooms have a required pictorial display would be of much assistance in that.

I do have most of my testimony in writing, although I did leave out some. Would you rather have me submit it as is now and submit an addendum or submit the whole thing in a few days?

Mr. OWENS. Well, that is up to you. You have 10 days to submit any additional testimony you wish.

[The prepared statement of Ken Beachman follows:]

PREPARED STATEMENT OF KFN BEACHMAN

Hello, my name is Ken Beachman and the purpose of my testimony is to give examples of how minor disabilities can have an impact on someone's life. In the 7th and 8th grades my movement was uncoordinated. My fellow students constantly used my lack of coordination to verbally and to a lesser extent physically abuse me. The abuse affected me to the point that the vast majority of nights I would fervently pray that I would die in my sleep. The next morning I pounded my pillow and cry in anger that I was still alive. If A.D.A. is passed, this situation would be less likely to occur because the public would be better educated in the vital area of disabilities. Another example of discrimination happened in college. My U.S. History professor had agreed to give me his essay tests orally to help compensate for my learning disability. To spite the fact that I had very successfully completed all the course work and constantly contributed brilliantly to class discussions. He refused to give me a grade. Some of his fellow professors and the academic Dean attempted to force him to give a grade. His response was, "If I must give Ken a grade it will be an F."

Due to a minor brain injury, I have to wear a surgical type anti-pollution mask on days of very high smog levels. The discriminatory reaction I get from some people is, "if you are that sick you should not be allowed outside." This is another form of discrimination that hopefully would be alleviated by educating the public that would accompany the passage of A.D.A.

I am proud to be employed at an Independent Living Center and a member of many self advocacy groups.

Mr. OWENS. Mr. Preneta.

STATEMENT OF ED PRENETA, DIRECTOR, CONNECTICUT DISABILITIES DEVELOPMENT OFFICE, EAST HARTFORD, CT

Mr. PRENETA. Good afternoon, Mr. Chairman, members of the task force. My name is Ed Preneta. I am the director of the Connecticut Development Disabilities Office and I am representing the Connecticut Developmental Disabilities Council's support for the Americans With Disabilities Act.

I am pleased to say I come from a State where the disabilities-right movement has been very strong, a State where people with disabilities realized early-on the pervasiveness of unfair and unnecessary discrimination and found the leadership to organize themselves to pursue access to those opportunities afforded the rest of society.

Over these last 10 years, these people have done what they could to get State laws passed, State regulations changed—statute by statute, program by program—to overcome restrictions and limitations. Some major battles have been won. In particular, in November of 1984, Connecticut's Constitution was amended to include people with physical or mental disabilities as a protected class.

More often than not, people with disabilities have won small battles here and there only to find their rights eroded somewhere else. It has been a frustrating experience. It is no wonder that self-advocacy groups have sprung up all over Connecticut. It is also interesting to note that Connecticut Developmental Disabilities Council's funds are being used to promote self-advocacy and people with disabilities are being trained in the strategies and tactics of the civil-rights movement of the sixties and seventies.

People with disabilities are finding it necessary to march in the streets, block stairs, take sledgehammers to curb cuts, chain themselves to buses, go to jail, and stage sit-ins almost as far as the Chambers and Halls of the U.S. Senate.

The next powerful movement is the rising of people with mental retardation locked up in institutions and sheltered workshops.

The time is long overdue for a clear and comprehensive national mandate for the elimination of discrimination against persons with disabilities. The Americans With Disabilities Act will provide a tool for already existing activists, encouragement for the downtrodden and an opportunity to reach the most segregated members of our society.

I ask Congress, particularly the entire Connecticut delegation, to support the Americans With Disabilities Act. Thank you very much.

[The prepared statement of Ed Preneta follows:]

PREPARED STATEMENT OF ED PRENETA

Good afternoon.

My name is Ed Preneta. I'm the director of the Connecticut Development Disabilities Office and I am representing the Connecticut Developmental Disabilities Council's support for the Americans With Disabilities Act.

I am pleased to say that I come from a State where the disabilities rights movement has been very strong. A State where people with disabilities realized early-on the pervasiveness of unfair and unnecessary discrimination and found the leadership to organize themselves to pursue access to those opportunities afforded the rest of society. Over these last ten years, these people have done what they could to get State laws passed and State regulations changed, statute by statute, program by program, to overcome restrictions and limitations. Some major battles have been won, in particular, in November of 1984 Connecticut's Constitution was amended to include people with physical or mental disabilities as a protected class. More often than not, people with disabilities have small battles here and there only to find their rights eroded somewhere else. It has been a frustrating experience. It is no wonder that self-advocacy groups have sprung up all over Connecticut. It is also interesting to note that Connecticut Developmental Disabilities Council Funds are being used to promote self-advocacy and people with disabilities are being trained in the strategies and tactics of the civil rights movement of the 60s and 70s. People with disabilities are finding it necessary to march in the streets, block stairs, take sledgehammers to curb cuts, chain themselves to buses, go to jail and stage sit-ins almost as far as the Chamber and Halls of the U.S. Senate. The next powerful movement is the rising of people with mental retardation locked up in institutions and sheltered workshops.

The time is long overdue for a clear and comprehensive national mandate for the elimination of discrimination against persons with disabilities. The Americans With Disabilities. The Americans With Disabilities Act will provide a tool for already-existing activists, encouragement for the downtrodden and an opportunity to reach the most segregated members of our society.

I ask Congress, particularly the entire Connecticut delegation, to support the Americans With Disabilities Act.

Thank you very much.

Mr. OWENS. Thank you.

Mr. Knight, I thought there was a great shortage of specialists in therapeutic recreation.

Mr. KNIGHT. Yes, sir, there is. But I found it difficult in getting employment. One of the things that disheartened me most was I wanted to be as honest as I could when applying for jobs. So, when I first started calling for interviews, I explained that I was blind. I got very few calls for interviews that way.

So, in the future, I did not say I was blind and went to interviews and still had problems. Most people were very subtle about why they would not hire me, such as that I would create an insurance liability. There were some who blatantly said that they—or more blatantly said that my blindness was definitely a contributing factor in them not being able to hire me.

Mr. OWENS. Are you employed now?

Mr. KNIGHT. Yes, sir, I am. I am the Information and Referral Coordinator for Independence, Northwest, an independent living center in the Waterbury area.

Mr. OWENS. Mr. Preneta, what problems do children with mental illness face in getting an education?

Mr. PRENETA. Well, it is not just kids with mental illness. I think you may be aware that recently Connecticut was ranked sixth from the bottom in terms of integrating kids with disabilities into public schools. So, it is persuasive amongst kids and parents have struggled through fair hearings to try and get their kids into their neighborhood public school, not just one segment of the population.

Mr. OWENS. And how long have you been there?

Mr. PRENETA. In Connecticut?

Mr. OWENS. Yes; as director.

Mr. PRENETA. Well, I have been with Development Disabilities Council for 10 years, 6 years with the United Cerebral Palsy Association of Greater Hartford. I have been a Connecticut resident for 35.

Mr. OWENS. Thank you very much. I want to thank all of you for testifying.

The next panel is Mr. Bill Dorfer, Stratford, CT; Cindy Kappe, Bridgeport, CT; Shelly Teed-Wargo, Chairman, Connecticut Union of Disability Action Groups. You may begin, Mr. Dorfer.

STATEMENT OF BILL DORFER, STRATFORD, CT

Mr. DORFER. Good afternoon, Mr. Chairman. I thank you for this opportunity to appear this morning to share with you some of my personal experiences with discrimination because of my physical disabilities.

My name is Bill Dorfer. I am from Bridgeport, CT. I am assistant director of the Center for Independent Living of Southwestern Connecticut and Stratford.

Thirty-four years ago, I was diagnosed as having limb-girdle muscular dystrophy, a progressive disease. And for the past 13 years, I have needed leg braces, a cane, and most recently a wheelchair to maneuver around. I strongly feel that attitudinal and architectural barriers within our communities, more than illnesses and accidents, are the primary reasons for the inaccessibilities that cause us to be labeled handicapped or disabled. And earlier today, I believe it was Mr. Kennedy who also touched on that.

I would like to touch on an area that I do not think has been brought up. And that is these particular attitudes force some of us persons with disabilities into attitudes. Attitudes of dependency, of being forced to remain in relationships, marital or family or personal that perhaps are just as unhealthy as our illnesses themselves.

I rely on public transportation or paratransportation to go to my job each day. And in a city of 140,000 people, in a metropolitan area of half a million, there are only a half a dozen buses that are equipped with wheelchair lifts. And many of these buses quite often bypass men and women in wheelchairs or with crutches, walkers, because they do not want to take the time, quite frankly, to stop and to assist these people on the buses. I rely on paratransit and we have two buses in the greater Bridgeport area that accommodate wheelchair people. And this is in a population of nearly half a million people. And I believe you will hear further testimony this afternoon in regard to that.

Also, an area that is very important to me is that of life insurance. And, ironically, I live in the life insurance capital of America. And, because of my muscular dystrophy, I am lumped into a category: disabled with muscular dystrophy. There are approximately 40 neural muscular disorders that come under the classification of muscular dystrophy. Each person deals with their illness in their own way. Some people deteriorate rapidly, other people deteriorate quite slowly. But none of us are looked at as individuals. And none of us are taken at face value and are given insurance or any other benefits based on our ability. We are simply lumped into a category and therefore we are turned down, or our premiums are so high that we simply cannot afford life insurance. To this date, I do not have life insurance because I simply can't afford it.

And, yet, I am 44 years old and I have had muscular dystrophy for 34 years and, except for the inability to get up out of my chair or to drive a car, I am as healthy as anybody else in this room and I fully expect and my doctors fully expect me to live a very productive life. Yet, I am turned down.

I just feel that until we address this particular issue, which, by the way, is not covered in the Americans With Disabilities Act, that we are not equal, in insurance, we are not all equal under the eyes of the law.

Thank you for your time.

[The prepared statement of William Dorfer follows:]

Prepared Statement of William Dorfer, Jr.

Dear Members of the Committee on Education and Labor: My name is William Dorfer and I am from Bridgeport, CT. I would like to express my gratitude for this opportunity to share with you today some of my personal experiences with discrimination because of my physical disabilities.

Thirty four years ago I was diagnosed as having Limb-Girdle Muscular Dystrophy. For the past thirteen years I have needed leg braces, a cane and most recently a wheelchair to maneuver around in a world that is more inaccessible than most people realize. I strongly feel that the mental attitudes and physical barriers within the community, more than illnesses and accidents themselves, are the primary reasons for the inaccessibilities that cause us to be labled "handicapped" or "disabled". One area this is most prevalent in is public transportation.

Because of my illness, I am unable to drive a car or van, even with specially equipped devices. As a result, I must rely on a paratransit system that transports me to and from work five days a week. There are currently seven such buses for the disabled in the Greater Bridgeport Area but not all have hydraulic lifts for wheelchairs. These buses carry upwards of ninety people a day out of an overall population or more than 300,000 residents in the six-town area served. It is accurate to say that without this particular paratransit system, there is simply no way I could continue to remain self-supporting and relatively independent.

To talk about the importance of a paratransit system is not to detract from the equal importance of an accessible mass transit system. The city of Bridgeport has a number of buses equipped with wheelchair lifts that are supposed to make mass transit available for the disabled. However, the reality is that many of these lifts are continually inoperable, in dire need of repair but not a priority of the transit company. I have personally witnessed bus drivers purposely bypass obvious wheelchair passengers waiting at a bus stop or in a shopping mall with no regard as to how the disabled will return home. Such blatant disregard and disrespect only encourages people with disabilities to shrug their shoulders in despair and remain prisoners in their homes.

Another major area of discrimination in my particular case is that of personal life insurance. Because of my Muscular Dystrophy, I am lumped into the general category of "Disabled—with Muscular Dystrophy". There are currently forty known neuromuscular diseases under the classification of Muscular Dystrophy. Each person's body responds to the illness in its own manner; for some, the muscle deterioration is slow and for others the deterioration is rapid. In some instances a person's life span is shortened by the illness and in others the life span is normal. The same, of course, can be said for other illnesses, not just Muscular Dystrophy.

Until this generalization of illnesses and diseases is removed and persons with disabilities are treated as individuals, not as categories, discrimination against the disabled will continue to deprive an ever increasing number of men, women and children the necessary services and benefits that all of us are entitled to in a nation where we proudly proclaim that all are equal under the eyes of the law.

Again, members of the committee, I thank you for this opportunity to appear before you today to share these personal experiences with you and hopefully stress the importance of the Americans with Disabilities Act of 1988.

Mr. **Owens**. Ms. Kappe.

STATEMENT OF CINDY KAPPE, BRIDGEPORT, CT

Ms. **Kappe**. Thank you, Mr. Chairman. My name is Cindy Kappe and I am here to speak on discrimination of the disabled. I would like to bring up two points, if I may, that happened to me.

In 1984, I and my late husband were working at Goodwill Industries of Bridgeport, CT. We asked for our 6 months' leave of absence prior to our wedding that year. But they said no. Their reasons were they could not spare us for that length of time. As a result, we were forced to leave permanently.

Point No. 2 is on transportation. In November of 1987, I called People's Choice of Bridgeport, CT, for transportation for an appointment that I had at 12 noon. But on that day, they picked me up at 9:30 in the morning, instead of 11. When this error was pointed out to the company, they refused to change times. Therefore, I was forced to sit in the cold for 1½ hours prior to my appointment. Thank you very much.

Mr. **Owens**. Thank you. Ms. Wargo.

SHELLEY TEED-WARGO, CHAIRMAN, CONNECTICUT UNION OF DISABILITY ACTION GROUPS

Ms. **Wargo**. My name is Shelley Teed-Wargo. I am the executive director of the Connecticut Union of Disability Action Groups. Bill Knight, who you heard a few moments ago, is the chairman.

The Connecticut Union of Disability Action Groups is an organization made up of grassroots groups working on disability issues. Our involvement with our member organizations include supporting and assisting these groups to make positive changes for persons with disabilities both on local and State levels.

Since the issues we involve ourselves with are issues chosen by our members, our work is indicative of the priority issues of a large number of persons with disabilities in Connecticut.

Let me relate to you some of the work that we have been involved with over the last year. One of the groups we work with is a statewide group known as Citizens for Accessible Transportation, CAT. For many years disabilities groups in Connecticut had been trying to convince the Connecticut Department of Transportation to make the public transportation system in Connecticut completely accessible, including making all buses lift-equipped. When Citizens for Accessible Transportation was established in 1987, they took up those talks and arguments with the State Department of Transportation. It was not long before Citizens for Accessible Transportation realized that negotiating with the department of transportation was getting us nowhere.

The next step was to go to our State legislature. Last fall more than 200 people, most of them people with disabilities, marched on the State capitol demanding that the public transportation system in Connecticut be lift-equipped.

Through the work of Citizens for Accessible Transportation, a bill was passed in the last legislative session requiring that all public buses bought or subsidized with State funds will be lift-equipped. All of our buses should be lift-equipped by 1996. Through 1996 still seems like a long time, we still thought we had won a substantial victory.

A few weeks ago, we received information that the southwestern regional planning agency in Connecticut had applied for a UMPTA entrepreneurial services program grant from the Federal Government to put an express bus in place from Selton Trumble to Stanford, CT. Because these funds would not be from the State, they are reasoning that they do not have to adhere to the new State law and plan to purchase a bus without a lift. Once again, we stopped some discrimination and more discrimination appears.

Another of our groups that we work with has been involved with another issue regarding a building in Hartford. About 3 or 4 years ago, a beautiful new office building was built in Hartford. A special feature of this building was a skywalk that would take people from the office building to the civic center right next door without having to go outside. When the office building and its skywalk opened to the public, it was discovered that everyone could travel from the new office building to the civic center via the skywalk, except anyone with a mobility impairment since there were more than a dozen steps at one end of the skywalk.

While everyone else stays out of the snow and rain, someone with a mobility impairment must go outside and across the street. Again, we are discriminated against.

Just this past summer, another one of our groups worked on another issue regarding the Waterbury Library. One of the members of an organization tried to take out a video tape out of the local library. He was told he could not because he lives in a group home. He would need to return with a staff person from the group home or with a permission slip from a staff person in order to take out a video tape. This member is a man with mental retardation. He is an adult and was being treated like a child. The group that this man belongs to returned to the library with him the following week to speak to the library board. They told the library board that this was a discriminatory policy against people who happen to live in group homes. The board agreed that it was a discriminatory policy, but that people who live in group homes destroy their materials and, therefore, the material must be protected. The board was also told that the library was architecturally inaccessible and needed some renovations.

Three weeks later this disability organization held a demonstration in front of the library. The media covered it well, the following week we again attended the library board. A electronic door was being put in and their policy was changed. We do not know if other libraries in our State discriminate in this manner, but as other groups become involved in the disability-rights movement in Connecticut, we hope that we will change those practices as well.

Each time we feel we have made gains toward stopping the discrimination against people with disabilities, someone finds another way to segregate, separate, and discriminate against us. We need the Americans With Disabilities Act to help us fight against further discrimination and to assist us as we demand our rightful place in this country. Thank you.

[The prepared statement of Shelley Teed-Wargo follows:]

PREPARED STATEMENT OF SHELLEY TEED-WARGO

My name is Shelley Teed-Wargo. I live in Cheshire, Connecticut. I am the Executive Director of the Connecticut Union of Disability Action Groups (C.U.D.A.G.). The Connecticut Union of Disability Action Groups is an organization made up of grassroots groups working on disability issues. Our involvement with our member organizations includes supporting and assisting these groups to make positive changes for persons with disabilities both on local levels as well as a state level.

Since the issues we involve ourselves with are the issues chosen by our members, our work is indicative of the priority issues of a large number of persons with disabilities in Connecticut. Let me relate to you some of the work we have been involved with over the last year.

One of the groups we work with is a statewide group known as Citizens for Accessible Transportation (C.A.T.). For many years disability groups in Connecticut had been trying to convince the Connecticut Department of Transportation to make the public transportation system in Connecticut completely accessible including making all buses lift equipped. When Citizens for Accessible Transportation was estabiished in 1987 they took up these talks and arguments with the state Department of Transportation. It was not long before Citizens for Accessible Transportation realized that negotiating with the Department of Transportation was getting us nowhere.

The next step was to go to our state legislature. Last fall more than 200 people, most of them people with disabilities, marched on the state capitol demanding that the public transportation system in Connecticut be lift equipped. Through the work of Citizens for Accessible Transportation a bill was passed in the last legislative session requiring that all public buses bought or subsidized with state funds will be lift equipped. *All* of our buses should be lift equipped by 1996. 1996 still seems like a long time but we still felt we had won a substantial victory.

A few weeks ago we received information that the South Western Regional Planning Agency in Connecticut had applied for an UMPTA Entrepreneurial Services Program Grant from the Federal government to put an express bus in place from Shelton/Trumbull to Stamford Connecticut. Because these funds would not be from the state they are reasoning that they do not have to adhere to the new state law and plan to purchase a bus without a lift. Once again we stop some discrimination and more discrimination appears.

About three or four years ago now a beautiful new office building was built in Hartford. A special feature of this building was a skywalk that would take people from the office building to the Civic Center right next door without having to go outside.

When the office building and its skywalk opened to the public it was discovered that everyone could travel from the new office building to the Civic Center via the skywalk *except* anyone with a mobility impairment since there were more than a dozen steps at one end of the skywalk. While everyone else stays out of the snow and rain someone with a mobility impairment must go outside and across the street. Again we are discriminated against.

Just this past summer one of the members of one of our member organizations tried to take a video tape out of his local library. He was told he could not because he lives in a group home. He would need to return with a staff person from the group home or with a permission slip from a staff person in order to take out a video tape.

This member is a man with mental retardation. He is an adult and was being treated like a child. The group that this man belongs to returned to the library with him the following week to speak to the library board. They told the library board that this was a discriminatory policy against people who happened to live in group homes. The board agreed that it was a discriminatory policy but that people who live in group homes destroy their materials and therefore the material must be protected.

The board was also told that the library was architecturally inaccessible and needed some renovations. They said they knew that too and were working on remedies. The library board would not agree to change their policies regarding people who live in group homes without further study even though they agreed they were discriminating ultimately on the basis of disability.

Three weeks later this disability organization held a demonstration in front of the library building. People from around the state joined them. The demonstration was well covered by the media. The following week we again attended a library board meeting. When we arrived an electronic door was being put in. The board changed their policies at this meeting so that someone who lives in a group home will no longer be required to have permission to take out material.

We do not know if other libraries in our state discriminate in this manner but as more people with disabilities get involved with organizations dealing with disability issues we will probably find more and more discriminatory practices.

We talk to people everyday who cannot find a job though they have the education and training necessary for a job. They have the ability to live on their own but cannot find affordable accessible housing that a landlord is willing to rent someone with a disability. We cannot get into many office buildings to do business or to be employed, we cannot get into or use the facilities in many public museums, theaters, restaurants, libraries, schools and other public buildings.

Everyday we look at the next issue on our list of priorities for persons with disabilities and try to make changes to remove discrimination from our lives. Our list is long and we end up putting out fires as new buildings are built with steps and public transportation is bought sidestepping state law so as to better discriminate and new policies are put in place as protection "against" persons with disabilities.

Each time we feel we have made gains toward stopping the discrimination against persons with disabilities someone finds another way to segregate, separate, and discriminate against us.

We need the Americans With Disabilities Act to help us fight against further discrimination and to assist us as we demand our rightful place in this country.

Mr. OWENS. Thank you. As a former public librarian, I am glad they were at least responsive in that one instance. [Laughter.]

I hope that the pattern is that they are more responsive.

Mr. Dorfer, we deliberately, as you know, it was a consensus that the best political strategy was not to tackle the insurance issue in this bill head on. So, it is the kind of thing that we should be preparing legislation for in another bill and start that fight rolling.

Mr. DORFER. Why is that?

Mr. OWENS. We can discuss it in more detail later on. In terms of strategy, to take on the insurance industry, to put it bluntly, to take on the insurance industry might guarantee far more difficulty, double or triple the difficulty that we are going to encounter at this time to take on the insurance industry. But we understand the need. And, as a matter of strategy, let us move ahead with this and perhaps we should have the insurance bill—the bill to confront the insurance industry in the works, now, as a proposition for tomorrow. Thank you very much.

The next panel, Mr. Bob Baton, Wethersfield, CT; Julie Reisken, Middletown, CT; Melissa Marshall, North Franklin, CT. Mr. Baton? Ms. Marshall, you may begin.

STATEMENT OF MELISSA MARSHALL, EXECUTIVE DIRECTOR, DISABILITIES NETWORK OF EASTERN CONNECTICUT

Ms. MARSHALL. Good morning. My name is Melissa Marshall and I am the executive director of the Disabilities Network of Eastern Connecticut, a new center for independent living in Franklin, CT.

Normally, as an executive director of an independent living center, I tend to speak on behalf of constituents and consumers of the center. Today, I thought for a change I would talk on a more personal note and give you some of my life experiences as a person with a disability.

I would like to invite you to take a journey back in time with me. Let us go back 13 years. The year is 1975. I am 15 years old and living in Kenton, MA. It is September. I have met with mild cerebral palsy, and I walk with crutches. I am, in theory, protected against discrimination in education on the basis of my disability. Chapter 766 of the Massachusetts general statutes which insures my right to an equal education regardless of my disability has been in effect for 1 year. The new Education for All Handicapped Children Act, Public Law 94-142, has just been enacted so that now I enjoy Federal and State guarantees of my right to a free and appropriate education. One might imagine that on this September day, I am in school with my peers. I am not. Instead, I am at home wondering if I will ever attain a high school diploma. I know that being tutored less than 2 hours per week is not comparable to receiving a real high school education. The reason I am being tutored at home has nothing to do with my physical or other abilities. I am receiving, quote/unquote, homebound education because the public high school that I am assigned to attend is architecturally inaccessible to people with mobility disabilities. Kenton High was and still is, to the best of my knowledge, located in three buildings with at least three floors in each building. Students must be able to walk up multiple flights of stairs and go from building to building in order to attend public high school in Kenton.

Despite legal protections and my family's obtainment of counsel, I remained at home that entire year. Not until 18 months later would school board officials compromise and finance my education in a public school in an adjacent town. Eventually, I secured that high school diploma and went on to receive a bachelor's degree from Hampshire College.

Let's skip ahead a few years, now, to 1984. I am a second year law student at the University of Connecticut. The school has been moved from a modest wheelchair usable single building facility to a more grandiose inaccessible multibuilding campus. I am in my constitutional law class and I am angry. I am angry because the class has just finished analyzing *Brown* v. *The Board of Education*, the landmark case supposedly abolishing separate but equal education for Third World people for all time. I am not angry because minority people have won a small amount of protection of their civil and human rights. I am angry because the mood in the classroom is self-congratulatory. The people of my generation just knew that they could never allow such a thing as intentional discrimination to happen. I raised my hand and I said to the professor: What about my situation and that of other people with disabilities who might wish to attend school or to even teach here? What about the fact that I can only enter the building through the back door and when I do, I can only get into a small section of the building? What about the fact that if I were to meet with the dean or other administrators, I must call on the phone and meet with them in the Disabled Students Conference Area where they keep the sports equipment because their offices are inaccessible to me? What about the fact that the library will be completely unusable to me because the elevator renovation will not be complete until the end of the semester? Does not this smack of separate but equal? What about the fact that a major university is not in compliance with State and Federal antidiscrimination law?

Upon hearing this, the professor replied that this was interesting, but we needed to move on to the next case.

Now, it is 1988. I managed to get my law degree and I am pleased to have this opportunity to share my story with you. I share it with you and hope that you recognize that existing protections are far too narrow and difficult if not impossible to enforce. I share it with you in the hope of illustrating how discrimination on a basis of disability is alive and well.

And, finally, I share my story with you and hope you will make the Americans With Disabilities Act law.

Mr. **Owens**. Thank you.

[Bell sounded.]

Is that legal training? [Laughter.]

Mr. **Owens**. Ms. Reisken.

STATEMENT OF JULIE REISKEN, COMMUNITY ORGANIZER, CONNECTICUT COALITION OF CITIZENS WITH DISABILITIES

Ms. **Reisken**. My name is Julie Reisken. I am the community organizer for the Connecticut Coalition of Citizens With Disabilities. I am here today to urge your support of the Americans With Disabilities Act, unamended. The Connecticut Coalition of Citizens with Disabilities, CCCD, is a statewide grassroots organization which advocates for the full participation of all citizens with disabilities. By citizens with disabilities, I am including people with communicable diseases, including AIDS. CCCD reaches over 2,000 Connecticut citizens.

Without laws preventing discrimination in obtaining housing, employment, transportation and more, full participation cannot be a reality. The Americans With Disabilities Act will put people with disabilities on an equal basis with other minority groups. No, it will not end discrimination. However, it is the most significant leap toward doing so since the passage of the section 504 of the 1973 Rehabilitation Act.

Often when I am working with disabilities rights groups, they run up against barriers in the community and attempt to go through the proper legal channels to deal with those, only to discover that in many cases there is no law to protect their rights. No legal channels to go through.

With the means to get around, life in our society is extremely limited. The Americans With Disabilities Act will create more accessible transportation which will enable more people to leave their homes and be participating citizens. Many of our members wanted to be here today, however, there is no accessible bus from Connecticut to Boston, very few accessible trains, although the train stations are not accessible, and let alone the issue of getting from one's home to the station. Persons with disabilities who do not own and drive a vehicle are literally prisoners in their homes.

We hear a lot about welfare rolls and government funding. We also hear a lot about a labor shortage. There are also a disproportionate number of persons with disabilities who are not in the work force who want to be working. Passage of the Americans With Disabilities Act could enable more people entering the work force, thus being a part of the active economy, helping the economy. Through barrier reduction and active antidiscrimination laws, a significant number of people would work, saving the whole economy financially.

Housing, transportation, jobs, access are all essential for survival in our society. These things constitute what we call quality of life measures. We are a country which prides itself in a democratic process but do not allow all to participate. We pride ourselves on a free market economy, but the market freely excludes 10 percent of its population. We pride ourselves on technology and mobility and, yet, we do not use that for the benefit of all of our citizens. We pride ourselves with the ideal of freedom, yet, Americans with disabilities are not free. It is 1988. We should by now be enlightened enough to see that discrimination hurts everyone. Separate but equal is not equal. Persons with disabilities need to be seen and treated as true equals and the Americans With Disabilities Act is a leap in this direction.

There is only one thing that separates persons with disabilities from other minority groups. That is we are the only group that anyone can join at anytime. For the future of this country, please support the Americans With Disabilities Act.

[The prepared statement of Julie Reisken follows:]

CONNECTICUT COALITION OF CITIZENS WITH DISABILITIES

My name is Julie Reiskin. I am the Community organizer for the Connecticut Coalition of Citizens With Disabilities. I am here today to urge your support of the Americans With Disabilities Act unamended. CCCD is a statewide grassroots organization which advocates for the full participation of all citizens with disabilities. CCCD reaches over 2,000 Connecticut citizens.

Without laws preventing discrimination in obtaining housing, employment, transportation, and more, full participation cannot be a reality. The Americans With Disabilities Act would put people with disabilities on an equal basis with other minority groups. No, it will not end discrimination. It will not end ableism. However, it is the most significant leap toward doing so since the passage of section 504 of the 1973 Rehabilitation Act. Often when I am working with disability rights groups, we run up against barriers in the community and attempt to go through proper legal channels, only to discover that in many cases there is no law to protect their rights.

Without means to get around, life in our society is extremely limited. The Americans With Disabilities Act will create more accessible transportation which will enable more people to leave their homes and be participating citizens. Many of our members wanted to be here today. However, there is no accessible bus from Connecticut to Boston and very few accessible trains, let alone the issue of getting to a station. Persons with disabilities who do not own and drive a vehicle are literally prisoners in their homes.

We hear a lot about welfare rolls and government funding. We also hear a lot about a labor shortage. There are also a disproportionate number of persons with disabilities who are not in the workforce who want to be working. Passage of the Americans With Disabilities Act could enable more people entering the workforce, thus being a part of the active economy, helping the economy. Through barrier reduction and active anti-discrimination laws, a significant number of people would work, saving the whole economy financially.

Housing, transportation, jobs, access, all are essential for survival in our society. These things constitute what we call quality of life measures. We are a country which prides itself in a democratic process, but do not allow all to participate. We pride ourselves on a free market economy but the market freely excludes 10% of its population. We pride ourselves on our technology and mobility, yet we do not use that for the benefit of all of our citizens. We pride ourselves with the ideal of freedom, yet Americans with disabilities are not free. It's 1988. We should by now be enlightened enough to see that discrimination hurts everyone. Separate but equal is not equal. Persons with disabilities need to be seen and treated as true equals and the Americans With Disabilities Act is a leap in this direction. There is only one thing that separates persons with disabilities from other minority groups. We are the only group that anyone can join at any time. For the future of this country, please support the Americans With Disabilities Act.

Mr. OWENS. Mr. Baton.

STATEMENT OF ROBERT E. BATON, PRESIDENT, GREATER HARTFORD ADVOCATES FOR CHANGE, WETHERSFIELD, CT

Mr. BATON. My name is Robert E. Baton, Jr. I am the president of the Greater Hartford Advocates for Change. I speak for 80 of our members in the Greater Hartford area who are committed to making Greater Hartford a more accessible place.

The transportation issue is of importance. I think transportation, particularly for those who do not make enough to own a car, public transportation is crucial, whether you are disabled or not. It is even more crucial if you do have a disability because you have to compete in order to get ahead. So, in regard to transportation I would urge that the law be adopted, unamended.

Thank you very much.

Mr. OWENS. Thank you very much. I think one of the great benefits of these hearings is we discover the tremendous amount of talent among us. And the three of you are examples of the resources that we have to wage this fight. Thank you very much.

Mr. BATON. Thank you.

Mr. OWENS. The next panel is Laura Nicholas, New Haven, CT; Nancy Durkin, executive director of CILSC—you will tell me what that is later, Stratford, CT; Marcie Roth, Danbury, CT.

Are we missing somebody? Is Ms. Nicholas missing?

Ms. DURKIN. Yes. She has not checked in, yet.

Mr. OWENS. All right. Ms. Durkin.

STATEMENT OF NANCY DURKIN, EXECUTIVE DIRECTOR, CILSC, INC., STRATFORD, CT

Ms. DURKIN. Thank you, Mr. Chairman. I want to introduce myself as Nancy Durkin, the executive director of the Center for Independent Living of Southwestern Connecticut. I have been actively involved with the disability rights movement for over 10 years and have seen numerous cases of discrimination. In spite of the many different pieces of legislation that guarantee equal access, people with disabilities are still regularly subjected to biased act. And I firmly believe that the ADA will help to eliminate such practices.

I would like to take this opportunity to discuss some of the issues in the act that I feel are very crucial. First is the definition of discrimination. This is a broad definition and encompasses situations which a person with a disability is subjected to unfair and unnecessary discrimination. This global definition which will finally address the concerns of those people who have slipped through the cracks and this will provide the scope of coverage that other civil rights acts offer.

I also want to address the issue of communicable diseases. During the past 5 years, the general public has learned more and more about communicable diseases, especially Acquired Immune Deficiency Syndrome, AIDS. During the past year, various court rulings have clarified that those individuals with AIDS are protected under section 504 of the Rehab Act and, therefore, are considered disabled. This bill will lend strength to this fact. People with AIDS have faced horrific incidences of discrimination. People have been run out of their homes, jobs, schools, and communities because of fear and misunderstanding. And, in many cases, people have been ridiculed and denied services from the medical profession.

I also wanted to address the issue of insurance, but I heard your comments earlier. And I would just encourage us all not to lose sight that insurance companies regularly do discriminate against people with disabilities and we do need to address that issue in the future.

All of us in some way or the other are affected by disabilities: ourselves, family members, coworkers, friends, neighbors may have a disability. Because the issues people with disabilities face have been consistently neglected for so many years, it is difficult and uncomfortable to admit that discrimination is still actively practiced. In my family, discriminatory behavior has been denied. For example, my mother was excused from jury duty because of her severe hearing loss, denying her right to fully participate as a citizen. My father's emphysema is greatly aggravated when he goes to a town meeting because the handicapped parking is a block away.

I was told for months that I have emotional problems when, in fact, I have chronic fatigue syndrome and cannot physically work a full day.

I have worked at the Center for Independent Living in Southwestern Connecticut for 8 years. During that time, I have witnessed some of the most outrageous cases of discrimination which I thought were no longer possible in this country. One woman with a rare physical disability married a man in the Navy and when she got pregnant, she had to use Naval medical facilities. She was told by the Navy doctors that no one with her disability had lived to have a child and if the pregnancy did not kill her, the child would be severely retarded and physically disabled. She was then advised to have an abortion. She requested consultation with specialists at Yale New Haven Hospital. The Navy refused to pay for this consultation for several weeks. She eventually went through the Yale clinic, gave birth to a very normal girl and was back to work in less than 4 weeks. This woman worked at an independent living center and knew her rights, but because of the discriminatory behavior of the medical staff, she almost gave in to what they were proposing.

I have submitted discrimination diaries out at the front desk and I hope you will have the opportunity to review them.

As I mentioned, I am from lower Fairfield County and, therefore, represent over 18,000 disabled people. We could only bring a small group of people here today because of the lack of transportation. Many of our consumers live in nursing homes or with their families because of the lack of affordable accessible housing in Fairfield County. Most of them are not employed because they are too disabled for traditional rehab services or employers are unwilling to take the chance or make the necessary modifications. These are very basic issues in a person's life. Transportation, a home and a job. None of us can say that discrimination is a thing of the past when people still do not have access to the commonplace rights most people take for granted. Thank you for allowing me this opportunity.

[The prepared statement of Nancy E. Durkin follows:]

Center INDEPENDENT
for Living of Southwestern Connecticut
959 Main Street, Stratford, Connecticut 06497
(203) 378-6977 (V/TDD)

To: Members of the Committee on Education and Labor
From: Nancy E. Durkin, Executive Director
Re: Americans with Disabilities Act of 1988
Date: October 24, 1988

I want to thank you for the opportunity to provide testimony. I have been actively involved with the disability rights movement for over ten years and have seen numerous cases of discrimination.

In spite of the many different pieces of legislation that guarantee equal acess, people with disabilities are still regularly subjected to biased acts. I firmly believe that the Americans with Disabilities Act of 1988 will help to eliminate such practices and is a much needed bill.

I would like to take this opportunity to discuss some of the issues in this Act that I feel are very crucial. First is the definition of discrimination. This is a broad definition and encompasses situations in which a person with a disability is subjected to unfair or unnecessary exculsion. This is a global definition which will finally address the concerns of those people who have "slipped through the cracks." This will provide the scope of coverage as the other civil rights acts.

I also want to address the issue of communicable diseases. During the past five years, the general public has learned more and more about communicable diseases, especially Aquired Immune Deficiency Syndrome (AIDS). During the past year, the various court rulings have clarified that those individuals with AIDS are protected under Section 504 of the Rehabilitation Act and therefore, are considered disabled. This bill will lend strenght to this fact. People who have AIDS have faced horrific incidents of discrmination. People have been run out of their homes, jobs, schools, and communities because of fear and misunderstanding. And, in many cases, people have been ridiculed by and denied services from the medical profession.

People with disabilities are regularly discriminated against by insurance companies. I believe that this issue should be specifically addressed in the Americans with Disabilities Act of 1988. Not only are disabled individuals denied insurance but employers who have hired disabled workers and want to provide medical coverage are often told that the insurance company does not accept individuals with "pre-existing conditions." I recognize the fact that insurance is based on the odds and as a result discrimination occurs. However, a disability does not and should not automatically place an individual into a high risk category, and therefore, is uninsurable. People with disabilities face the same risks of accidents, illness, or theft as everyone else. This legislation presents an excellent opportunity to tackle one of the largest discriminators in this country. Let us not lose sight of the purpose of the Americans with Disabilities Act: to eliminate discrimination against people with disabilities.

All of us, in some way or the other, are effected by disabilities. Ourselves, family members, co-workers, friends, neighbors, etc., may have a disability. Because the issues disabled people face have been consistently neglected for so many years, it is difficult and uncomfortable to admit that discrimination is still actively practiced. In my family, discriminatory behavior has been denied. For example, my mother was "excused" from jury duty because of her severe hearing loss denying her right to fully participate as an United States citizen. My father's emphesema is greatly aggravated when he goes to a town meeting because the "handicapped parking" is a block away making it extremely difficult for him to participate in local government. I was told for months that I had emotional problems when in fact I have chronic fatigue syndrome and cannot physically work a full day.

I have worked at the Center for Independent Living of Southwestern Connecticut, Inc. for eight years. During that time, I have witnessed some of the most outrageous cases of discrimination which I thought were no longer possible in this country. One woman with a rare physical disability married a man in the Navy and when she got pregnant she had to use the naval medical facilities. She was told by Navy doctors that noone with her disability had lived to have a child and that if the pregnancy didn't kill her, that the child would be severely retarded and physically disabled. She was then advised to have an abortion. She requested a consultation with specialists at Yale-New Haven Hospital. The Navy refused to pay for this consultation for several weeks. She eventually went through the Yale clinic, gave birth to a very normal girl and was back at work in less than four weeks. This woman worked at an independent living center and knew her rights, but because of the discriminatory behavior of the medical staff, she almost gave in to what they were proposing. I have brought with me "discrimination diaries" that we have been collecting at the center. I hope you will take some time to read what these constituents have experienced.

As I mentioned earlier, I work at an independent living center in lower Connecticut. I speak on behalf of the over 18,000 disabled people in our catchement area. We could only bring a small group of people here today because of the lack of accessible transportation. Many of our consumers live in nursing homes or with their families because of the lack of affordable, accessible housing in Fairfield County. Most of them are not employed because they are too disabled for traditional rehabilitation services or employers are unwilling to take the chance or make the necessary modifications. These are very basic issues in a person's life: transportation, a home and a job. None of us can say that discrimination is a thing of a past when people still do not have access to the commonplace rights most people take for granted.

Thank you again for allowing me this opportunity to submit this testimony in support of the Americans with Disabilities Act.

Mr. **Owens**. Thank you. Ms. Roth.

STATEMENT OF MARCIE ROTH, SUPERVISING ADVOCATE, WE CAHR

Ms. **Roth**. Hi. My name is Marcie Roth. I am the supervising advocate of We CAHR, an organization which offers advocacy services to people in western Connecticut who happen to have disabilities. Last year, We CAHR provided these services to over 850 people. I am also a member of the State of Connecticut Independent Living Council and I chair its planning committee.

I wish to thank the 113 Representatives and 25 Senators who are truly representing the wishes of their constituents by cosponsoring this bill. Clearly, it is time to insure that those of us with disabilities are afforded the same rights protection that other minority groups now enjoy.

I wish to remind you that many of us have hidden disabilities. We often risk discrimination by the very act of disclosing our disability. Once disclosure is risked, we have little recourse when denial of accommodation and exclusion occur.

For those of us who have a communicable disease, this bill is crucial. As with other medical diagnoses, communicable diseases are often misunderstood and their transmission potential is usually sensationalized in a most misinforming way. The effects of communicable disease vary, but discrimination is the one effect which is both catastrophic and preventable in every case.

People with disabilities experience the most blatant discrimination of all at the hands of the insurance industry. I know that you have made some comments about the insurance industry, so, I will not continue with that part of my testimony.

Mr. **Owens**. No. I did not mean to restrict testimony at all. Go right ahead and include it.

Ms. **Roth**. We must specifically include insurance companies in this act. Not only is private insurance generally denied most folks with disabilities, but those lucky enough to obtain private insurance find the items crucial to maintenance of function and optimum health are categorically denied or provided only once over a person's lifetime.

Recently, a little girl was born in Connecticut and it happens that she was born without arms. She was fitted with her first pair of prosthetic arms before her first birthday. Her insurance company will only provide one set of prosthetices in her lifetime. Her family will have to purchase the subsequent prosthetices. She will need her arms replaced yearly until she stops growing and then periodically for the rest of what is expected to be a long and productive life. It is when she is not wearing her prosthetices that she may find her options limited, her ability to maintain optimal health jeopardized.

In closing, I want to tell you about my friend, Joe. He is 23 years old. He has lived in a nursing home since he had an accident at age 17. He stayed because he was unable to find an apartment, transportation, a job, the amount of personal care he requires, and other necessities. Joe is a great artist. In fact, one of his collages, hangs in the White House. Joe did not like the nursing home and was working hard to move out. In April, Joe had to enter the local hospital for medical treatment due to what some considered poor care in the nursing home. He had to stay in the hospital so long that his bed at the nursing home was given to someone else.

Four days ago, Joe was placed in a nursing home 1 hour away from his friends and family. He did not choose this location. It was the first available bed. And he was given less than 24 hours notice of the impending move. This is the third time this has happened. After 6 months of hospitalization, Joe needs to build up his strength. All the work he had done to start the wheels rolling to move to a living situation of his choice has been lost. And his self-esteem is not great. The battery for his motorized wheelchair is missing. No one will take responsibility for losing it. So, he must find a way to replace it, himself. In the new nursing home, he is unable to have his own telephone. He cannot have cable TV, either. He is again rooming with a man who is in his nineties and is dying. Even the Americans With Disabilities Act will not help Joe, now. But if there was housing, access to a good job, transportation and quality services available to him before last April, maybe he would be here today or maybe he would be back at work, today. Joe was ready to get the wheels turning again so that he can move on. Passage of the ADA will play a key role in his success.

Thirty-five million Americans are counting on your support and this is one minority group that is growing all the time. Thank you for inviting me to be here today. And thank you for your support of the Americans With Disabilities Act of 1988.

[The prepared statement of Marcie Roth follows:]

We CAHR Western Connecticut Association for the Handicapped and Retarded, Inc.

Lake Avenue Plaza, 11 Lake Ave., Ext., Danbury, CT 06810
(203) 792-3540

JOINT SELECT SUB-COMMITTEE
EDUCATION AND LABOR
CONGRESSIONAL HEARING
HR 4498
THE AMERICANS WITH DISABILITIES ACT OF 1988
BOSTON, MASSACHUSETTES
OCTOBER 24, 1988

My name is Marcie Roth. I am the Supervising Advocate at WeCAHR, an organization which offers advocacy services to people in Western Connecticut who happen to have disabilities. Last year, WeCAHR provided these services to over 850 people.
I am here today to urge your support of HR 4498, the Americans with Disabilities Act of 1988, without ammendment.

I am here for myself, my family, my friends and for the rest of the 35 million people in America who happen to have disabilities and who were not able to be here today.

I wish to thank the 113 Representatives and 25 Senators who are truly representing the wishes of their constituents by co-sponsoring this bill. Clearly, it is time to insure that those of us with disabilities are afforded the same rights protection that other minority groups enjoy.

Today you will have the opportunity to hear from many people who support this bill. You will hear many reasons why we need passage of this bill. I could take several hours citing examples of discrimination in our communities. I could talk about many different people and the impact that a discriminating society has on their lives, but I hope that they have expressed themselves in person or by submitting diaries documenting discrimination they have experienced over a seven day period. You need to hear it or read it in their own words. I also urge you to remember that our society has discouraged so many of us from using the power of our own words and that many of us have not yet realized our right to enjoy living our lives as we choose, as valued members of our own communities.

I also wish to remind you that many of us have hidden disabilities. We often risk discrimination by the very act of disclosing our disability. Once disclosure is risked, we have little recourse when denial of accomodation and exclusion occur.

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In closing, I want to tell you about my friend Joe. He's in his twenties. He was living in a nursing home until April of this year because he was unable to find an apartment,transportation, a job, the amount of personal care he requires and other necessities.

He didn't like the nursing home, but he lived there for several years, made friends, helped the other residents, got local corporations to donate a T.V., Video camera, VCR and a variety of other great stuff.

Joe is a great artist,in fact one of his collages hangs in the White House.

In April, Joe had to enter the local hospital for medical treatment due to what some would consider poor care in the nursing home. He had to stay in the hospital so long that his bed at the nursing home was given to someone else. He was transferred to Yale for additional treatment not available in his community hospital. Four days ago Joe was placed in a

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nursing home one hour away from his family and friends. He did not choose this location, it was the first available bed, and he was given less than 24 hours notice of the impending move.

After six months of hospitalization, Joe needs to build up his strength.

All the work he's done to start the wheels rolling for a move to a living situation of his choice has been lost and his self-esteem is not great. The battery for his motorized wheelchair is missing, no one will take responsibility for losing it so Joe must find a way to replace it himself. In the new nursing home he is unable to have his own telephone, he can't have cable T.V. either. He will be rooming with a man who is in his nineties and is dying.

Even the Americans with Disabilities Act won't help Joe now, but if there was housing, access to a good job, transportation and quality services available to Joe before last April, maybe he'd be here today or maybe he'd be at work like most everyone else is.

Joe is ready to get the wheels turning again so that he can move on. Passage of the ADA will play a key role in his success.

35 million Americans are counting on your support, and this is one minority group that is growing all the time.

Thank you for inviting me to be here today and thank you for your support of the Americans with Disabilities Act of 1988.

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Mr. **Owens**. And thank you, both, for your testimony. We are going to have two more panels before we break for 15 minutes. The next panel is Paul Zapun, Eileen Horndt, and Jenny Domini. Mr. Zapun.

STATEMENT OF PAUL ZAPUN, EXECUTIVE DIRECTOR, INDEPENDENCE UNLIMITED, HARTFORD, CT

Mr. **Zapun**. Good afternoon. My name is Paul Zapun. I am the executive director of Independence Unlimited, the independent living center of the capitol region of Connecticut which constitutes the 29 towns of Greater Hartford with a population of almost 800,000 and with an estimated population of persons with disabilities of approximately 118,000.

I am here not to speak for myself but for this constituency. Let me begin by telling you a little story. A number of years ago, I was traveling out West with a friend of mine. Our car broke down in a small town and we had to hang around waiting for it to be repaired. We, therefore, spent the time wandering about. We were suddenly approached by a local sheriff who informed us rather matter of factly after asking us who we were, what we were doing there, why and so on, that if anything happens in town while we are there, anything out of the ordinary, we are going to be held responsible; that is, that our presence was not really welcome. His announcement made us feel threatened, afraid. We felt discriminated against and finally caused us to retreat back to the gas station, back to our car, and as soon as possible, out of town. Fortunately, we had that option. We were able to get out of town and forget it and move on with our lives. The persons with disabilities that Independence Unlimited and other organizations like ours serve, may feel that same anger, same frustration, they may need to retreat unto themselves or into their homes every time they attempt to ride a bus which is not lift equipped, rent an apartment that is not accessible or adaptable, cannot enter a restaurant because it is not accessible or, if they can enter that restaurant, find that they cannot use the rest room.

Disabled persons are discriminated against daily in every aspect of their lives from where, when, and how they travel, where they eat, sleep, where they work. And, unlike my friend and myself, they cannot leave their disability. They cannot just leave town. They live with it and they travel with it everyday. It is all persuasive and it is for this reason that a civil rights bill such as the Americans With Disabilities Act of 1988 must be enacted Thank you.

[The prepared statement of Mr. Zapun follows:]

Prepared Statement of Paul Zapun, Independence Unlimited, Inc.

Good morning, my name is Paul Zapun. I am the Executive Director of Independence Unlimited, Inc. the Independent Living Center of the Capital Region of Connecticut which constitutes the 29 towns of greater Hartford with a population of almost 800,000 with an estimated population of persons with disabilities of approximately 118,000. I am here not to speak for myself, but for this constituency. Let me begin by telling you a little story:

A number of years ago I was traveling out West with a friend of mine. Our car broke down in a small town and we had to hang around waiting for it to be repaired. We, therefore, spent the time wandering about, we were suddenly approached by the local Sheriff who informed us rather matter-of-factly, after asking us who we were and what we were doing there and why that "If anything happens in town that is out of the ordinary—we will be held responsible," i.e., that our presence was not really welcomed. His announcement made us feel threatened, and afraid feeling discriminated against, and finally caused us to retreat back to the gas station, to our car and as soon as possible—out of town. Fortunately, we had that option. We were able to get out of town and if not forget it at least move on with out lives.

The persons with disabilities that Independence Unlimited see daily may feel the same anger or frustration as need to retreat into themselves as their homes . . . every time they attempt to ride a bus which is not lift equipped, rent an apartment that is not accessible or adaptable, can't enter a restaurant because it is not accessible or if they can enter the restaurant itself, find once there that they cannot use the bathroom. Disabled persons are discriminated against daily in every aspect of their lives, from where, when and how they are able to eat and sleep to where, when and how they work or travel and unlike my friend and I they can not leave their disability when they leave town—it travels with them. Discrimination is every where and all pervasive and it is for this reason that a Civil Rights bill such as the Americans With Disability Act 1988 must be enacted.

Thank you.

Mr. OWENS. Ms. Domini.

STATEMENT OF VIRGINIA DOMINI, INDEPENDENCE UNLIMITED

Ms. DOMINI. Hello. My name is Virginia Domini and I work for Independence Unlimited of Hartford. You know I can talk and also walk. I do all my personal care. Therefore, am I really disabled? Unfortunately, I have to say, yes. But my disability is a less understood one. For openers, I do not qualify for any help from an agency because I can take care of myself and my home. I cannot sneak 3 extra hours a day to do it, though. I get up very early to squeeze in the chores that I could not finish the night before. It takes me from 2 to 2½ hours a day just to get dressed and look like I have got something to offer the employment world.

When I try to buy groceries for me and my teenage son, I was told I bought too many groceries to use Dial-a-Ride. I could only buy four bags of groceries. Try feeding a teenager, his cats, and myself on three or four bags of groceries. I do not fight Dial-a-Ride anymore. I walk. And if I walk one way, I can afford a taxi back. But winter is coming and I do not know how I am going to pull this winter off without risking my health or my safety. I know I will, but to do it at best, the price is exhausting. At worse is asthma and arthritis. I find the general public has no knowledge of people with disabilities and must fight to function in a society where busdrivers start moving before I have my balance or State human resources yell, "I can't understand you," to justify leaving a man without food or access to food over the weekend.

[The prepared statement of Ms. Virginia Domini follows:]

PREPARED STATEMENT OF VIRGINIA DOMINI, TRAINING COORDINATOR, INDEPENDENCE UNLIMITED, INC.

Today I would like to speak to you about the "less disabled" or the mulattoes of the "crip world." As you can see I talk and I also walk. I can take care of all my bodily needs. Therefore, am I really disabled? Unfortunately I have to say yes, but my disability plays itself out in less understood ways.

For openers, I don't qualify for any help from an agency because i can take care of myself and my home . . . I just need an extra 3 hours in a day to do all my chores. I get up very early to squeeze in last minute housekeeping chores I didn't get done the night before. It takes me 2 hours to look like I have something to offer the employment world.

When I tried to buy groceries weekly for me and my teenage son, I was told I bought too many groceries to use Dial-A-Ride. I could only buy 4 bags. The assumption was that every one who uses Dial-A-Ride has but one person to feed. Try to feed a teenager and his cats with those constraints. I don't use Dial-A-Ride anymore. I walk and then take a taxi home. Winter is coming, I am wondering how creatively I will get to the store without spending too much on a taxi and not risking my health and safety. I know I can and will do it but the price is at best exhaustion and at worst asthma and arthritis attacks.

I find that the general public has no knowledge of people with disabilities. I must fight to function in a society with bus drivers who start the bus moving before I have my balance, to the State Human Resources' worker who "can't understand a word you say" as you inquire about how they could leave a man without food or means to get food for a weekend, or with the laundry attendant who waits until you've put your clothes in the washer before she tell you to go to the back of the laundrymat . . . (where you are out of the way). You know the general public doesn't want to see you doing your laundry, being a case worker, a shopper, or a Mom. It is difficult to see yourself as a valuable member of society, and sometimes it is so hard to see yourself as a person worthy of so much more respect than you get from the general public.

Mr. OWENS. Ms. Domini, thank you very much.

Ms. Horndt.

STATEMENT OF EILEEN HEALY HORNDT, EXECUTIVE DIRECTOR, INDEPENDENCE NORTHWEST

Ms. HORNDT. My name is Eileen Healy Horndt. I am the executive director of Independence Northwest, a center for independent living located in Waterbury, CT. We serve the 44 towns and cities that comprise northwestern Connecticut. I am here today to show support for Americans With Disabilities Act on behalf of the board of directors and the membership of Independence Northwest and for myself as a person with a disability.

Section 504 of the Rehabilitation Act, the Civil Rights Restoration Act and Public Law 94-142, were a beginning attempt to eliminate discrimination against people with disabilities, but they were just a beginning. These pieces of legislation are too limited in scope to ensure equal access for people with disabilities. Discrimination continues to exist everywhere.

Let me give you some examples. A man with mental retardation was told he could not open a savings account at his local bank. His advocate was told that he did not fit the image the bank wants to project. At a supported employment site, persons with mental retardation and emotional disabilities have been asked to become dues paying members of the union, but they are not allowed to vote, nor are they entitled to the other benefits offered to their dues paying union brothers and sisters.

Parents of a junior high school boy are fighting their local special education department to change their son's individualized education plan, IEP. The school officials had agreed to make changes in the IEP and the parents signed the changed IEP, but somehow the school personnel lost those changed ones. They have returned to the original IEP and have told the parents to take their complaints to an administrative hearing.

A young mother must delay going grocery shopping because there is no available handicap parking spaces. They are all occupied by people without disabilities who just ran in quick.

The majority of the police departments do not enforce the handicap parking laws and I have even had the opportunity to report police officers parked in the handicap parking spaces.

The board of education of an affluent town has decided to reduce the number of remedial classes, their euphemism for a special education class, in favor of increasing the number of gifted classes. The reduction will result in an increased student-to-teacher ratio in the remedial classes and obviously less one-to-one instruction and attention.

Some States' commissions on the deaf and hearing impaired are considering whether or not they can continue to provide interpreting services when they are unable to charge for these services. Therefore, individuals who are deaf or hearing impaired may not have access to an interpreter for a private doctor's appointment or a job interview.

A senior citizen with arthritic needs is not able to step into the suburban type limousines and buses run by the Connecticut Limousine Services and from what I have seen from Boston, they also run the same kind of limousines. This service and many others do not offer accessible transportation to the airports.

Two children with disabilities were sent to private schools because the public school personnel could not protect these children from harm by other students. A recommendation for disability awareness training for the students was ignored. It was easier to have the disabled children attend a school further from home.

A parent with a disability is denied access to her nondisabled child's classroom because of architectural barriers. Complaints filed with the Commission on Human Rights has been unsuccessful in resolving this issue.

A man with quadriplegia and myself were invited to a Presidential campaign office to discuss accessibility. We were told that the office was accessible. There was no handicap parking that would allow sufficient room to let the van lift down. The elevator was a freight elevator that had to be operated by a campaign worker. When I requested his assistance, I was asked if I was one of them.

Yes, I am one of them.

Like all of the people in the examples I have presented to you, I face discrimination on a daily basis. I do consider myself to be a person with a disability. My disability is known as zoachondroplasia. It is one of over 80 different types of dwarfism. I prefer the term, "short stature."

In addition to being handicapped by a society that assumes that everyone is at least 5 feet tall, I also have a secondary disability that makes using stairs a painful experience for deteriorating joints. In many ways, but not all, I need the same types of physical access as someone who uses a wheelchair. Ramps, elevators, lifts on buses, and handicap parking spaces are not special services to me. They are absolute necessities if I, like so many others, am to remain an active citizen in my community.

Where I differ from someone using a wheelchair is my shorter arm length. Some examples of the differences would be: wheelchair accessible sinks are too deep for me. I cannot reach the faucets at the back of the sink. Pay phones are low enough for me to use the dial and the handset, but I cannot reach the coin slot. Therefore, I pay more than the average person using a pay phone because I have to charge my call to a calling card. Most bank counters are so high, the tellers do not even know I am there. And I can forget using the automated telemachines. These are only but a few of the differences.

I point this out to you to make you aware that discrimination comes in a variety of forms. Some are obvious, such as lack of physical access. Some is out of ignorance regarding people's disabilities, but that does not make it acceptable. And some is so subtle that we cannot even build a case to fight the discrimination.

These individuals or organizations have found the loopholes in the existing pieces of discrimination legislation and continue to discriminate against people with disabilities.

We need the broad-based coverage that the Americans With Disabilities Act offers so that these types of discrimination are eliminated and people with disabilities have an effective recourse when they have been discriminated against.

While I understand that the insurance industry requires a specialized approach, this is an area that has traditionally been a major problem for people with disabilities. Many people are paying exorbitant amounts of car, life, and medical insurance if we can get the insurance at all. The car insurance people tell us it is because of the equipment on the car. Personally, I would be more worried about the lack of appropriate equipment on the car.

Statistics show that people with disabilities have no higher incidence of accident than the average driver and in some cases people with disabilities have better driving records.

Because disability is seen as an illness, the life and medical and disability insurance companies do not want to insure us. Many people with disabilities are medically stable. We are not in and out of hospitals. But one trip in could be financially devastating without medical insurance and that is true of anybody whether you have a disability or not.

Some employers, such as the independent living centers have either been denied medical and life insurance because half the staff are persons with disabilities or we are paying premiums that we can barely afford.

Despite working consistently for the last 12 years, I cannot get disability insurance should I need to be away from my employment for any illness whether it is related to my disability or not.

[The prepared statement of Eileen Healy Horndt follows:]

AMERICANS WITH DISABILITIES ACT OF 1988
TESTIMONY

My name is Eileen Healy Horndt. I am the Executive Director of Independence Northwest, a Center for Independent Living located in Waterbury, Connecticut. We serve the 44 towns and cities that comprise northwestern Connecticut. I am here today to show support for the Americans With Disabilities Act (ADA) on behalf of the Board of Directors and the membership of Independence Northwest, and for myself as a person with a disability.

Section 504 of the Rehabilitation Act, the Civil Rights Restoration Act, and Public Law 94-142 were a beginning attempt to eliminate discrimination against people with disabilities. But they were just a beginning. These pieces of legislation are too limited in scope to ensure equal access for people with disabilities. Discrimination continues to exist everywhere. Let me give you some examples:

> A man with mental retardation was told he could not open a savings account at his local bank because he did not "fit the image" the bank wants to project.
>
> At a supported employment site, persons with mental retardation and emotional disabilities have been asked to become dues-paying members of the union, but they are not allowed to vote, nor are they entitled to the other benefits offered to their dues-paying union brothers and sisters.
>
> Parents of a junior high school boy are fighting their local special education department to change their son's Individualized Education Plan (IEP). The school officials had agreed to make changes in the IEP and the parents signed the changed IEP's, but somehow the school personnel "lost" those IEP's. They have returned to the original IEP and have told the parents to take their complaints to an administrative hearing.

A young mother must delay going grocery shopping because there is no available "handicapped" parking spaces; they are all occupied by people without disabilities, who "just ran in quick". The majority of police departments do not enforce the "handicapped" parking laws, and I have even had the opportunity to report police officers parked in the "handicapped" parking spaces.

The Board of Education of an affluent town has decided to reduce the number of "remedial" classes (their euphemism for special education class), in favor of increasing the number of "gifted" classes. The reduction will result in an increased student to teacher ratio in the remedial classes, and obviously less one-to-one instruction and attention.

Some states' Commissions on the Deaf and Hearing Impaired are considering whether or not they can continue to provide interpreting services when they are unable to charge for these services. Therefore, individuals who are deaf or hearing impaired may not have access to an interpreter for a private doctor's appointment, or job interview, etc.

A senior citizen with arthritic knees is not able to step into the "suburban" type limousines and buses run by Connecticut Limousine Service. This service and many others do not offer accessible transportation to the airports.

A public library in Waterbury instituted a policy requiring anyone who lived in a group home to present a note from a group home staff person before she/he would be allowed to borrow anything from the library. (This policy was recently changed because of the pressure the library received from disability advocates.)

Two children with disabilities were sent to private schools because the public school personnel could not protect these children from harm by the other students. A recommendation for disability awareness training for the students was ignored. It was "easier" to have the disabled children attend a school further from home.

A parent with a disability is denied access to her non-disabled child's classroom because of architectural barriers. Complaints filed with the Commission on Human Rights have been unsuccessful in resolving this issue.

A man with quadriplegia and myself were invited to a presidential campaign office to discuss accessibility. We were told that the office was accessible. There was no "handicapped" parking that would allow sufficient room to let the van lift down. The elevator was a freight elevator that had to be operated by a campaign worker. When I requested his assistance, I was asked if I was one of "them".

Yes, I *am* one of them. Like all of the people in the examples I have presented to you, I face discrimination on a daily basis. I do consider myself to be a person with a disability. My disability is known as pseudoachondroplasia; it is one of over 80 different types of dwarfism. I prefer the term short-statured. In addition to being handicapped by a society that assumes everyone is at least 5 foot tall, I also have a secondary disability that makes using stairs a painful experience for deteriorating joints. In many ways, but not all, I need the same types of physical access as someone who uses a wheelchair. Ramps, elevators, lifts on buses, and "handicapped" parking spaces are not special services to me; they are absolute necessities if I, like so many others, am to remain an active citizen in my community.

Where I differ from someone using a wheelchair is my shorter arm length. Some examples of the difference would be:

-wheelchair accessible sinks are too deep for me; I cannot reach the faucets at the back of the sink.

4.

-payphones are low enough for me to use the dial and the handset but I cannot reach the coin slot; therefore I pay more than the average person using a pay phone because I have to charge my calls to a calling card.

-most bank counters are so high the tellers do not even know that I am there and I can forget using the automated teller machines.

These are only but a few of the differences. I point this out to you to make you aware that discrimination comes in a variety of forms. Some is obvious, such as lack of physical access; some is out of ignorance regarding people with disabilities, but that does not make it acceptable; and, some is so subtle that we cannot even build a case to fight the discrimination. These individuals or organizations have found the loopholes in the existing pieces of discrimination legislation and continue to discriminate against people with disabilities.

My one criticism of Americans With Disabilities Act is that it does not include the insurance industry. This is an area that has traditionally been a major problem for people with disabilities. Many people are paying exorbitant amounts of car, life, and medical insurance, if we can get insurance at all. The car insurance people tell us it is because of the "equipment" on the car. Personally I would be more worried about the lack of appropriate equipment on the car! Statistics show that people with disabilities have no higher incidence of accidents than the "average" driver and in some cases, people with disabilities have better driving records.

Because disability is seen as an illness, the life and medical insurance companies do not want to insure us. Many people with disabilities are medically stable; we are not in and out of hospitals. But one trip in could be financially devastating without medical insurance. This is true whether you have a disability or not. Some employers such as the independent living centers have either been denied medical and life insurance because half the staff are persons with disabilites or we are paying premiums that we can barely afford. Without discrimination laws that include the insurance companies, people with disabilities will be forced to choose between Medicaid/Medicare and the opportunity to become employed, but without insurance.

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Lastly, some states such as Connecticut, apparently have state statutes that allow insurance companies to deny an employer liability insurance based on the types of people she/he may hire. If the insurance company determines that a person with a disability is a liability risk, the insurance company can deny or cancel the employer's liability insurance, or make it so expensive that the employer cannot afford to keep that disabled employee. I ask that you all consider how effective the Americans With Disabilities Act will be with the insurance companies potentially undermining the legislation.

With the passage of the ADA, people with disabilities of all types will be afforded the opportunity to participate equally in society. It will increase our choices of work, to have a home, to raise a family, and to share in the joys and responsibilities of community life. We are currently being denied this through one form of discrimination or another. It is time that we had true equal opportunity.

Eileen Healy Horndt

Eileen Healy Horndt

INDEPENDENCE NORTHWEST
25 Hillside Avenue
Oakville, CT 06779

Mr. **Owens**. Thank you very much.

Ms. **Horndt**. Thank you.

Mr. **Owens**. I want to thank all three of the panelists.

Our next panel is Stanley Koslowski, Director, Office of Protection and Advocacy, Hartford, CT; Michael Oestreicher; Bob St. Laurent. And following this panel, we will have a 15-minute break.

Mr. Koslowski.

STATEMENT OF STANLEY KOSLOWSKI, ASSISTANT DIRECTOR, OFFICE OF PROTECTION AND ADVOCACY, HARTFORD, CT

Mr. **Koslowski**. Good afternoon. I want to thank you for two things. One is for calling me on the panel before you took the break. I appreciate that. Second, is to thank you, personally, as well as other people that might be here today, for your tremendous support for the rights and services of people with disabilities and your understanding of the meaning of the term "empowerment" and how that affects us and how important it is to us.

I am not the director, but the assistant director of the Connecticut Office of Protection and Advocacy for Handicapped Persons. We are the agency in Connecticut that is responsible for implementing the protection and advocacy system for the developmentally disabled persons as well as the protection and advocacy system for people with mental disabilities and we also run the client assistance program which advocates for people who are clients for the vocational rehabilitation agencies in Connecticut.

I would like to share with you briefly some general information about discrimination based on disability as it occurs in Connecticut and then three specific instances that I have been involved with personally just in the last 2 weeks. The Connecticut Office of Protection and Advocacy represented over 2,000 people last year who had some form of disability related problem. These problems included special education issues, employment discrimination, transportation deficiencies, housing needs, including discrimination, financial entitlement denials, denials of services from state agencies and institutional abuse and neglect, and architectural barriers.

I am here to tell you that based on this experience that discrimination based on disability is alive and well in Connecticut and I suspect in the rest of the country as well. The people who experience difficulties with discrimination come in all shapes and sizes. They are rich. They are poor. They are white. They are black. They are Hispanic. They live in the cities. They live in the suburbs. They live in the country. They are mentally retarded. They are physically disabled. They are hearing impaired. They have visual disabilities. They have psychiatric handicaps and they have disabilities which are not visible to the casual observer.

In all cases, prejudice, stereotyping and discrimination are a fact of life. And it is one of the tragedies of our day that we have not yet found a way to rid ourselves of this terrible phenomenon.

Now, on to the three incidences that I have recently been involved with. The first occurred in an urban school system when physically disabled students were being denied the opportunity to participate in a field trip with their able-bodied peers. The reason for this denial was that there was not enough money available to hire a lift equipped van which the students required.

When the issue became public, it was presented as a charity case and, as expected, two private wheelchair service companies from the community came forward and donated vehicles for use on the day of the trip. I am sad to report that this was not the first time that such an incident occurred in the city and I am also sad to report that it still remains a charity issue that is being addressed by the community rather than the recognition that it was truly the civil rights issue that it was.

The second incident involves a woman who called me last week to inquire about getting a waiver from the State building codes so she would not have to make her daycare center accessible. She claimed it was not necessary to provide access to the center because, quote, the State takes care of all of the handicapped children, end quote. And besides a person with a disability could not possibly work in a daycare center because of the need to change diapers and supervise playground activities.

Well, first, I patiently explained to her the waiver process. And then I tried to educate her of the importance of integrating children with disabilities with children without disabilities at an early age. I further explained—to no avail, I might add—that if she tried to exclude handicapped children from her center, she might legitimately be charged with discrimination. I also told her of my experience personally diapering and otherwise caring for my daughter and even shared with her my wheelchair sports experience which would certainly assist me in supervising any playground activities.

I told her that I thought I would make a good daycare worker and would it not be unfair to deny me employment opportunities her center might offer.

She seemed deaf to my words and asked me to again explain the waiver process.

The third incident was already reported by Shelly T. Wargo about a half hour ago. And that involves the commuter bus that a city in Connecticut was buying with Federal funds that they refused to include a wheelchair lift on it. And I will not repeat that example. But that was the third instance that I have been involved within the last couple of weeks.

Because of these three recent instances as well as all the other instances of discrimination that our office deals with, I plead with you to move the Americans With Disabilities Act forward on the House agenda. It is desperately needed by the 36 million Americans who have disabilities and need the additional protection such an act offers. Thank you for the opportunity to be here today.

[The prepared statement of Stan Koslowski follows:]

STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR HANDICAPPED
AND DEVELOPMENTALLY DISABLED PERSONS

TESTIMONY ON THE AMERICAN WITH DISABILITIES ACT

OCTOBER 24, 1988

Good afternoon. My name is Stan Kosloski and I am the Assistant Director of the Connecticut Office of Protection and Advocacy for Handicapped Persons. I would like to share with you some general information about discrimination based on disability as it occurs in Connecticut, and then three specific incidents that I have been involved with personally in the last two weeks.

The Connecticut Office of Protection and Advocacy represented over 2000 people last year who had some form of a disability-related problem. These problems included special education issues; employment discrimination; transportation deficiencies; housing needs, including discrimination; financial entitlement denials; denial of services from state agencies; institutional abuse and neglect; and architectural barriers. I am here to tell you that discrimination based on disability is alive and well in Connecticut, and I suspect in the rest of the country as well.

The people who are experiencing difficulties with discrimination come in all shapes and sizes. They are rich, they are poor; they are white, they are black, they are Hispanic; they live in the cities, they live in the suburbs, and they live in the country; they are mentally retarded, they are physically disabled; they are hearing impaired, they are visually impaired; they have psychiatric disabilities, and they have disabilities which are not visible to the casual observer. In all cases prejudice, stereotyping, and discrimination are a fact of life, and it is one of the tragedies of our day that we have not yet found a way to rid ourselves of this terrible phenomonom.

I have been involved in three incidents recently which point out the need for stronger civil rights efforts on behalf of persons with disabilities. The first occurred in an urban school system when physically disabled students were being denied the opportunity to participate in a field trip with their able-bodied peers. The reason for this denial was that there was not enough money available to hire a lift-equipped van that the students required. When the issue became public it was presented as a charity case, and, as expected, two wheelchair service companies from the community came forward and donated vehicles for use on the day of the trip. I am sad to report that this wasn't the first time such an incident occurred in this particular school system. And the civil rights aspect of this issue has yet to be understood as a legitimate claim.

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The second incident also involves transportation. The transit district of a second urban area sought to use federal money to purchase motor buses to transport commuters from outlying suburbs to the city for employment purposes. When I raised a question regarding the need to equip the buses with lifts so that physically disabled commuters could benefit from the service I was told they could take a dial-a-ride service to the train station and then take the train to the city. Anyone who is familiar with dial-a-ride service knows of the impossibility of such an arrangement, and besides, why shouldn't people with disabilities have the same right to ride the commuter bus as people without disabilities. We need a federal law to prevent this type of discrimination from happening.

The third incident involves a woman who called me to inquire about getting a waiver so she would not have to make her day care center accessible. She claimed it wasn't necessary to provide access to the center because the state takes care of all the handicapped children, and besides a person with a disability could not possibly work in a day care center because of the need to change diapers and supervise playground activities. Well, I patiently explained the waiver process to her, and then tried to educate her to the importance of integrating children with disabilities with children without disabilities at an early age. I further explained, to no avail I might add, that if she tried to exclude handicapped children she might legitimately be charged with discrimination. I also told her of my experience diapering and otherwise caring for my daughter, and even shared with her my wheelchair sports experience which would certainly assist me in supervising playground activities. I told her that I thought I would make a good day care worker, and wouldn't it be unfair to deny me the employment opportunity her center might offer. She seemed deaf to my words, and asked me to again explain the waiver process.

I plead with you to move the ADA forward on the House agenda. It is desparately needed by the 36 million Americans who have disabilities and who need the additional protections such an Act offers.

Mr. OWENS. Thank you.
Mr. Oestreicher.

STATEMENT OF MICHAEL OESTREICHER, DIRECTOR, CHALLENGES UNLIMITED

Mr. OESTREICHER. Thank you very much, Mr. Chairman. Thank you for this opportunity. I am the director of Challenges Unlimited, a nonprofit architectural firm that designs barrier-free environments and specializes in creating adapted recreation areas. Seventy-five percent of our staff is disabled.

I will address my remarks to the need for a barrier-free environment and why the ADA is so important to that goal. One of our services is to provide consulting to professional design firms on accessibility issues. In the last 4 months, with the passing of the Civil Rights Restoration Act and the fair housing bill, we have received calls from 26 architects or landscape architectural firms, about 20 more than our average for an average 4-month period. Of these 26 calls, only 2 firms were interested in learning more about the laws and how they could implement them in a positive way. The other 24 firms only wanted to know how they could get around the rules or how they could get a variance.

Mr. OWENS. They were willing to pay quite a bit for that.

Mr. OESTREICHER. They were willing to pay almost anything for that.

To a firm, they all said something like, "We think the laws are good. Those people need that help, but this project is different. If I have to do all this access stuff, it will kill my budget."

Now, these are educated, articulate people. Most of them read the New York Times and watch public TV, and, yet, they seem to be totally ignorant and insensitive to over 35 million human beings.

To make this situation worse, these professional designers are 100 percent dead wrong. If accessibility is part of the planning from the onset of a project, then that access costs no more or at the most marginally more than a project with no access.

It is obvious that a clear message must be sent to the people who design our environment that no access or bad access will not be tolerated. Furthermore, strong, specific enforceable legislation must be enacted to aid these designers to create true barrier-free environments.

The enactment of the Civil Rights Restoration Act and the fair housing law is a good start. The Americans With Disabilities Act will be a welcome addition.

It must be noted that all of the provisions of the ADA need a strong barrier-free environment to work. It is important that in addition to legislation, we must also inform and educate the able-bodied community of the reason for the legislation.

During a late-night planning session for beach accessibility for a local community, a very tired and frustrated member of our group said, "You know, sometimes I almost wish a person would hate me for being disabled. Then at least I would know they knew I was alive."

This is a major key, for generally speaking, unless an able-bodied person has the privilege of working with, playing with, loving, or simply knowing a disabled person, the sad truth is they seldom ever think about them. We must awaken the consciousness and social responsibility of the able-bodied community. And one positive way is through this type of legislation.

Mr. Chairman, I have the distinct privilege and honor of working 6 days a week with a group of people that are labeled "handicapped" and "disabled." Mr. Chairman, let me assure you that they are neither. They are creative, intelligent, sensitive and have more common sense than many able-bodied people I know.

In closing, I would like to make one additional point. When our group designs barrier-free environments, you know what? It is not really that difficult. We are not doing brain surgery or nuclear fission or something like finding affordable parking in Boston. With good common sense, solid design precepts, and most importantly, strong input from the disabled people, we can create barrier-free environments. Thank you.

Mr. Owens. Thank you.

Mr. St. Laurent.

STATEMENT OF ROBERT ST. LAURENT, WORCESTER, MA

Mr. St. Laurent. Thank you, Mr. Chairman. My name is Robert St. Laurent. I live in Worcester, MA. Most of the handicapped individuals in the city have decided, "Let's fight and let's get things together." I gave a piece of evidence to you in regard to discrimination on transportation, discrimination in equal housing, also discrimination of the Handicap Affairs Office, who does nothing for the disabled in the city of Worcester. You cannot be elected to an appointed position and be nothing but a rubberstamp.

The disabled community is up in arms because of transportation, housing, hospitals' bathrooms not accessible to even take a shower, as a patient. When they are told as individuals, "Well, you are only going to be here for a short stay. You will be out in a few days." Or if you have no feeling, they do major surgery in your room. That is wrong.

I think we have got to start educating the system. There are people out there who need the education.

Mr. Chairman, many of us who are in wheelchairs cannot even go to a funeral parlor and not only that, cannot even go to a church of our denomination. Equal rights to all, not to a certain few. Thank you for much for letting me testify.

[The prepared statement of Robert St. Laurent follows:]

Prepared Statement of Robert St. Laurent

To Whom It May Concern: I am Robert St. Laurent, 7A Sever St., approximately age 50 years, disabled 17 years, testifying here today in regards to discrimination in the city of Worcester. I sit on the Worcester Regional Transit Authority Advisory Board and have done so for the past 7 years—trying to bring about accessible transportation throughout the whole city for the disabled. We have requested main route accessibility—for the past 7 years we have gotten nowhere with the Worcester Regional Transit Authority. The excuse they use is they don't know how many disabled need the service; they have refused to even try to complete a survey in the city of Worcester. We also have a local Handicapped Affairs Office in the city of Worcester and some of the issues that we have been bringing to the Executive Director of the office are—curb cuts, lighting for the disabled; lines in roads and sidewalk repairs. We have not seen in the local downtown area that any of these projects have been completed in the past 7 years. Every year we have Handicap Awareness Month and we have the city councillors and the mayor go out to see the deplorable condition of sidewalks, curb cuts, etc. Many of the councillors and the mayor have filed orders to have curb cuts and sidewalks fixed in the city of Worcester; however, in the last 3 years that they have been filing—nothing has been completed yet. The banks in the city of Worcester do not make it accessible for the disabled to reach the counters to cash checks or do banking and presidents of banks have stated the disabled can have their checks sent directly to the bank and do their deposits from home (via mail) rather than come into the bank. Most of your supermarkets are inaccessible for reaching shelves, racks—check-out counters are very narrow—independence is taken away due to these conditions.

I will gladly answer any questions that are given to in regards to the above.

Mr. OWENS. Thank you very much, the three of you. I have one question for Mr. Koslowski. The protection and advocacy program now covers adults with mental illness. What role does discrimination play in preventing people with mental illness from getting housing?

Mr. KOSLOWSKI. Well, it plays a major role. I think there is a tremendous—there is stigma attached to all disability, but I think the stigma attached to someone who has a history of hospitalization, institutionalization or psychiatric disability is probably more severe than any other stigma. I think that area in particular of the disability rights movement is perhaps farthest behind other areas. Access is something that people might not necessarily always agree with, but they can certainly understand a ramp and a bathroom door. Psychiatric disability is something that very, very few people in our society understand. And I think there is more stigma attached to that disability than any other. And I think that that disability above all others hopefully will stand the most to gain from the passage of the Americans With Disabilities Act.

Mr. OWENS. Thank you very much.

We are going to take a 15-minute break at this point. I think you will find that we are—we were at one point an hour and a half behind, now we are in far better shape than that. And if we have a 15-minute break, we will be able to get back on schedule and guarantee that everybody who was scheduled to be heard will be heard.

[Whereupon, a brief recess was taken.]

Mr. OWENS. Would everyone please come to order.

Returning to our schedule, the next panel consists of Jean Healy, Janet Kyricos, Joseph Caudre. Are we adding somebody?

Mr. ATKINSON. Ray Atkinson.

Mr. OWENS. Ray Atkinson.

Ms. Healy, would you like to begin?

STATEMENT OF JEAN HEALY, DIRECTOR, DEAF-BLIND CONTACT CENTER

Ms. HEALY. Hello. My name is Jean Healy. I am the director of Deaf-Blind Contact Center. I am here on this great day for people with all disabilities to get together in support of the Disabilities Act. I wanted to talk about two things. First of all, I want to say that I have two disabilities: deafness and blindness.

I have experienced subtle discrimination. And this happens in different ways. First of all, I will explain one situation. And the situation is related to transportation. Communications and announcements and so forth need to be provided for deaf blind people so that they can know what is happening in the transportation system. For example, if there is an emergency situation or things like that. In the past, I complained about bus signs in another city's transportation system. So, I was invited to try to determine which type of sign was the best. I chose one sign, but the man who was in charge who himself had no visual problems told me that another type of sign was the best one and he refused to listen to me. That man's attitude was not good for disabled people. He needs to listen to disabled consumers.

Another experience I had was a situation which was accessible for other disabled people, but not for deaf blind people. And the reason was that there were no interpreters for deaf blind people.

I wanted to go to a city-sponsored event, but they refused to hire more interpreters for the deaf blind people and the reason was that there was no money in the budget. But in that city, they need to think about accessibility for deaf blind people because we are part of the community and we want to participate and have equal access. Thanks for listening to me.

[The prepared statement of Jean Healy follows:]

DEAF-BLIND CONTACT CENTER, INC.
299 NEWPORT AVENUE, No. 5
WOLLASTON, MASSACHUSETTS 02170
(617) 770-0262 (TTY) (617) 770-0278 (VOICE)

October 24, 1988

To Whom It May Concern:

Today is a great opportunity for people with all disabilities to come together to show support for the Americans with Disabilities Act of 1988. This is a very important step in our goal toward equal access in employment, housing, communication, and so forth. And also in educating the general public that disabled people can be independent, have jobs and be involved in the everyday real world. It is our civil right to be involved in everyday activities the same as nondisabled people.

I am glad to have this chance to express my thoughts about discrimination. I have two disabilities-deafness and blindness-and from my experiences, discrimination has happened but in subtle ways. I will focus on communication access. A good communication system is very important for deaf-blind people to receive information-any information, emergency, current events, and so forth. For example, many deaf-blind people travel alone on public transportation and therefore communication/announcement systems need to be developed so that deaf-blind people can know what is happening with flashing lights, easy to read signs, braille, or the system is not accessible.

In the past, I complained to the transportation system in another city about the difficulty i had reading that city's bus signs. I could not know which route the bus was going and it was very frustrating to ask people because I'm deaf. I was invited to go to determine from various bus signs which one would be the easiest for most visually impaired people to read. I chose one sign that was not my ideal but it was the best among the choices. However, the man in charge, who had no visual problems, told me that in his opinion another sign was better but his choice was the worst one for me to read. He was not willing to listen to my point. He decided his choice was better and that was it. This man's attitude is what causes subtle discrimination. He is supposed to listen to disabled consumers, but he refused to listen to me.

Several times, I have confronted situations that were accessible to people with other disabilities but not for deaf-blind people. For example, an event sponsored by a city in which the advertisement read that a sign language interpreter would be available for deaf people but when contacted that city department refused to hire more interpreters for the deaf-blind people interested to attend the event. The reason was that there was no money in the budget for more interpreters. That whole event was wheelchair accessible but nothing for deaf-blind people.

Deaf-blind people are part of the community and want to participate in different and events. Communication access for deaf-blind people is different than for deaf people or blind people even though deaf-blind people use sign language interpreters and braille. The reason is that many deaf-blind people need their own interpreters for tactile/touch communication or close interpreting. Communication access for deaf-blind people needs to be considered with everything and we should not be discriminated against because it costs too much to provide the access.

Thank you for listening.

Sincerely,
Jean Healy
Jean Healy
Director

Mr. **Owens**. Thank you very much.

STATEMENT OF JANET KYRICOS, MASSACHUSETTS

Ms. **Kyricos**. I have experienced discrimination throughout my life. It became a way of living to me, almost like oppression. On most of the jobs that I have had—which I have had many. I have been working for over 25 years—would always have a certain level of discrimination involved and I will explain that. They are all pretty much similar.

I would be hired. And oftentimes have not found it difficult to be able to find a job. And in the interviews, I would often explain that I have a hearing impediment and cannot use the phone effectively and need people to face me so that I may read their lips for communication. Different things like do not talk behind my back to give me instructions. Make sure you get my attention. And most of the time it was fine, no problem. And I would start the job. And within 2 months, I would start being given pressure to start using the phone to make business phone calls related to my job. I would then speak up and say, "I let you people know before I cannot effectively do this." And I have been met with a great deal of anger and impatience. And in some situations, I was threatened in terms of losing my job if I did not use the phone. I eventually had to leave. I have had situations where my boss made fun of my speech in front of many people. We would have many, many people coming in for different interviews and I would have to call their names out. And she would make fun of my speech in front of everyone.

I have also had situations where, because I wear two hearing aids, I read lips and I use sign, now, because I now have a progressive sight loss. I have had situations where I made it clear that I could not use any kind of equipment involving like a dictaphone, for example, because I would have to take my aids off and I would not be able to see anyone to read lips and so on. I was told at one point that if I did not use the dictaphone, I would lose my job. I had a coworker cover for me. This person used to type for me and do the dictaphone work. And, eventually, I had to confront my boss and tell her that this was happening and that what she was doing was quite unfair. Unfortunately, it did not get anywhere. I had to leave that job.

Essentially, each job I have had, I would run up against this communications, sort of subtle discrimination, and it was always put on my so that I had to leave because no one else was willing to make any kind of accommodations for me.

I was in a situation once where my boss was wonderful, really wonderful. And she wanted to keep me because she thought I was very, very good. She had to appeal to a board of trustees. The board of trustees refused to change the job description in order to eliminate the phone and give me other responsibilities.

I was also in situations where people would hire me and I sort of felt very much like the token disabled person because I never got promotions. I never got any pay increases, always being told because I could not use the phone or because I could not use the dictaphone, or I could not use shorthand, all things related to communications, I am very frustrated to say the least because there was not anything wrong where people were willing to coming forth and support me and be able to fight these people, so to speak.

I have experienced a situation very recent in which I lived in a two-family house and had to leave because my landlady essentially said, "Had I known how handicapped you were, I never would have rented this place to you." In the meantime, I had gotten a guiding eye dog, which she gave me permission to get. She did not really have to because it is a law that I could have the dog. But, essentially, she increased the rent twice to $75 within a year's time. I could not afford. So, I eventually was forced to get out of that situation. And when I was leaving, I wanted my security deposit back, which is a great deal of money, and she refused to give me the money back. So, I told her I would bring her to small claims court. And I knew that was really going to be a big deal if it came down to that. Eventually, over about a period of 5 months, she finally gave me back my security deposit before the time for the court date had come around.

[The prepared statement of Janet M. Kyricos follows:]

TESTIMONY October 24, 1988

Janet M. Kyricos
114 Converse Avenue
Malden MA 02148

I have always experienced discrimination, it had become a way of life, like oppression.

I have experienced discrimination in most jobs school, college, in housing, transportation and within some public places such as stores and restaurants. I will only highlight some specifics here. but first i will explain a bit about my disability in order to better understand the nature of the discrimination.

I am an oral deaf woman and legally blind. I wear hearing aids, read lips and in the recent past has begun learning sign language. I need to read lips in order to communicate, along with the help of my hearing aids and sign My progressive sight loss sometimes creates a situation in which i must used sign by touch. I use a cane and also have a guide dog. [Guiding eyes dog]

EXAMPLES OF DISCRIMINATION

I was accepted into a smal Boston Liberal Arts College, but I was denied admission clearly on the basis of my deafness. As I was told my hearing impairment and imperfect speech did not make me a good candidate to suceed in college. I appealed this decision without results. I was not legally blind at the time, my sight problem was confined to night blindnes at the time.

ESTIMONY Pg. 2

I later entered a Business School (reluctantly as Business was not my first love, but the Rehabilitation Counselor told me it was the only place for me). Two requirements were necessary for graduation. A speed of shorthand and dictaphone. With shorthand one has to keep their head down in order to obtain accuracy and speed, I could not do this as I had to read lips in order to understand. With the dicta.. phone, I had to remove my hearin aid in order to use the machine, iI could not discriminate speech in this way. I appealed to the dean who told me not to worry, waived the requirements and substituted with other courses. On the day of graduation I was awarded a "Certificate of Attendance" not my Associate Degree/Legal Sciences. I went to the dean and was I told I should be grateful that they had their rules and could not change them for one person. Later when I received my transcrip my fourth semester of grades were missing. The transcript looked as if I failed and withdrew from school. I went up to the school again confronted the officials, but no one could find the grades, nor did anyone want to pursue it beyond a certain point. I had no where to go to receive any help.

I obtained a job with a Law School. I explaine my hearing problem and that I could not use a dictaphone, and that I needed to read lips to communicate effectively. I was hired on the spot. I worked for one year and during that time my boss would make fun of my speech in front of many people, she would threaten to fire me if I did not use the dictaphone, My co-worker would cover for me. We had a intercome system in which my boss used to call on us. I could not understand when my name was called, she would accuse me of not being ② cooperative

*My experiencas in the world of work continued along these lines, I would just leave and look for another job hoping to find a place that would accommodate me. Now after 25 + years of working I am finally being given access to do my job well. I work for a smal social service orgainization as a Finacial Consultant on a part time basis. I never knew what it meant to feel self esteem from a job that was not loaded down with obstacles and attitudes creating barriers to prevent me from growth. I got here on my own, I was not given support. I had felt the the Rehabilitation Commissions were not interested in the quaility of life and work, but "as long as you had a job, you should be grateful". My support primarily came from people outside the system.

I was living in a two family house renting the first floor. My sight had worsened, and I decided that a guide dog might be safer to travel with. I approached my landlady with my thought of getting a dog before I applied for one. She understood, and granted permissio Well, eventually, I was forced to leave. She increased the rent to $75 and then less than a year later increased it again to $75 . She told me I had to move that the "dog drove her crazy" The dog was doing nothing, its a highly trained animal. She said to me "if I had known how handicapped you are I would never have rented the place to you." She refused to return my deposit, and I put in a Small Claims in the local court. She eventually returned my deposit.

* At a later date when I had to leave another job I sought help from a Rehabilitation agency. They found me a job in a shoe factory.' They told me this was the best they could do and I was then a Certified Full Charge Bookkeeper. ③

TESTIMONY pg 4

I patron local stores frequently with my guide dog. In one local store I was asked to leave because dogs were allowed. I explained that she was a guide dog for blind people. They insisted I leave the dog outside, I said that the law protected me, and that I had a right to be in the store. The Manager physically pushed me oot of the store. I went home called the police. They dodmt tgomk ot was a big deal. I pleaded with them and said my rights were at stake. I went back to the store and met the police. Eventually, I was allowed to go back in. Amazing, throughout the whole situation, other customers just looked on, no one wanted to get omvplved/ I have been subjected to similar treatments in Boston stores as well!

Public transportation is difficult because all announcements about any changes are done over PA systems, which is not communication accessible for any persons who are deaf, for those of us who are both hearing and visually impaired it is very difficult.

INSERT pg 5

It kind of overwhelms me to put all this down on paper, and I know there is so much more to say, but I've said enough for now. I feel that to be able to testify today is a wonderful experience, thank you for caring! I look forward to the day when we can all live togethe on equal terms, in harmony and without the fear that create the barriers and are more disabling than our disabilities are.

Janet M. Kyricos

TESTIMONY Pg 5

INSERT

I want to mention a few points in reference to the world of work to highlight the type of discrimination i have experienced.

I rarely had difficulty finding a job, in the past* During interviews I was honest about my hearing impairment explaining that people had to face me when they talked to me so that I could read lips, not talk to me from behind me. And that using the phone would not be such that would not any benefit. I was still . hired with oral promises that there would be no problem to these accommodations. It was after I was on the job for a couple of months that pressure would be put on me to use the phone to make business calls, and when I asserted that I had made it clear in the interview that it would not be reasonable to expect, I was met with anger and had to experience a great deal of tension. I was never given promotions or pay increases the excuse being that because I was unable to use the phone I could not be promoted. No efforts were made to work it out even though I rated high in my reviews. Also people were continually forgetting to speak to me face on and were constantly putting pressure on me to get the information and do my job efficiently while they refused to take the time to give it to me in a way I needed. My only option was to eventually leave.

Discrimination with communication is very subtle and complex and needs desperately to be changed. Especially in the case of myself who spent 13 years in speech and auditory training and speak well, and people expect that i "should be able to hear well too".

*Now, It would be quite different with both a hearing [illegible]

Mr. OWENS. Thank you, Ms. Kyricos.
Joseph Caudre.

STATEMENT OF JOSEPH CAUDRE, AIDS ADVISORY BOARD, STATE OF MASSACHUSETTS

Mr. CAUDRE. I am a member of AIDS Advisory Board for the State of Massachusetts which deals with Social Security. And one of the problems that I have heard about in the last couple of weeks were the turnover rate of the counselors at Social Security offices throughout New England which have been so severe that each of these counselors or the people who are replaced either get paid at a reduced rate or are not getting paid enough, so, they have a Social Security Administration—at least in this region—has a high turnover rate. And, therefore, if they talk work incentives or any other area which are concerned with disability individuals, they do not give out the right kind of information.

Last week, I was at a consumer conference which the Massachusetts Rehab Commission held and I heard two stories about the incentive situation at least in the New England area. And these clients called up their Social Security Administrations in their area and got two different stories. This is a large problem because I feel that Social Security ought to have a much better understanding of the board incentive program. If they are going to serve the disabled people and provide jobs for them, they have got to have a much better understanding of the incentives that are there. A lot of the regulations that SSA has are out of date or they are nonproductive for workers, for disabled people who want to become workers, work-related individuals and taxpayers.

For me, this is a personal point: I am getting a job. And the rules and regulations that Social Security is dealing with, as far as I am concerned and a lot of disabled people who are in my situation, they are disincentives. If you will check the regulations, I think you will understand exactly why.

I have too short a time to really explain, but if you check the regulations, I think you will understand why a lot of disabled people do not work. In fact, if you do not work, you get more benefits. It is just that simple.

Mr. OWENS. Do you think this is a public policy problem or a discrimination problem?

Mr. CAUDRE. It is both. And the Reagan administration has made it worse in the last 8 years.

Mr. OWENS. Thank you.
Mr. Atkinson.

STATEMENT OF RAY ATKINSON, ASSISTANT DIRECTOR, CENTER FOR INDEPENDENT LIVING AND WORKING, WORCESTER, CT

Mr. ATKINSON. Good afternoon, Mr. Chairman. My name is Ray Atkinson. I am the assistant director at the Center for Independent Living and Working in Worcester. And I have been disabled for 15 years, now. And throughout that timeframe, I have become pretty much a good self-advocate and I have learned how to make the best of the situation, so to speak.

So, today, rather than talk about small instances I might run into in day-to-day living, such as restaurants, transportation, things like that, I think I would rather be an advocate of the clients of the Center for Independent Living and Working, incorporated in Worcester.

Some of the problem areas or areas that could use improvement with Federal moneys, aspects of housing, when people become disabled. They are looking to go —we have got a transitional program there where we can take on as many as seven clients at one particular point in time. And after the fact we have done the 9-month transitional program, we have to try placement for them. And there is a housing shortage for everybody. And it seems to be more prevalent, even, for the disabled population because of the fact that just a certain percentage is allocated or accessible for disabled persons.

The second point I would like to make would be the aspect of transportation. I live in Fitchburg, myself. I would have liked to have taken the train to come in, but it is not set up, as of yet, to make it accessible for persons in a wheelchair to take the train into Boston. I know it takes Federal moneys and some administrative push to make these things happen so that persons can come into such a function like today and be able to speak without having to rely on others.

Another aspect I would like to talk about briefly would be employment. Many—there have been great strides in employment. I think people are doing as much as is required of them at present time. I think today's meeting might require employers to do just a little bit more to make people with disabilities more marketable in the job place and give them an opportunity to be persons who can become productive members of society, build their self-esteem and be proud to be out there in the work force.

I think the aspect of housing is important, the aspect of transportation to get to and from work is important and the aspect of allocating Federal moneys for employment also so that there could possibly be some sort of a watchdog committee so that these things could transpire, will help everybody as a whole in the future to come. And I hope after November 8, these things will come about. I appreciate your time, Mr. Chairman.

Mr. OWENS. Thank you very much. I want to thank all the members of the panel. Thank you all for testifying.

The next panel is Cathie Marshall, Rima Sutton, and Laurie Williams. Ms. Sutton is the director of the National Multiple Sclerosis Society.

Ms. Sutton, you may begin.

STATEMENT OF RIMA SUTTON, SERVICE COORDINATOR, NATIONAL MULTIPLE SCLEROSIS SOCIETY, MANCHESTER, NH

Ms. SUTTON. Thank you. Just a small correction. I am really the service coordinator for the MS Society.

Mr. OWENS. Service coordinator for the Multiple Sclerosis Society.

Ms. SUTTON. Right. I help people with multiple sclerosis obtain services, provide information and referrals, and help with problems that they face. Many of their problems are caused by discrimination. Discrimination toward the handicap takes many forms, but I will focus on four: employment, insurance, including health and life, housing and accessibility.

At this time, when an individual in New Hampshire becomes disabled, they can be fired from their job if they are physically unable to do it. No accommodations of any kind are required of the employer by law. In many cases, disabled people are able to continue working with minimum modifications. Unfortunately, most employers will not even consider these simple and easy options.

I know a woman who was required to climb a spiral staircase to get to her desk when her legs could hardly support her. It would have been quite simple to move her down to the first floor so that she could continue working her desk job.

I know a man who used to work in a hospital in which he was required to be on his feet for 8 to 10 hours a day. He began falling. When he asked to be reassigned to more sedentary work, he was told that either he accept forced retirement or work in the laundry.

People with MS cannot tolerate heat or humidity, nor do they want to work for minimum wage. It is a waste of these people's potential to completely shut them out of the workplace and creates economic hardship for them and their families.

One woman I know applied for Social Security disability after being fired from her job. She waited approximately 6 months for a decision and was denied. In the meantime, no money was coming in at all. She has the right to appeal, but this process often takes as long as a year.

Another major problem disabled people face is an inability to obtain health or life insurance. Insurance companies refuse to sell them policies under the preexisting clause condition.

I know a man that wanted to buy life insurance for his family of six, but could not find one carrier in the whole State of New Hampshire to offer him a policy.

Multiple sclerosis is not a fatal disease. Nor are many other disabilities. An even uglier form of discrimination is insurance companies that cancel existing health insurance policies when they find out that an individual is disabled. I know a woman who worked for a company for 10 years before she was diagnosed as having MS. Not only was she fired from her job, but both her short term and long-term disability was cancelled. After paying for this insurance for 10 years, she is denied her right to use it now that she needs it. Disabled people need health insurance. Their medical costs are high. They are willing to pay high premiums for it.

In New Hampshire, we have a great need for more handicapped housing. I know of one family in New Hampshire that searched all summer for a handicapped accessible apartment for their family of four. They were finally forced to move into a one-room motel efficiency while the local housing authority continued looking. The State of New Hampshire does not have a central office that maintains listings of available handicapped units. Often when a handicapped unit becomes available, it gets rented to a nonhandicapped person. As of October 1, this family still has not found an apartment.

Also, the percentage of handicapped units in existing or under-construction housing complexes is very low or nonexistent. If a disabled individual cannot afford their own home and have it adapted to their needs, they are often trapped inside their home. This creates much loneliness and depression and can be very dangerous.

I know a woman who lives in a third-floor apartment building which had a fire when her husband was away at work. If the neighbors had not been aware of the fact that she was home alone, she could have died.

In conclusion, I would like to address the problems of accessibility. Most of our public buildings in New Hampshire are older and do not provide access. I know a man who went to city hall to vote in one of our major cities and could not get in the building. He was forced to vote outside in his wheelchair in the middle of the winter.

I know a public school teacher who, every morning, has to drag herself up the stairs on her behind to get to the top of the landing and her wheelchair.

Disabled people depend greatly on provided handicap parking spaces. But every day I see spaces filled by cars without handicap plates or stickers. If a disabled person cannot park their car, they can't get out.

[The prepared statement of Rima Sutton follows:]

NATIONAL MULTIPLE SCLEROSIS SOCIETY
New Hampshire Chapter
50 Bridge St, Manchester, NH 03101

Subcommittee on Select Education
Committee on Education and Labor
U.S. House of Representatives
518 Annex 1
Washington, DC 20515

Dear Ladies and Gentlemen:

I would like to introduce myself; my name is Rima Sutton. I am the Services Coordinator for the National Multiple Sclerosis Society's, New Hampshire Chapter. I help people with MS obtain services, provide information and referrals and help with problems that they face.

Many of their problems are caused by discrimination. Discrimination towards the handicapped takes many forms but I will focus on four: employment, insurance(health & life), housing and accessibility.

At this time when an individual in NH becomes disabled they can be fired from their job if they are physically unable to do it; no accomodations of any kind are required of the employer by law. In many cases disabled people are able to continue working with minimum modifications. Unfortunately, most employers will not consider these simple and easy options. I know a woman who was required to climb a spiral staircase to get to her desk when her legs could hardly support her. It would have been quite simple to move her down to the first floor so that she could continue working her desk job. I know a man who used to work in a hospital in which he was required to be on his feet for eight to ten hours a day; he began falling. When he asked to be reassigned to more sedentary work he was told that either he accept forced retirement or work in the laundry! People with Multiple Sclerosis cannot tolerate heat or humidity! It is a waste of these people's potential to completely shut them out of the workplace and creates great economic hardship for them and their families. One woman I know applied for Social Security Disability after being fired from her job; she waited approximately six months for a decision and was denied, in the meantime no money was coming in at all. She has the right to appeal but this process often takes as long as a year.

Another major problem disabled people face is an inability to obtain health or life insurance. Insurance companies refuse to sell them policies under the pre-existing clause condition. I know a man that wanted to buy life insurance for his family of six but could not find one carrier in the whole state of New Hampshire to offer him a policy. Multiple Sclerosis is not a fatal disease nor are many other disabilities! An even uglier form of discrimination is insurance companies that cancel existing health insurance policies when they find out an individual is disabled. I know a woman who worked for a company for ten years before she was diagnosed as having Multiple Sclerosis; not only was she fired from her job but both her short term and long term disability was cancelled. After paying for this insurance for ten years she is denied her right to use it now that she needs it. Disabled people need health insurance; there medical costs are high and they are willing to pay high premiums for it.

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In New Hampshire we have a great need for more handicapped housing. I know of one family in New Hampshire that searched all summer for a handicapped-accessible apartment for their family of four. They were finally forced to move into a one room motel efficiency apartment while the local housing authority continued looking. The State of New Hampshire does not have a central office that maintains listings of available handicapped units; often when a handicapped unit finally becomes available it gets rented to a non-handicapped person. As of October 1st this family still has not founnd an apartment. Also the percentage of handicapped units in existing or under construction housing complexes is very low or non-existent. If a disabled individual cannot afford their own home and have it adapted to their needs, they are often trapped inside their home; this creates much loneliness and depression and can be very dangerous. I know a woman who lives in a third floor apartment building which had a fire when her husband was away at work; if the neighbors had not been aware of the fact that she was home alone; she could have died.

In conclusion I would like to address the problems of accessibility. Most of our public buildings in New Hampshire are older and do not provide access. I know of a man who went to City Hall to vote in one of our major cities and could not get in the building. He was forced to vote outside in his wheelchair in the middle of the winter! I know a public school teacher who every morning has to drag herself up the stairs on her behind to get to the top of the landing and her wheelchair! Disabled people depend greatly on provided handicapped parking spaces but every day I see spaces filled by cars without handicap plates or stickers. If a disabled person can't park their car in an accessible spot they can't get out of there car. Parking tickets do not seem to work; perhaps towing the cars would! As for going out for dinner, going grocery shopping or going to a movie, these simple pleasures are denied the disabled person. At this time there is no legislation in New Hampshire that requires businesses to provide access to the disabled.

We need the Disabilities Act of 1988. The fact of the matter is that any one of us could become disabled at anytime due to disease, illness or injury. The passage of the Disabilities Act of 1988 would protect all of our rights and allow our disabled citizens to continue participating in our society.

Thank you for your time and consideration.

Sincerely,

Rima Sutton
Chapter Services Coordinator

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Mr. OWENS. Thank you, Ms. Marshall. I am sorry. Ms. Sutton.

Ms. MARSHALL. I am Ms. Marshall.

Mr. OWENS. Ms. Marshall is next. Cathie Marshall.

STATEMENT OF CATHIE MARSHALL, NASHUA, NH

Ms. MARSHALL. Right. Many people assume or believe that handicapped people are content to live their lives at the expense of the Government, happy to have few responsibilities, lucky not to have to work for a living. This is a fallacy. Most of us are not content, not happy, and definitely not lucky. Most of us want and need something constructive to do, the satisfaction of financial independence, to live as normally as possible. Unfortunately, it is not our bodies that prevent us from achieving our goals, but rather the inadequacy of society and the governmental agencies that fail to make it possible for thousands of handicapped people to become taxpayers instead of tax takers, to achieve our maximum potential.

Most handicapped people who want an education or a job must deal with vocational rehabilitation. To start with, you have to have a physical to determine if you are eligible. If you are, your problems really start because you must be in touch with your assigned counselor. Fully, 75 percent of the time, he or she is in conference, unavailable, on another line, out sick or on vacation.

When you leave a message, you very rarely get your call returned. When you do get in touch, then you have to deal with being told what you can and cannot do, what kind of work you are capable of, what kind of courses you may take in college, what kind of medical equipment is best for you—usually the cheapest and most ineffective—and how little money is available.

If you try to tell your counselor what your needs are, what you can do and what you would like to accomplish, you are told what is best for you, to be a realist, and then you are ignored.

In July 1982, my counselor told me that I was unsalvageable and that I would no longer receive the funds to finish my college education, nor would I receive any help to go to work. Finally, after 18 months of arguing and a final threat of court action, I was put into a work assessment program that led to a real job.

My work record was excellent, better than a nonhandicapped worker and had it not been for an accident that redisabled me, I would still be with the company.

From May 1987 until June 3, 1988 when I testified at a hearing held by Justin Dart in Concord, NH, my counselor was again talking about my multiple medical problems as though I was not worth the investment of time and money. All my requests for help are consistently delayed with excuses and almost all were denied.

Suddenly, after the hearing, all my requests have been approved. My wheelchair was repaired, physical therapy granted and a new wheelchair cushion was immediately approved. I am now in the process of trying to regain my college funding.

Another benefit of my testimony was an invitation to become a member of the Consumer Advisory Committee. I accepted and have become an active member. Good for me. But what of the hundreds of clients who either cannot or will not advocate for themselves? What happens to these clients who have problems with vocational rehabilitation? What if like me they are not made aware of the client assistance program or are unable to understand how it works? Anyone who is successful in dealing with vocational rehabilitation, myself included, should be canonized. [Laughter.]

What, if through an accident or an illness, you are unlucky enough to become redisabled? If a person thinks he had problems while on Government aid, they are nothing compared to what you are now facing. All those lovely benefits you were so careful to get to ensure your financial security now create a hell on Earth.

Six months after losing your job, your medical insurance is no longer covered by your company. You must now pay for it out of your own pocket. And because you are now on an individual plan, your coverage is seriously inadequate. Now, most likely, you will have no coverage for blood tests, x rays, CT scans, MRI's, medication, physical therapy, emergency room care, doctor's fees, dental fees, psychiatric care, medical equipment and repairs, and in-home care. This inadequate insurance will cost you in the area of $550 every 3 months. If you think you are lucky to be getting long-term disability through your company, think again. You only get 60 percent of your income with no cost-of-living increases. It is hardly enough to make ends meet. And when you add on the cost of the medical expenses not covered by your inadequate insurance, it could leave you with less to live on than someone on Government aid.

However, because your income is higher than qualifying income for assistance, door after door will be shut in your face.

This brings me to Medicaid and food stamps. You can apply and probably get accepted for Medicaid on a spend down program. This means that you have to cough up the difference between your income and the income of someone on Government aid every 6 months before Medicaid kicks in. In my case, I have to come up with $1,324 every 6 months. And food stamps? Well, if your medical bills were incurred before your application, they do not qualify as a deduction from your income. This is also true of Medicaid. Although I pay out fully half of my income for existing medical bills, my application for food stamps has been denied three times. My income is considered too high. And, yet, most months, I have only $30 left for food. Sometimes less.

Recently, I have been turned down for city welfare, food stamps, Social Security, Medicaid, SSI, and necessary medical care because I cannot pay up front. I believe that there is a solution to these problems. First, there should be a more efficient way of dealing with voc rehab so that months are not wasted trying to get approval for one thing. Counselors should be more objective and allow that handicapped people generally know more about what they are capable of and what their needs and goals are. Also, counselors should verbally tell clients and/or guardians of the client assistance program and any other recourse the client may have in case of problems. And, further, should be sure that the client and/or guardian fully understands. Too often, counselors become bureaucratized and it is the client who suffers.

Most of all: No counselor has the right to say someone is unsalvageable and is not worth any effort or money to help that person achieve his or her maximum potential.

[The prepared statement of Catherine E. Marshall follows:]

October 24, 1988

Regional Congressional Hearing
Boston, Massachussetts

Many people assume or believe that handicapped people are content to live their lives at the expense of the government; happy to have few responsibilities; lucky not to have to work for a living. This is a fallacy ... most of us are NOT content; NOT happy; and definitely NOT lucky. Most of us want and need something constructive to do, the satisfaction of financial independence, to live as normally as possible.

Unfortunately, it is not our bodies that prevent us from achieving our goals, but rather, the inadequacy of society and the governmental agencies that fail to make it possible for thousands of handicapped people to become taxpayers instead of taxtakers, to achieve our maximum potential.

Most handicapped people who want an education or a job must deal with Vocational Rehabilitation. To start with, you have to have a physical to determine if you are eligible. If you are, your problems really start because you must be in touch with your assigned counselor. Fully 75% of the time he or she is in conference; unavailable; on another line; out sick or on vacation. When you leave a message you very rarely get your call returned. When you DO get in touch, then you have to deal with being told what you can and cannot do; what kind of work you are capable of; what kind of courses you may take in college; what kind of medical equipment is best for you (usually the cheapest and most ineffective) and how little money is available. If you try to tell your counselor what your needs are, what you can do and what you'd like to accomplish, you're told what's best for you, to be realistic and then are ignored.

In July of 1982, my counselor told me that I was "unsalvageable" and that I would no longer receive the funds to finish my college education nor would I receive any help to go to work. Finally, after 18 months of arguing and a final threat of court action, I was put into a work assessment program that led to a real job.

My work record was excellent, better than the non-handicapped workers and had it not been for an accident that re-disabled me, I would still be with the company.

From May of 1987 until June 3, 1988 when I testified at a hearing held by Justin Dart in Concord, N.H., my counselor was again talking about my multiple medical problems as though I weren't worth the investment of time and money. All my requests for help were consistently delayed with excuses and almost all were denied.

Suddenly, after the hearing, all my requests have been approved. My wheelchair was repaired, physical therapy was granted and a new wheelchair cushion was immediately approved. I'm now in the process of trying to regain my college funding.

Another benefit of my testimony was an invitation to become a member of the Consumer Advisory Committee. I accepted and have become an active member.

Good for me! But what of the hundreds of clients who either cannot or will not advocate for themselves? What happens to these clients who have problems with Vocational Rehabilitation? What if, like me, they are not made aware of the Client Assistance Program or are unable to understand how it works?

Anyone who is successful in dealing with Vocational Rehabilitation, myself included, should be canonized!

What if through an accident or an illness you are unlucky enough to become re-disabled? If a person thinks he had problems while on government aid, they are nothing compared to what you are now facing! All those lovely benefits you were so careful to get to ensure your financial security now create a hell on earth! Six months after losing your job, your medical insurance is no longer covered by your company. You must now pay for it out of your own pocket and because you are now on an individual plan, your coverage is seriously inadequate. Now most likely, you will have no coverage for blood tests; x-rays; CAT scans; MRI's; medication; physical therapy; emergency room care; doctor's fees; dental fees; psychiatric care; medical equipment and repairs and in-home care. This inadequate insurance will cost you in the area of $550.00 every three months.

If you think you're lucky to be getting long-term disability through your company, think again! You'll only get 60% of your income with NO cost of living increases. It is hardly enough to make ends meet and when you add on the cost of the medical expenses not covered by your inadequate insurance, it could leave you with less to live on than someone on government aid. However, because your income is higher than the qualifying income for assistance, door after door will be shut in your face.

This brings me to Medicaid and Food Stamps. You can apply and probably get accepted for Medicaid on a spend-down program. This means that you have to cough up the difference between your income and the income of someone on government aid every 6 months before Medicaid kicks in. In my case, I have to come up with $1,324.00 every 6 months.

And Food Stamps-well, if your medical bills were incurred before your application, they don't qualify as a deduction from your income. This is also true of Medicaid. Though I pay out fully half of my income on existing medical bills, my application for Food Stamps has been denied three times. My income is considered too high and yet most months I have only $30.00 left for food. Sometimes less.

Recently I've been turned down for City Welfare; Food Stamps; Social Security; Medicare; SSI and necessary medical care because I can't pay up front.

I believe that there is a solution to these problems. 1st, there should be a more efficient way of dealing with Vocational Rehabilitation so that months aren't wasted trying to get approval for one thing. Counselors should be more objective and allow that handicapped people generally know more about what they are capable of and what their needs and goals are. Also, counselors should verbally tell clients and/or guardians of the Client Assistance Program and any other recourse the client may have in case of problems and further, should be sure that the client and/or guardian fully understands. Too often, counselors become bureaucratized and it is the client who suffers. Most of all, NO counselor has the right to say someone is unsalvageable and isn't worth any effort or money to help that person achieve his or her maximum potential.

2nd, I believe that the government should guarantee medical care for the handicapped and disabled. You may say that this would be too expensive, but I say that in the end the government would about break even. Many thousands of handicapped people do not work for the simple fact that they cannot afford to lose their medical coverage. Were this medical coverage guaranteed, they would go to work and no longer need to be financially subsidized and they would also be paying taxes. They would in effect be putting money INTO the government rather than taking money OUT of the government.

3rd, I believe that all money spent out on medical bills should be deductible from a person's income when he or she applies for Medicaid and for Food Stamps. No matter when the bills were incurred, if one is presently paying out on them, it leaves that much less to live on.

No person who needs it should be denied medical care. They should not have to worry because whatever medical insurance they may have been able to salvage is inadequate and fails to meet their needs. They should also be able to put food on their table.

Three weeks ago I fractured my arm in a 10 K road race. Sure, I ran the race for a personal reason ... I need to prove to myself and others that I am NOT an invalid. But the MAIN reason was because I needed the $100.00 awarded to the winner. I NEEDED FOOD ON MY TABLE! I won the $100.00 and in the process incurred a doctor and hospital bill of $300.00.

Does this qualify me for in-home care now that I need help to shower, dress, do dishes and housework? Certainly not! I spent a full week on the phone trying to get help and heard over and over "You haven't met your Medicaid spend-down." "I know your situation is desperate but your income is too high." "We cannot help you." And finally, "Sorry, but our funds have been cut and we have no one free to help you." My frustration has hit an all-time high!

We are talking about human beings, human lives! Lives that many handicapped people take in suicide because they can no longer cope with the Catch-22's, the cracks they fall through; the emotional rejection and the negative responses they receive every day from society and government.

But then, why should we expect society to help when the government is truly negligent in helping the handicapped and disabled? The government makes a SHOW of helping us but when it comes down to actually developing and directing good, workable programs, it becomes a "bureaucratic ostrich"!

Catherine C. Marshall

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Mr. **Owens**. Thank you, Ms. Marshall. I did not hear the bell ring, but I think we are out of time. You did very well in the time allotted. You went from being unsalvageable to being canonized.

Ms. **Marshall**. Also, the Government is a bureaucratic ostrich. That was my next line.

Mr. **Owens**. We will be happy to have your written testimony.

Ms. Williams? Laurie Williams.

STATEMENT OF LAURIE WILLIAMS, MANCHESTER, NH

Ms. **Williams**. My name is Laurie Williams and I live in Manchester, NH. I have muscular dystrophy and for the past 4 years I have used a wheelchair for my mobility.

New Hampshire is a bitter cold State with majestic mountain ranges and serene lakes. There are many attractions that I would like to see and take part in. But I cannot because they are not accessible. I cannot take a bus to visit my mother who lives 60 miles away because the buses are not equipped with lifts.

I have been to several restaurants that do not have accessible front doors and/or restrooms. I have to rely on someone else to get me books from the public library because it is not completely accessible. I am tired of this kind of discrimination. I want the same opportunities as everyone else in this country. Thank you.

Mr. **Owens**. Thank you, Ms. Williams. I want to thank all three of you. We are going to take a 10-minute break at this point.

[Whereupon, a brief recess was taken.]

Mr. **Owens**. Would everyone please come to order?

Our next panel consists of Lindsy White from New Hampshire, Lisa Lyons and Eleanor Smith, all from New Hampshire. Are we missing someone? Marilyn Levin?

Ms. White?

Ms. **Levin**. Marilyn Levin. Ms. Lindsy White is not here, apparently.

Mr. **Owens**. Oh, Lindsy White will not be here?

Ms. **Levin**. That is my understanding.

Mr. **Owens**. Lisa Lyons.

STATEMENT OF LISA LYONS

Ms. **Lyons**. Discrimination has been brought to my attention by my fellow disabled colleagues. To begin with, many individuals are not given the proper help in the division of vocational rehabilitation to assist them in getting them meaningful employment and the training which they must receive to achieve their goals. Therefore, there are a number of disabled people who are not working in their chosen field. They cannot get into the program which is mandated to assist them in fulfilling their goals.

My situation was somewhat different in that the Division of Vocational Rehabilitation did not come through with the promise that they had committed to me for my master's degree program. My parents were able to help me out in fulfilling my goal.

[Portions of Ms. Lyons' testimony were incomprehensible.]

I am currently completing the master's degree program in counseling psychotherapy. Prior to this I had contacted, traveled to 16 regional units across the country. Ten have responded favorably concerning the feasibility of my employment.

Several of the individuals whom I have dealt with have a difficult—wish they could find jobs in their chosen field. However, they are afraid of losing their benefits they need to live. Some of the most mentally disabled people's cost of living can be $400 a day. So, therefore, no one can commit a salary high enough to employ them, once these benefits have been cut off.

For the past 10 years, I have resided in nursing homes. When I first was admitted to the nursing home, the nurse who admitted me—enabled me to be picked up Saturday and returned to the nursing home Sunday night. Since the nursing home—the State ruled that I could be thus covered since I was in residence full time, 24-hour period.

Three years ago, the Federal statutes concerning—making it necessary for the individual to be in the nursing home at 12 o'clock. I graduated from a Catholic college 15 years ago where we had worse stringent curfews.

Furthermore, it is beyond my understanding why the nursing homes are allowed to take the private rate of $69 a day, when the State pays $42.50 for a person residing in a nursing home.

Many letters to Congressmen and President Reagan have been written by myself and my physicians. To date, no exception has been made to the rule has been restored.

It appears ludicrous the Constitution which guarantees the person's pursuit of happiness would punish a family who was willing to take his or her loved ones home for an occasional overnight.

In concluding, the disabled now number 35 million nationally. These individuals are entitled to live lives with respect and dignity and to maximize their abilities without having to fight for their basic rights.

To quote a renown psychologist who put forth of the theory—to achieve what is impossible, it can be possible to be as much as we can be in the dream of being more. Thank you.

[The prepared statement of Elizabeth H. Lyons follows:]

Testimony Submitted to the Congressional Task Force on the Discrimination of the Disabled; Hotel Lafayette Place, Boston, Massachusetts, October 24th, 1988.

There are several areas of discrimination which have been brought to my attention by my fellow disabled colleagues. To begin with many individuals are not receiving the proper help from the Division of Vocational Rehabilitation to assist them in gaining meaningful employment and the training which they must receive to achieve their goals. Therefore, there are a number of disabled people who would and should be working, who cannot achieve their occupational goals because they are denied the services of the program which is mandated to assist them in fulfilling their goals.

My situation was somewhat different in that when the Division of Vocational Rehabilitation did not come through with the funds they had committed to me for my Masters Degree program, my parents were able to help out so that I was able to pursue my goal to become a counselor. I am currently completing the Masters Degree program in Counseling and Psychotherapy at Notre Dame College in Manchester, N.H. Prior to this I contacted twelve of the sixteen regional spinal cord units specified by the National Institutes of Health and Research concerning the feasibility of my obtaining a job upon the completion of my Masters Degree. Ten of those responded and all did so in a favorable manner so the feasibility of my employment could not be challenged.

Several of the individuals whom I have dealt with as a Peer Support Facilitator for the Granite State Independent Living Foundation would and could find jobs in their chosen fields, however, they cannot work due to the fact that they would lose the services which they are receiving, that enables them to live in the community. Clearly, there need to be programs set up which would encourage disabled individuals to join the work force once they have been trained in a given field. These individuals should not fear losing medical coverage, low cost housing, personal care attendant services which are just some of the necessi for a disabled person. Some of the estimates for the cost of supporting a person with a closed head injury go as high as $400.00 a day. No person can command that high a salary, so clearly the persons benefits cannot be cut off when he or she has entered the work force.

For the past ten years I have resided in nursing homes. When I first was admitted to a nursing home, my neurosurjeon made a deal with the State which enabled me to be picked up at noontime on Saturday and returned Sunday evening. Since the nursing home day goes from midnight to midnight, the State ruled that I would thus be covered since I was in residence part of each twenty-four hour period. Three years ago the Federal Statute concerning nursing home

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attendance was changed, making it necessary for an individual to be in the nursing home at twelve o'clock midnight each night.
I graduated from a Catholic College fifteen years ago where we had far less stringent curfews. Just because one resides, through necessity, in a nursing home should not mean that he or she must be in by midnight or should be penalized by being charged the private rate of $69.00 when not there when the State pays $42.50 a day for a person residing in a nursing home.

Many letters to congressmen and even to President Reagan have been written by myself and my physicians. To date no exception to the rule has been restored. It seems ludicrous that a constitution which guarantees the persons pursuit of happiness would punish a family who is willing to take their loved one home but who are not able to provide constant care for him or her by refusing to allow the family the right to take the individual home overnight when the family is willing to do so. The ramifications of this law struck me this year when I was on my pilgrimage to St. Anne de Beaupre with the Ahearn Memorial Pilgrimage from Springfield, Mass.
They have traditionally brought some severely disabled patients from Goldwater State Hospital in New York along on the pilgrimage. This year, however, the hospital did not allow these patients to go because they would have been away more than the ten days allowed by the Federal Statute. One could question, does'nt the Constitution guarantee one freedom of religion?

In conclusion, the disabled now number thirty-five million nationally. These individuals are entitled to live lives with respect and dignity and to maximize their abilities without having to fight for their basic rights. Abraham Maslow, renowned psychologist, puts forth the theory of self-actualization which can be summized by "To achieve all that is possible, we must attempt the impossible, to be as much as we can be, we must dream of being more."

Respectfully submitted,

Elisabeth H. Lyons

Mr. **Owens**. Thank you, Ms. Lyons.
Ms. Smith.

STATEMENT OF ELEANOR SMITH

Ms. **Smith**. My name is Eleanor Smith. I reside in a nursing home right now. I am an active-minded person though physically disabled. I would have preferred to be able to live outside the nursing-home in order that I might have independence to arrange my living style to meet many basic rights not currently available through a nursing home residence. These basic needs and rights includes as follows: The right to maintain the privacy of telephone calls and mail and correspondence. The right to have some input into my general care and therapy. The right for a quiet surrounding with those facilities are not accessible to me that would enable me to do the personal tasks I would wish to do.

Mr. **Owens**. Thank you, Ms. Smith.

Ms. Levin is the coordinator of death services, supervisor of occupational therapy, department of mental health. Ms. Levin.

STATEMENT OF MARILYN LEVIN, SUPERVISOR, OCCUPATIONAL THERAPY, DEPARTMENT OF MENTAL HEALTH, MASSACHUSETTS

Ms. **Levin**. Good afternoon. My name is Marilyn Levin and I am very pleased to be here to testify today on behalf of Edward M. Murphy, Commissioner of the Massachusetts Department of Mental Health, a State agency which serves over 100,000 individuals with mental illness in the Commonwealth.

The millions of people across our Nation who are stricken with mental illness face numerous instances of discrimination and oppression on a daily basis. They and their families and the professionals who work with them are stigmatized for an illness they did not cause nor control. The dictionary defines stigma archaically as a mark burned into the skin of a criminal or slave. And, today, a mark or token of infamy, disgrace, or reproach.

Throughout history, people with mental illness have been viewed as weak-willed, violent, morally defective, and less than human. People with mental disorders have been herded into jail-like asylums along with the poor and criminals. Mental patients have been isolated, chained and beaten, and abused. At one time, tickets were sold to the public to watch the, quote, lunatics, as entertainment, adding to the degradation and brutality. Is it any wonder, then, that the legacy today are views of the mentally ill as dangerous and criminal, objects of ridicule and blame, people to be shunned and abused.

The mentally ill are among the two largest disability groups in America. Yet, they are the least known. And they receive the least public support. Research into the causes and treatment for mental illness is minuscule. Major forms of mental illness such as schizophrenia and manic depressive illness are biochemically based diseases of the brain. Schizophrenia strikes approximately 1 out of every 100 Americans. There are over 2 million schizophrenic individuals in the United States.

Contrary to popular myths, persons who are mentally ill are not criminals. In fact, the mentally ill are far more likely to be victims of violent crime than perpetrators of such crimes. Given a supportive environment and appropriate medical treatment, mentally ill persons can live and work successfully in our community.

The stigma of mental illness stemming from public ignorance, prejudice, and superstition adds to the already terrible burden and anguish imposed by the illness. Our clients face exclusion from jobs, housing, and the basic rights that all citizens should enjoy.

Due to discrimination and lack of resources, many of our mentally ill citizens are among the growing numbers of homeless. The Massachusetts Department of Mental Health has initiated a major campaign to combat stigma in the Commonwealth. We have joined with newly empowered consumers and family methods. Our methods are educational and consciousness raising. The proposed legislation will provide the legal basis to eliminate discrimination due to handicap in many important areas of public life.

The mental health community of consumers, providers, advocates, and professionals will continue to work to eliminate attitudinal barriers. The proposed legislation will mandate behavioral change. Both efforts are necessary and complementary.

The Department of Mental Health is in full and unequivocal support of the proposed national disabilities rights legislation. Passage will bring our Nation forward in expanding rights to the least represented and most stigmatized in our society. Thank you.

Mr. OWENS. Thank you.

I want to thank all the panelists. Thank you very much for your testimony.

The next panel consists of Shelly Lemilim, Joe Malle, and Barbara Waters. You may begin.

STATEMENT OF BARBARA WATERS, MASSACHUSETTS

Ms. WATERS. I started attending a Massachusetts State college part time in the fall of 1985. Between then and the spring of 1987, I had many epileptic seizures on campus with no repercussions. Suddenly, in the spring of 1987, with the advent of an administrative change at the college, I was asked to leave the college due to the seizures.

The fact that I had contributed a lot of time to the college programs and had a high grade point average and was a committed student did not matter. Neither did the fact that I was the leadership behind the college's first Handicap Awareness Day. I was told that I was a liability risk. I was also informed by the administration that I was disruption, even though my professors and classmates did not feel that way.

Mr. OWENS. Excuse me 1 minute, Ms. Waters.

Could we please clear the door? The noise level is too high. We cannot hear. Can you please close the door?

I am sorry, Ms. Waters. Would you continue?

Ms. WATERS. It was only the threat of legal action by the Disability Law Center of Boston that caused the college to back down. I was able to stay in the school and, hopefully, will graduate next year, only due to the intervention of the lawyers. But the fact that this occurred in the middle of the semester did affect my studies that semester and that is all I have to say. Thank you.

Mr. Owens. Did you mention the name of the college?

Ms. Waters. Excuse me?

Mr. Owens. Did you mention the name of the college?

Ms. Waters. No, I did not. Would you like me to? It is Salem State College.

Mr. Owens. Thank you.

Mr. Mallen.

STATEMENT OF JOSEPH MALLEN, PORTSMOUTH, NH

Mr. Mallen. My name is Joseph Mallen and I live in Portsmouth, NH. Some of the problems facing handicapped citizens today are as follows: There is not enough of handicap accessible transportation. A disabled person cannot have a job if he cannot get transportation to get there. Also, narrow aisles in stores make it difficult, if not impossible to shop. Public restrooms that are not always stocked with paper towels pose a problem because it means that a person has to use the air blower to wipe their hands and they are almost impossible to use, especially for people who use crutches. Buildings that do not have ramps pose a very frustrating situation for people in wheelchairs who want to get into a building but cannot because of the lack of a ramp.

These are just some of the problems facing handicapped citizens today. That is why I urge you to support H.R. 49, the Americans With Disabilities Act of 1988. It will help all citizens with disabilities live more independent and productive lives.

Mr. Owens. Thank you, Mr. Mallen.

Shelly Lemelim.

STATEMENT OF SHELLY LEMELIN, DOVER, NEW HAMPSHIRE

Ms. Lemelim. My name is Shelly Lemelim. Social Security is on the mind of most of the disabled population. I personally have experienced many situations in which buildings were not accessible. When I moved into an apartment on my own nearly 2 years ago, at the main entrance at the front of the building, there were two handicap places, parking spaces, one on each side of the fire lane. One would think that that is a good place for a curb cut for access to the sidewalk from the street. It would have been nearby so that people in wheelchairs, walkers, or even public elderly people could easily reach it.

Incidentally, the apartment complex was built to accommodate the elderly and the handicapped. And there is a dialysis center on the ground floor. The only access to the sidewalk is to the extreme right of the building, 100 feet away from the main entrance. It would not only create a dangerous situation but also mean it was very inconvenient. But with the help of my dad and the cooperation of a very good friend, who was also handicapped, I was interviewed by a reporter for the local newspaper. An article was published explaining to the public how it is difficult to get around the sidewalks, the streets are not made accessible for the handicapped and the elderly. It was sort of hard at first to go through this process, but it was worth the while. This past summer, they answered my request and many others and they got a curb cut put into place.

[The prepared statement of Shelly Lemelim follows:]

GOOD AFTERNOON EVERYONE' MY NAME IS SHELLIE LEMELIN'

PUBLIC ACCESSABILITY IS STILL ON THE MINDS OF MOST OF THE DISABLED POPULATION. I, PERSONALLY, HAVE EXPERIENCED MANY SITUATIONS IN WHICH BUILDINGS WERE NOT ACCESSABLE.

ONE EXAMPLE WAS WHEN I MOVED INTO AN APARTMENT COMPLEX, ON MY OWN, NEARLY TWO YEARS AGO. AT THE MAIN ENTRANCE, IN FRONT OF THE BUILDING, THERE ARE TWO HANDICAPPED PARKING SPACES, ONE ON EACH SIDE OF THE FIRE LANE. ONE WOULD THINK THAT THE LOGICAL PLACE FOR A CURB CUT OR ACCESS TO THE SIDEWALK FROM THE STREET WOULD HAVE BEEN NEARBY, SO THAT PEOPLE IN WHEELCHAIRS, WALKERS, OR ELDERLY PEOPLE COULD EASILY GET ONTO THE SIDEWALK. INCIDENTLY, THIS APARTMENT COMPLEX WAS BUILT TO ACCOMMODATE THE HANDICAPPED AND ELDERLY. ALSO, THERE IS A DIALYSIS CENTER ON THE GROUND FLOOR OF THIS BUILDING.

FOR WHATEVER REASON, THE ONLY ACCESS TO THE SIDEWALK, WAS AT THE EXTREME RIGHT OF THE BUILDING, ABOUT 100 FEET FROM THE MAIN ENTRANCE, NEAR THE ENTRANCE TO THE PARKING GARAGE, WHICH NOT ONLY CREATED A HAZARDOUS SITUATION, BUT ALSO MADE IT VERY INCONVENIENT.

WITH HELP FROM MY DAD AND THE COOPERATION OF A GOOD FRIEND WHO ALSO HAS A HANDICAPPED DAUGHTER, I WAS INTERVIEWED BY A REPORTER FROM THE LOCAL NEWSPAPER, FOSTER'S DAILY DEMOCRAT, AN AN ARTICLE WAS PUBLISHED, EXPLAINING TO THE PUBLIC, HOW DIFFICULT IT IS TO GET AROUND IF SIDEWALKS AND STREETS ARE NOT MADE ACCESSABLE FOR THE HANDICAPPED AND ELDERLY.

I MUST ADMIT THAT THE PROCESS WAS NOT THE KIND OF THING THAT I LIKE TO DO, BUT IF IT MADE PEOPLE AWARE OF A PROBLEM AND THAT THE RESULTS ARE BENEFICIAL TO THE HANDICAPPED AND ELDERLY, IT MAKES IT WORTHWHILE.

WORTHWHILE IT WAS, THIS PAST SUMMER, WHEN THE CITY OF DOVER, NH ANSWERED MY REQUEST AND THAT OF MANY OTHERS. WHY IS IT THOUGH, THAT THE DISABLED AND HANDICAPPED, NEARLY HAVE TO BEG, IN ORDER TO BE HEARD.

ACCESSABILITY TO PUBLIC BUILDINGS -

THOUGHT SHOULD BE GIVEN IN REGARDS TO ENTRANCES AND EXITS, AS WELL AS DOORWAYS TO INSIDE ROOMS, BATHROOMS, ETC.

THOUGHT SHOULD BE GIVEN IN REGARDS TO THE CLUTTERING OF FLOOR SPACE AND AISLES IN BOOKSTORES, GROCERY STORES, CLOTHING STORES, ETC.

PUBLIC PLACES SHOULD BE MADE EASY AND CONVENIENT PLACES TO GO, THEREBY CREATING AN ATMOSPHERE THAT WOULD MAKE THE DISABLED, HANDICAPPED AND ELDERLY, HAPPY TO RETURN TO, IF THEY WISH.

AS A LAST COMMENT, I WOULD LIKE TO SEE THE FUTURE BUILDING OF PUBLIC PLACES, DONE SO WITH MORE AWARENESS AND CONSIDERATION OF PEOPLE OF THE COMMUNITY AND OTHERS WHO HAVE DISABILITIES.

BUILDERS AND PEOPLE ON PLANNING BOARDS SHOULD INVITE SOMEONE WHO IS DISABLED, HANDICAPPED AND ELDERLY AND QUESTION THEM CONCERNING THEIR NEEDS IN REGARDS TO ACCESS TO AND FROM THE BUILDING, AS WELL AS INSIDE. INVITATIONS CAN BE MADE PUBLICLY, EITHER BY NEWSPAPER ADS, RADIO OR TELEVISION.

IF AT ALL POSSIBLE, I WOULD LIKE TO SEE A PROCESS ESTABLISHED THAT WOULD MAKE IT PART OF THE REGULAR PROCESS TO INCLUDE THE DISABLED IN NEW CONSTRUCTION OF PUBLIC BUILDINGS, HOUSING, ETC. WITHOUT COMMUNICATION FROM BOTH SIDES, IT IS DIFFICULT TO KNOW THE NEEDS OF THE OTHER.

THANK YOU FOR GIVING ME THE OPPORTUNITY TO BE HEARD.

Mr. **Owens**. Thank you. Thank you all for testifying. The next panel consists of Stephen Cohen, Sandy Gorski, Neil Eichorn.

Mr. Cohen is not here, so we will take Lynda Hoffman.

Ms. Hoffman, would you like to begin?

STATEMENT OF LYNDA HOFFMAN

Ms. **Hoffman**. Yes, thank you. To be honest, I am very tired of fighting for all the services and equipment that I need. And it gets harder and harder every year. The three areas I am going to talk about is employment, housing, and transportation and, if time, the present situation employment.

My first job was as a caseworker in the Public Welfare Department in Massachusetts. I was patronized and prevented from handling any difficult cases of consumers because my supervisors did not want to upset me. After all, I am—I was a social worker.

My next job was Social Security. That was even more discriminating. And after my first 700-hour position under the authority, I was terminated. And even personnel tried to help me out. But the regional commission——

Mr. **Owens**. You were terminated from Social Security, you say?

Ms. **Hoffman**. Excuse me?

Mr. **Owens**. You were terminated from Social Security?

Ms. **Hoffman**. Yes. And the regional commissioner told personnel, "Keep your fingers out of this one." I went to my Congressman and he got my job back. And they asked me to be a service rep at the teleservice center. They harassed me about my slowness, about my legibility—I had been only writing with my left hand for a few years—and about not coming up with my own reasonable accommodations. And, finally, I was prevented from upward mobility and lateral transfers and was even asked to come to two offices. That is when I decided to become an employment specialist for people with severe physical disabilities.

And housing? Are you aware that in elderly housing, where most handicap housing is placed, they do not allow children? My 15-year-old son, he was 15 at the time, had to be taken away—well, asked to live with relatives, I should say. To me, it felt like he was being taken away from me, especially as an adolescent. Who wants an adolescent? They are impossible to live with. And he was my responsibility. I may joke about some of these things.

Transportation. I used to be able to mainline service wherever I wanted to go, whenever I wanted to, however I wanted to go. I had no problems with jobs, et cetera. Now, I am stuck with the ride. And that is forcing me into a block of time: When I can go, when I can come. And I have to apply for transportation services a week ahead of time in order to get it. God forbid I want any changes. There is no such thing.

It was so bad this summer, I wanted to go into a long-term-care facility because I just could not handle it anymore. And then when Mass Rehab's funding was cut, both federally and State level, I knew employment was out of the picture because I needed services and I needed argumentative devices and equipment for a computer because I could no longer physically write. In my kind of profession, I need to be able to write. And there just is not any money.

And they do not have on-the-job transportation which would have provided me with a perfect job as home-service coordinator. But you have to be able to travel quite a distance, as far as Worcester. And, of course, the ride does not go there. That is it in a nutshell.

[The prepared statement of Lynda N. Hoffman follows:]

Prepared Statement of Lynda N. Hoffman

I have experinced discrimination due to my disability for most of my life. As a child and then in applying for college, I was denied appropriate education because "my disability would not allow me to complete the program". This was by the admissions interviewers in the mid 60's. I did eventually go to college, but not thanks to MRC.

My first job was as a caseworker for the Welfare Dept, where I was patronized, and prevented from holding difficult consumers because my supervisor did not want me upset at all. I was a social worker after all. My employment at Social Security was even more discriminating as even Personnel Department backed me up as much as they could. But the Regional Commissioner told them to stay out of it! Since this was only a 700 hour appointment under the U authority there was nothing I could do except go to Rep. Father Drinan who got my job back. I was asked to work as the Teleservice rep and I was excellent at the job. I was harassed about my slowness, about my legibility and about not coming up with my own reasonable accommodations. Finally I was prevented from getting lateral transfers or upward mobility. After three years, I left to get my Master's degree in Rehab Counseling to specialize in Job Preparation and Placement for the Physically Disabled.

It was at this point that my disability became progressive and within two years I was forced to turn to the Ride for transportation. I am a very spontaneous individual, especially when it comes to work and my social life. When there is extra time, I would like to go to work, etc. Transportation needs to be made a week ahead of time.

Housing is another story—Are you aware that childen are not able to live in elderly housing, but that is also where handicapped housing is? My son (15 at the time) could not live with me and had to live with relatives. Adolescence is a tough age and after all he is my responsibility.

Massachusetts Rehabilitation Commission has been providing hit-or-miss services to me for 25 years-career testing, job placement, follow-up, appropriate IWRP, misinformaiton on services and equipment. The latest took place one year ago when I was determined eligible, but did not have an IWRP for three months. I was considered unmotivated and not able to make a commitment. I was forced to keep looking for a volunter position to justify the expenditure of funds on computer training. She was not too thrilled with my choice, and again dragged her feet some more until my CAP rep and/or an official at the Administrative Office called and demanded answers. We should have choices between Part A and VR. I also dread the future because the cut backs in funding is going to prevent my getting computer equipment and supportive services. I also lost the chance for a job because MRC does not pay for on-the-job transportation.

Employment appears to be very far off.

Mr. **Owens**. Thank you, Ms. Hoffman.

Ms. Gorski.

STATEMENT OF SANDY GORSKI, PORTSMOUTH, NH

Ms. **Gorski**. Mr. Chairman, recently, a couple of months ago, I went down to Portsmouth city hall and I was not able to register to vote, because I went down there to vote because I became a Portsmouth resident. And I had to sit out on the lift and get registered. They could not let me in. And I thought that was pretty discriminating against me. And I would like them to fix that if possible. It was cold that morning and I had to sit out on the lift to register for voting. And that was not to my satisfaction at all. And I think this needs to be addressed totally because if city hall cannot make it accessible, they are discriminating against us, totally. Thank you.

Mr. Owens. Thank you, Ms. Gorski.
Mr. Eichorn.

STATEMENT OF NEIL EICHORN

Mr. Eichorn. Thank you, sir. You have heard many pieces of testimony today that is encouraging about the kinds of provisions that have been made. The discouraging side of the picture is that so often these assets that have been gained by the handicapped do not filter down to the lowest level at individual use. And that remains a tremendous discouragement. I will cite but one incident from my own experience in the deference of saving time.

I moved into a home that was not accessible because there were not, in New Hampshire, homes readily available that were accessible. I invested $9,256 in making that home an accessible place for me and for my family.

When that was reported to the board of selectmen, somehow that got translated into an increased cost of $11,450 with an exemption granted of $3,500 or a net cost of $7,950. That increased my taxes by about $250 a year.

Then we went through the magical mysteries of townwide reevaluation 1 year ago, in which our property which previously had been valued at a total of $29,323 including the $3,500 exemption was now determined to be worth $173,300, maintaining the same $3,500 exemption.

We went to the Board of Taxations for the State of New Hampshire and found in section 7237[a]:

> Exemptions for improvement to assist the physically handicapped, every owner of residential real estate upon which he resides and to which he has made improvements for the purpose of assisting a physically handicapped person who also resides on said real estate is each year entitled to an exemption from taxation upon such residential real estate determined by deducting the value of such improvements from the assessed value of the residential real estate before determining taxes upon said real estate.

When in the process of reevaluating the entire town, they factored the value six times from $29,343 to $173,300. We asked that they understand that the value should have been proportionate with the exemption. To which we were informed: "It is our prerogative as selectmen to read value any way we so see fit. We see fit to determine that in terms of net cost, not current price." Exception denied.

This is what happens to many incidences. It is a small incidence that represents perhaps a $500 tax bill a year, $45 a month. But for many of us, $45 a month determines whether we make the grade financially or do not. It is not an easy thing today to raise a family of four on $738 a month. That is what I am faced with.

When people cannot comprehend even clear-cut English the frustration level becomes great indeed for those of us trying to survive without being any further of a liability than we have to be. Thank you for hearing this and other concerns of this nature, sir.

Mr. Owens. You do not mean they could not comprehend—it was the law that they should deduct or exempt up to the same amount of the cost of the improvement to accommodate your condition. That was the law?

Mr. Eichorn. That is correct.

Mr. OWENS. So, they just violated the law.

Mr. EICHORN. That is right because they say:

> It is our position to be able to interpret that as we see fit. We see fit to determine it in terms of actual out-of-the-pocket expense and not value. That is what value means to us. And so long as we choose to interpret it that way unilaterally, our decision will be to deny you further exemption.

There is something wrong with law when it permits our officials to interpret it to their own guidelines and not to a standard set to everyone.

Mr. OWENS. Thank you very much, Mr. Eichorn and Ms. Gorski.

The next panel is Sara Bloor, Susan Downie, and Nancy Blackmoor. Are Ms. Bloor and Ms. Blackmoor here?

Ms. BLOOR. Yes.

Mr. OWENS. Please begin, Ms. Bloor.

STATEMENT OF SARA BLOOR

Ms. BLOOR. My name is Sara Bloor, and I have epilepsy. Two years ago, I applied for a job in Newton, MA, in a position as an educator in an urban setting. I had an interview over the telephone and then I was asked to fly down to Boston for a second interview in person. At that time, I spoke to the school director, a personnel committee, and the board director.

At that time, I revealed that I had epilepsy, though I knew at the time I legally did not have to share my health information with them. But I needed them to know that at the time I could not drive. At the time, I was also a resident of Wisconsin and Wisconsin had tougher driving laws than out here.

My seizures were under control and I thought that in the other jobs I had had, revealed my epilepsy and I have worked with children and that it would not be a problem. And it is something I do not mind disclosing.

At the end of the interview, they told me they would let me know about the job. They also told me that there was no problem with my epilepsy. And I had also explained to them how I have dealt with children with working with epilepsy.

Well, I never heard from the director when I was supposed to. So, I finally called them back and they said they needed a little bit longer to decide as another candidate had come into the picture. And I said, fine. And they would let me know on Saturday.

They called me that Saturday at the scheduled time and told me they could not hire me because of my seizures. At that time, I called the director back and asked what it was about my seizures he could not hire me for.

He did not know anything about epilepsy to begin with. He did not know what to do in case someone had a seizure. So, I reexplained what people do when you have seizures or that I was under control and that I was willing to let them talk to my doctors to find out and to make sure that I was seizure free. Which he did and he told me he still had not hired anyone for the position and that I had gotten excellent recommendations from my references and I was the person they wanted to hire.

He took it back to the board. Ten days later they decided again they could not hire me because I had epilepsy and that my seizures would get in the way, even though I had been seizure free.

At that point, I sued against this program for discrimination. I have won the case and it was settled in March, this past March after almost 2 years. It is still hard today to look for employment. I do hold jobs and my seizures are still under control. I do drive. I do what everyone else does. I just take precautions in what I do. But I always still have that fear that someone is still going to reject me against my seizures. Thank you.

[The prepared statement of Sara Bloor follows:]

Name: Sarah Bloor

FACTS

1. I applied for a position with AN After School program in Newton, Massachusetts on June 12, 1986.

2. On Tuesday, June 17th, 1986 I received a call from a woman [illegible] the board (5:30-6:00 p.m. - Eastern Time at Camp Eagle Island in Saranac Inn, New York). and told me she was on the personnel committee for the After School Program and that the director of the program, , would like to talk with me. I asked her to have him call me between 7 and 8 p.m. that night.

3. The Director called me and interviewed me on the phone for approximately 45 minutes. After the interview, The Director asked if I could come to Boston for a second interview.

4. I cleared the time with my camp director. — And I flew to Boston on Thursday June 19th, 1986. My interview was scheduled for 9:30 p.m. at the home of a board member in Newton, MA. Present at the meeting were the woman , the director of the program, , and the President of the Board. who made the initial call

5. It was during the second interview that my seizure disorder was brought up. I know legally I do not have to share health information, but I needed to let them know that I could not drive. I wanted to make sure that wasn't part of the job. We talked about my seizures and I was told they saw no problems with my seizures.

6. At the end of the interview they said they would let me know by Monday, June 23rd or June 24th, and if I had not heard from them by June 25th, I was to call and find out the decision. (As I was leaving on a family gathering in Spain on June 27th and the board did not want to wait until my return to make a decision, they wanted the position filled by a certain date and I wasn't going to be around on that date.)

7. I never heard from , the director, on June 23rd or the 24th; on Wednesday, June 25th I called the board member at her home but got no answer and I continued to call throughout the day, but only got her answering machine. (In the time span between my second interview, my plans changed. I no longer was going to Spain; I was returning to my home state, Wisconsin, to resolve medication problems with Dr. Salinsky in Madison, Wisconsin.) I could never reach the board member, so I left a message on her answering machine that I could be contacted at my Wisconsin number on June 26 in the evening.

Name: Sarah Bloor

8. Thursday night I called back to her house who was not yet home from the board meeting, but I was told she would call me as soon as she got in.

9. At approximately 10 p.m. the Director called me. He told me that the board had not come to a decision yet, and could I wait until Saturday, June 28, 1986 to receive an answer. We set a time that He would call me at 10:00 a.m. my time on Saturday. Before He and I hung up he said that he and the board were very, very interested in hiring and having me as an employee.

10. On Saturday, June 28, 1986 the Director called at the specified time. He told me that he had called Camp on Friday, June 27, 1986 looking for me, although he knew I was in Wisconsin. The director of the program talked to my director at the camp who said I had returned to Wisconsin because of my seizures, but I had plans to return to the Island during the course of the summer. The director of the program asked my director for a work reference, as well as about my seizures and how they were dealt with at the Island. After telling me he had called the camp and talked to my director he said we cannot offer you the position due to your seizures.

11. After that conversation with the director of the program I called my director at the camp on Saturday, June 28th and asked what was said in the phone conversation with the director of the program told me she gave me a good work reference, and she repeated her remarks to the director of the program as to how the camp has dealt with my epilepsy during the past two summers. my camp director told me she was told that I was the top contender for the job at Newton, MA.

12. Later on Saturday, the 28th, I called the director back and asked what was it exactly with my epilepsy that caused me not to be hired. I wanted to know for future employment. He and I talked for about 45 minutes about epilepsy. It is to my knowledge that He knew very little about the subject. During our talk I reexplained my seizure disorder. At the end of our talk he thanked me for calling back and talking about subject. He told me no one had been hired for the position yet. He also said that my camp director gave me a good work reference, and that I was the person they were going to give the job to. After our conversation he said he would talk to the board again and get back to me. This time he asked for two references as well as asked if he could talk to my doctors . . . I gave him the names of my references as well as my doctors.

13. The following are the references and doctors I gave:

- A former assistant camp director of mine in Wisconsin.
- My director at Boston University's Outdoor Education Center (1986).

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Name: Sarah Bloor

Dr. Martin Salinsky - University of Wisconsin Hospital. Madison, WI

Dr. John Margraf - Concord, NH

Dr. Tom Sutula - University of Wisconsin Hospital. Madison, WI

14. The Director [redacted] talked with Dr. Salinsky on Tuesday, July 1, 1986. Dr. Salinsky came to me and told me that a director had called from the After School asking about my epilepsy. Dr. Salinsky replied that there would be no problem with me performing the job as long as I did not need to drive or swim, which are not part of the job.

15. The director never called me back; so I got back in touch with him on Wednesday, July 9, 1986 to find out what decision had been made. I was told again they could not offer me the job because of my seizures.

16. I have talked to my references and my other doctors and have found only one doctor was contacted as well as only one reference.

Mr. **Owens**. Thank you. Ms. Downie.

STATEMENT OF SUSAN DOWNIE, SPRINGFIELD, MA

Ms. **Downie**. Yes; I appreciate the opportunity to present testimony. My name is Susan Downie. I am a resident of Springfield, MA. I am the director of Traumatic Brain Injury Services at a rehabilitation center in Hartford, CT. I am also a licensed speech-language pathologist with a master's degree. Accomplishing this was not an easy task, as most college students will tell you, but in light of the discrimination that I encountered in this process, it was a dehumanizing struggle. At the private college where I began my studies, I was discouraged from being a speech pathologist. My advisor tried to persuade me to be a social worker because the other two women with disabilities attending the college were going to be social workers. I am not sure to this day why she tried to pigeonhole me, but I pursued my initial choice.

Finally, as a bit of unsolicited advice, the head of the speech department, in her attempt to help me with her problem, told me that I could not be a speech pathologist. I left the college and transferred to a university where the needs and the rights of students with disabilities was accommodated through an office which provided transportation and other essential services.

What I did not expect was that in reorganizing the speech department at the university, the department and the speech clinic relocated to a building where the clinic was housed on the second floor without access for its clients or its graduate students.

Once again, I had to fight and a reasonable accommodation was made by making available to me a therapy room in the basement where the audiology equipment was housed. In my 2 years in that graduate program, I never once worked in a clinic setting and was afforded the opportunity to interact with my fellow graduate students or access to testing and other materials and to learn what it was like to operate in a professional and clinical atmosphere.

In my third semester, I had been chosen from among seven other graduate students to do a clinical affiliation at a local rehabilitation hospital, working primarily with people who have aphasia, a communication impairment resulting from stroke, which was my primary area of interest.

Two weeks before the placement which had been arranged several months ago, I was told by my advisor that another affiliation would have to be set up. Through my own efforts, since the university did not want to support me and endanger the clinical affiliation at this hospital, I found out that although I was presented with a smokescreen of excuses, the pathologist of the unit did not want me there because I would have a negative effect on the patients.

I did complete my clinical affiliation there, but not in a positive supportive atmosphere that any other graduate student should have expected.

Finally, in California, during my second job search, I interviewed and was verbally hired at a large State facility for severe and profoundly mentally retarded individuals. During my physical, a routine step in the hiring process, I was asked by the facility's physicians humiliating, unethical, and illegal questions about my disability. For example, if my mother had taken drugs while she was pregnant with me. Again, I was told that I could not work there because I could not protect myself from the residents. I filed and won a discrimination suit.

The Americans With Disabilities Act is critical to insure that my rights as a human being as well as a person with a disability will be guaranteed and that I will not have to settle for second best. Thank you.

Mr. Owens. Thank you.

Ms. Blackmoor.

STATEMENT OF NANCY BLACKMOOR, HARVARD DYSLEXIA SOCIETY, CAMBRIDGE, MA

Ms. Blackmoor. Thank you very much, all of you, for the opportunity to be here today to testify on behalf of learning disabilities. My name is Nancy Blackmoor and I am dyslexic. Currently, I am a graduate student at the Harvard School of Education and also work as assistant to an academic dean at one of the undergraduate houses.

Discrimination to the learning disabled population, I believe, is done in such a way that it is not readily visible by the ones doing the discrimination—or discriminating—or the ones being discriminated against.

As you know, a learning disability is not visible and this is an added handicap to the learning disabled person in that it is not seen. And we have to work all the harder and we have the burden of convincing people around us that even though we look normal, we do have a handicap.

Both as a student and a young adult in the workplace, I have been in situations where I have been discriminated against, whether it was having points taken off for turning a paper in late or having points taken off for spelling mistakes or not being hired for a certain position or being screened out of it because I could not pass a timed typing test when timed typing was only a convenience for the job and when timed typing was a moot point.

I felt that the majority of circumstances where I have been discriminated against were due mostly to people's ignorance or lack of awareness as to what a learning disability is. For this reason, I started a group at Harvard. The group sponsors a monthly lecture series where experts in the field dedicate their time to come and talk about dyslexia and what the current research trends are.

The group has gone for 3 years and it has attracted people from not only the Harvard community, but all over the greater Boston area and it has even had national recognition. It has far exceeded any expectations and continues to excel in attendance.

This has provided me with first-hand experience and knowledge of what can be done to help minimize discrimination through awareness. People have come out of the woodwork. They have learned more about themselves. They have gotten help. They have learned advocacy techniques. They have learned their legal rights. Employers and administrators from around the area have been more sensitized to what a learning disability is.

And the one example I have is so many Americans speak loudly to someone who does not speak English, thinking if they speak louder that the person is going to understand. They are missing the total point. It is the same attitude that you get with learning disabled or that we get from people around us: "Well, if you just listen a little bit more close. If you just try a little bit harder." And I was just told last week, "If you just start your paper a little bit earlier, you know, you can get it in on time." This is a total misunderstanding of what the disability is. And this act would heighten awareness and definitely minimize the discrimination and the barriers that many of us face with learning disabilities.

I have been very fortunate to know and to understand my disability and to have had insightful people in my life that have made a difference. There is no reason why everyone else cannot be afforded those opportunities. Everyone should have these rights afforded to them and to take away the unseen barriers and discrimination to allow the learning disabled population to contribute to society because we think in a very unique way. Thank you.

[The prepared statement of Nancy Y. Blackmoor follows:]

October 24, 1988

Nancy Y. Blackmore
Claverly Hall 4-A
Harvard College
Cambridge, MA 02138

To the Members of the Boston Congressional Hearing of the Americans with Disabilities Act:

My experience with learning disabilities is that I am dyslexic. As a response to my own personal trials with dyslexia, I started the Harvard Dyslexia Awareness Group at Harvard University 3 years ago--a group dedicated to bringing the problems of the dyslexic and learning disabled adult to the attention of the university and the community. The attendance at the Group's activities--both from inside and from outside the university--continues to be overwhelming. This points to one fact: there are many people suffering silently with a learning disability, and that any serious attention given to the problem by community or government organizations has the potential to do enormous good.

Many of those that attend the Harvard Dyslexia Awareness Group's lectures are learning disabled adults in the professional world. They constantly reiterate one, ever-present concern: discrimination against learning disabled adults in the employment world does not have to be explicit. Requiring the taking of a typing test for the pure convenience of screening job applicants for a job that has nothing to do with typing puts many LD adults at an immediate disadvantage--many cannot type, or cannot type at the speed required by the test. In other situations where potential or talent is measured quantitatively, when LD people have serious difficulty performing at a pre-established level (for exa[illegible] standardized, timed exams) level, a common response from em[illegible]s or teachers is that the person must simply "try harder" [illegible] work harder". And this is a perfect example of silent discrimination--it's just like trying to speak English loudly to someone who only speaks, say, Chinese; speaking loudly and slowly will not make that person understand English. To the LD adult, "try harder, work harder" is the equivalent of speaking English loudly in an attempt to make the speaker of Chinese understand.

One very tragic effect of discrimination against the LD adult is that extremely talented, capable people are summarily dismissed from employment or education opportunities because they do not fit a standard pattern. One of the most treacherous aspects of LD discrimination is that even the LD adult may not know he/she is being discriminated against; some employers have discriminatory attitudes and judgments, and may not be aware of it themselves. The Act being considered here today can be a tremendous step in helping solve a very complex and serious problem. People come to my Dyslexia Awareness Group's lectures from all parts of life--they come out of the woodwork. The attendees are people who have been desperately hoping for the attention they need to their problems. The Americans with Disabilities Act is extremely important.

Some suggestions as to what could be done might be in the form of:

. Increasing awareness by providing public awareness/sensitivity to the problem, e.g., blurbs on TV, more mass media publications, pamphlets, books etc.

.Increase awareness of teachers and educators through teacher training. Educators at all levels must be able to recognize when a student is having problems related to a learning disability as opposed to an "attitude" problem. But, many attitude problems stem from learning disability problems. School is where the future generation's minds are being shaped.

.Do not use any one way to measure the abilities and capabilities of the LD population. There need to be alternative ways of measuring the unique abilities of the LD.

.Most LD people are discriminated against in employment situations because they never make it in the door due to standardized tests that measure success or failure on precisely those bases that cause an LD person problems. There need to be alternative hiring procedures. Many LD people I know consciously avoid careers that require passing any kind of tests.

.Many tests are only a convenience for hiring, and the material being tested may not be essential for the performance of the job.

.If tests are used then alternatives should be provided (like ACT, SAT tests, etc.).

.On-the-job alternative ways of training, increased time for training, adjusting, etc. Many people cannot "meet quota", then are fired. Many can't read the training manuals (not because they are illiterate, but because reading is extremely diffcult--this, for example, is the case of the dyslexic. Many dyslexics are quite capable of understanding what is being discussed, it's just that they can't get the information through reading.)

.Increase general employers' awareness as to the special thinking pattern of the learning disabled and see them as the learning abled. Hire them for their unique capabilities, not to just fill legal quota.

.Increase availability of computers, training programs, help agencies, etc., for LD people.

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.Increase funding to support research in the area of the benefits of the LD brain patterns and the advantages of this way of thinking. Research the brain.

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Mr. OWENS. Thank you. Again, all three of you are examples of the tremendous amount of talent and resources that are available in people with disabilities.

I have an unfortunate announcement to make. We thought we had the room for a little more time than we do have it for, and I am going to have to take 1 more minute away from the remaining panelists, the remaining people testifying. If you could please go to your testimony, remembering that we will take written testimony if you have it and you can always submit additional written testimony to us within the next 10 days. I apologize for this, but this is as a result of our attempt to try to get as many people in as possible.

Would you like to begin, Mr. Chao?

STATEMENT OF MATTHEW CHAO, LEGISLATIVE COMMITTEE CHAIR, BAY STATE COUNCIL FOR THE BLIND, NEWTON, MA

Mr. CHAO. Thank you, Mr. Chairman. Good afternoon. My name is Matthew Chao. I am here to advocate for expeditious passage of the Americans With Disabilities Act on behalf of myself and the Bay State Council for the Blind, which is an affiliate of the American Council for the Blind.

I am also here to describe briefly some personal experiences in terms of what I have dealt with as far as discrimination is concerned. The four areas on which I will touch briefly are: Public accommodations, housing, employment, and communications, both of which can be related.

Basically, in terms of public accommodations, we all assume we have the right to access to facilities in which the public is invited. I am a guide-dog user. And there have been repeated attempts to deny me access to such areas as restaurants and hotels. For more details, please refer to the report which you should be getting shortly.

But this is a major problem for those of us who are blind and visually impaired and one which I hope under the ADA will be less of a problem.

The next area on which I will deal with is that of housing. Many blind and visually impaired are denied housing because landlords are concerned in terms of liability or that the person will burn the house down while cooking because of their visual impairment. This is something that cannot and should not be tolerated. And I feel that the ADA, again, will put people on notice that such standards of behavior will not be tolerated in the future.

Finally, in terms of employment, one of the things I would like to touch upon is employment and communications are the final areas I would like to cover. In this area, there is a lot of overt or what I would call soft discrimination. This is identified more in my report.

Basically, the problems are numerous. It is difficult to have access to testing materials as well as the very job leads which you need in order to become employed. Personally, I am in the process of seeking employment and have had difficulty in having access to information/job leads.

Another aspect of employment is that of communications. The ability to not only get information regarding job leads but the dignity and the privacy which our sighted counterparts are afforded when having to deal with disciplinary matters on the job.

Imagine, if you will, being put on notice that your performance is below par and having a report read to you by your boss and your supervisor. Imagine the feelings of intimidation, fear, and disbelief as a disciplinary report is read to you. Contrast that with the ability of sighted counterparts to take that report, go to their private office and read that report with the ability to rebut it at a later date. Granted, this happened 8 years ago, but this is something that should no longer be tolerated.

I realize my time is up, but I thank you for the opportunity to speak and one thing I would like to say before closing is that we are at a point now where the technology should allow us to work, but yet this technology outruns the very attitudes of employers in terms of our ability to get hired. Thank you very much.

[The prepared statement of Matthew Chao follows:]

REPORT ON PERSONAL ASPECTS OF DISCRIMINATION AND DISABILITY

Testimony Before the House Select Education Subcommittee'
by Matthew Chao
48 Hollis Street, Apt. 2
Newton, Ma 02158
October 24, 1988

Members of the House Select Education Subcommittee:

As Legislative Chairman of the Bay State Council for the Blind, I am writing this report to both present my personal observations concerning discrimination on the basis of disability, and to strongly encourage development and passage of the Americans with Disabilities Act(H.R. 4498 and S. 2345). While this report may be somewhat lacking in terms of statistical information to support my testimony, the primary purpose for my writing this report is to briefly examine discrimination on a level which is often overlooked by the majority of people in this country--a personal one. Specifically, I will discuss discrimination as it pertains to those of us who are blind and visually impaired. Emphasis will be on four major areas: public accommodation, housing, employment, and access to information (communications.)

INTRODUCTION. Before discussing these four areas in detail, I feel some background information is necessary. There are approximately 1.7 million persons in the U.S. who have a serious visual impairment. Of these, 491,000 are totally blind, unable to see at all. It is estimated that there are 15,000 dog guide users. These statistics, important as they may be, do not look at the intangibles, the human aspects of discrimination based on disability.

PUBLIC ACCOMMODATION. As a person who uses a dog guide, I have encountered discrimination in the area of public accommodation. This category includes everything from restaurants to hotels and amusement parks. Under the various state and Federal laws, those of us using dog guides are afforded access to accommodations to which the general public is invited. However, in practice, attempts are repeatedly made to exclude us from access to these facilities. This initial denial to access is due partly to ignorance on the part of the operator, and partly as a flagrant disregard for the law. Two examples of my personal experiences concerning discrimination come to mind in this area.

In the summer of 1986, a friend and I went to eat at a small Chinese restaurant in Norwood, Mass., a community 15 miles southwest of Boston. My dog guide, Josie accompanied us. As we stepped in the door, the owner asked, "Could you please leave your dog outside? Health reasons." I responded by saying, "Excuse me, under state law, I am allowed access to restaurants with my dog." The owner then replied, "Nothing personal, it's for health reasons. Does your dog have to be with you at all times?" "Yes," I replied, "and it is the law! Would you like to see my identification and the law itself, or should I file a complaint with the Norwood Police Department that my rights were violated?" Only then did the owner allow me to enter the restaurant. While I was successful in gaining access, a person with less resolve might have given up and left. In this case, the owner seemed to be aware of the law granting access by those with dog guides to restaurants, but thought he could circumvent it by hoping that I would easily comply with his request. That's only part of the story, however. Imagine the embarrassment and humiliation to which my friend and I (and maybe Josie) were subjected! Imagine being at the door of that restaurant knowing that everyone's looking at you! An incident such as this evokes feelings of being a second-class citizen. I certainly can understand how racial minorities felt before the Civil Rights Act of 1964.

A more current incident occurred in the summer of this year, this time in Boston. A friend and I walked into a delicatessen to buy a sandwich. As we entered the place, the owner of the establishment said to my friend, "Hey, you can't bring that dog in here." My friend alerted me to the problem, at which point I told the owner that my dog guide had access to eating establishments under state and Federal law. One of the workers at this place also brought these laws to his attention.

Disturbing as the above-mentioned incidents are, the same problems have befallen friends of mine, one of whom was denied access to a restaurant at which he was to have a business lunch with his associates. The case is in the process of being litigated. In summary, public accommodations should be truly public. The Americans with Disabilities Act would serve to put people on notice that discrimination in terms of access to public accommodation will not be tolerated. Additionally, this bill would serve to codify state and Federal laws concerning this issue. It is important that those who are least able to speak for themselves be protected and treated with equality.

HOUSING. For those who are blind or visually impaired, obtaining adequate housing can at times be difficult. According to Roberta Douglas at the American Council for the Blind headquarters in Washington, D.C. there have been a number of complaints concerning housing discrimination based on blindness or visual impairment. While there are no statistics to indicate the extent of the problem, there are cases in which people have been denied housing. Reasons for this denial range from that of concerns on the part of landlords concerning liability and the fear that the prospective tenant will somehow cause damage to the property (the most common concern here is that he or she will burn down the house while cooking) to that of refusing housing because the person has a dog guide, and the animal will damage the premises. Although I have not had any difficulty in obtaining housing, I raise this issue in the hope that problems such as the ones presented here will be adequately covered in the proposed legislation of ADA. It is vital that we as persons with disabilities be accorded equal protection as those persons who come under the aegis of the Civil Rights Act of 1964 and its amendments.

EMPLOYMENT. One of the most difficult areas in which to make inroads with respect to lowering the barriers of discrimination on the basis of disability is that of employment. For blind and visually impaired, it is estimated that approximately 70% of working age blind are unemployed. Of those who are working, 70% of them are underemployed.

In terms of securing employment (a task which I am currently undertaking), we encounter a lot of what I would call "soft" or overt discrimination. Even if we get to the interview and are able to explain how we will be able to do the job despite our limitations, there is an underlying feeling or "vibe" on our part that our explanations are unbelievable. Occasionally, there is the employer who directly or indirectly will say that it's too expensive to hire a blind or visually impaired person to do the job. In some cases, this concern is valid, but in many cases there are several ways to make up for the lack of vision. In the realm of today's technology, we are able to perform jobs which would have been difficult or impossible three years ago. For example, only three years ago, it would have been extremely difficult for me to have drawn up this paper with only a few days' notice. I would have had to take notes on my topic, write the rough draft in Braille, then type out the report. Such an undertaking would have involved several days' work, and many, many, sheets of wasted paper if I wanted the print copies to be error-free. Today, however, I can work on a report such as this one and be finished in a day or two. In other words, the technology which allows us to be productive has outrun the attitudes of the prospective employer. By banning discrimination on the basis of disability, perhaps the attitudes and technology can be brought more into line.

If our job-hunting strategies are successful, there are discriminatory aspects which affect our ability to strive for career advancement. As one who has worked for the Commonwealth of Massachusetts for 8 years, I can give you an instance in which I was put at a disadvantage with respect to career advancement. As a Vocational Rehabilitation Counselor for the Massachusetts Rehabilitation Commission, I availed myself of as many opportunities as possible for advancement within the agency. As part of the process of advancing in state service, we were required to take state Civil Service exams. When it came time for me to take these exams, I inquired as to whether my test could be administered in Braille, as this method is the best way by which I can process information. I was informed by the Department of Personnel Administration (which was administering the exam) that this option was ruled out because it "cost too much." Instead, I was provided with a reader to read me a 120-question, multiple choice exam. The option of a reader would have been satisfactory if not for the fact that the reader was at the exam in body, but not in mind. He proceeded to read the exam, but confused the answers from one question with those of the previous question, making a tough situation even worse. It was bad enough that I was taking a standardized test under nonstandard conditions, which was made even worse by the lack of adequate support services. Imagine yourself being on Question 100, and not being sure whether your reader's giving you the appropriate choices for that question! Further, imagine that there are 4 job slots for 800 applicants. Combine these two factors and you can understand how career advancement can be hampered if not stymied.

In summary, discrimination pervades nearly all aspects of employment, from job-seeking to career advancement. While I do not expect ADA to eliminate this problem, I hope that this bill will put employers on notice that discrimination on the basis of disability is as intolerable as discrimination based on race, color, or national origin. Safeguards must be put in place which will give us as many opportunities as those afforded our able-bodied counterparts. Reasonable accommodations must be provided both in the spirit and not just the letter of the law. We must have access to both professional information and test materials in the medium most appropriate to our learning style and disability needs.

COMMUNICATIONS. Communications to me is the ability to have access to, exchange, and analyze information. In our ever-changing society, the ability to have access to current information is necessary if we are to make well-informed decisions. For those of us who are blind or visually impaired, finding the right information at the right time can be difficult if not impossible, even in the era of computers. The technology to access this information is here, but the commitment to make this information accessible is not. A few examples here are appropriate:

This is an election year. As a responsible voter, I feel that it is important to fully understand the issues on both a state and Federal level before casting my vote. However, if you are blind or visually impaired, much of the information you need is inaccessible because most of it is in print. And if that's not bad enough, most government agencies don't have information available in accessible formats. When faced with this problem, you have a few choices, many of them undesirable. First, you can talk to others about the ballot questions, but there is no guarantee you will get an unbiased view. Next, you can gain some of your information concerning the issues through the electronic media (radio, TV, etc.) However, most of this information comes to you in a capsule summary. Finally, you can get a friend or significant other to read the paper to you and instruct him or her to look for certain information. This solution is fine, if you have people who are willing to take the time to read to you.

Another example of information inaccessibility is in the area of employment. In order for me to look up job information, I must rely on sighted help to accomplish this task. This method is both inefficient and labor-intensive. If you're poor and unemployed, your only hope is to rely on friends or volunteers from a variety of agencies. If they can't show up at a predetermined time, you are stuck without information on job leads, and you could possibly miss out on a good job opportunity as a result. It is frustrating at best to rely on someone only to have them let you down at a critical time. Making job opportunities accessible could give us more flexibility and a greater degree of independence. The technology is here; all we need is the commitment to provide the information. It is my hope that, as part of the ADA, steps would be taken on a national level to make key information available in media other than print.

CONCLUSIONS. In closing, I strongly encourage the passage and implementation of the Americans with Disabilities Act. While such a bill will not eliminate the many instances of discrimination which we have encountered through the years, it will be a step towards greater and more equal participation of the blind and visually impaired and those with other disabilities in our society. Such a bill will enable our country to better utilize its most under-utilized resource--our disabled population!

Mr. **Owens**. Thank you very much, Mr. Chao.

Linda Mills.

STATEMENT OF LINDA MILLS, FARMINGTON, ME

Ms. **Mills**. Thank you. I would like to describe to you what I have had to go through to try to obtain a driver's license through vocational rehabilitation in the State of Maine. They refused to modify my van for me to drive until I actually had a driving license. The following explains what the process was that rehab forced me to go through in order to try to get that license.

Six years ago, I requested voc rehab to help me in obtaining a driver's license. I had gone through an evaluation and it had been recommended that with the proper modifications to a van, I would be able to successfully drive. When rehab received this evaluation, they started picking it apart and required me to overcome a number of issues that they were uncomfortable with. I strongly sensed that rehab thought I was not capable of driving and obtaining a driver's license.

First, I was required to take an eye exam even though my evaluation stated I fall within the requirements. Next, VR requested I get a permit through a local driver's training. That was not possible because their vehicles were not modified for the severely disabled and they would not grant me a permit from just taking the classroom aspect of the class. I had to then convince rehab to allow me to get a permit by taking a written exam to get it, as a majority of individuals do. They finally agreed.

I was then referred to a service provider who provides driver's training for the severely disabled. After inspecting their vehicles, it was felt with a few simple adjustments, I would be able to use it for road training. VR then did not want me to drive from my wheelchair. They wanted me to transfer from my chair to the chair in the modified van. I then consulted my doctor on this. He agreed with me that this was not safe because of my disability. He strongly recommended I do not transfer to drive, especially since I cannot transfer myself.

After reading my doctor's statement, rehab then questioned again my ability to drive and had my case reviewed by the rehab medical advisor. Before proceeding with the road training, the medical advisor insisted on getting case histories from other rehab agencies in other states to see if they had a success rate with any persons with my particular disability to drive. They received several replies from over eight States stating that they had had a success rate in helping persons with osteogenesis imperfecta obtain their licenses. Some of these replies were from individuals themselves with OI who were driving. VR did not receive one negative response.

The VR then decided they should have me sign an indemnifact to protect them and the State of Maine should I get hurt or hurt someone else during my training. At this point, I called in an advocacy agency to investigate this to see if signing such a statement was a routine process or one which rehab was only requesting of me.

The advocates investigated and reported that only one other individual had ever been required to sign such a statement. I refused to sign feeling I was being discriminated against. The advocate advocated on my behalf and forced VR to drop the indemnifact situation and proceed with my on-the-road training. The issue of me driving from my wheelchair was still pending. After several trips to the provider of the job training—the VR finally agreed to let me drive from my chair. This is finally happening after 2 years from the time I started this process. I then spent over 30 hours of successful——

Mr. OWENS. Ms. Mills, we have run out of time. Thank you very much.

[The prepared statement of Linda J. Mills follows:]

VOCATIONAL REHAB VS. LINDA J. MILLS (DRIVER'S LICENSE)

I am about to describe to you what I have had to go through to try to obtain a driver's license through Vocational Rehabilitation in the State of Maine. They refused to modify my van for me to drive until I actually had a driver's license. The following explains what the process was that VR forced me to go through in order to try to get that license.

Six years ago I requested VR to help me in obtaining a driver's license. I had gone through an OT evaluation and it had recommend that with the proper modifications to a van I would be able to successfully drive. When VR received this evaluation, they started picking it apart and required me to overcome a number of issues that they were uncomfortable with. I strongly sensed that VR felt I was not capable of driving and obtaining a driver's license.

First, I was required to take an eye exam even though my OT eval stated I fell within the range. Next VR requested I get a permit through a local driver's training. It was not possible because their vehicles were not modified for the severly disabled and they would not grant me a permit from just taking the classroom aspect of the class. I had to then convince VR to allow me to get a permit by taking a written exam to get my permit as a majority of individuals do. They finally agreed. I was then referred to a service provider who provides driver's training for the severly disabled. After inspecting their vehicle, it was felt with a few simple adjustments I would be able to use it for road training. VR then did not want me to drive from my chair. They wanted me to transfer from my chair to the chair in the modified van. I then consulted my doctor on this. He agreed with me that this was not safe because of my disability and strongly recommended I do not transfer to drive especially since I cannot transfer myself. After reading my doctor's statement, VR then questioned again my ability to drive and had my case reviewed by the VR Medical Advisor. Before proceeding with the road training, the medical advisor insisted on getting case histories from other Rehab Agencies in other states to see if they had a success rate in training persons with my particular disability to drive. They received several replies from over eight states stating that they had had a success rate in helping persons with O.I. (osteogenesis imperfecta) obtain their license. Some of these replies were from individuals themselves with O.I. who were driving. VR did not receive one negative response.

VR then decided they should have me sign an indemnifact to protect them and the State of Maine should I get hurt or hurt someone else during my training. At this point I called in an advocacy agency to investigate this to see if signing such a statement was a routine process or one which VR was only requesting of me. The Advocates investigated and revealed that only one other individual had been required to sign such a statement. I refused to sign feeling I was being discriminated. After further advocating on my behalf, the Advocates forced VR to drop the indemnifact situation and proceed with my on-the-road training. The issue of me driving from my chair was still pending. After several trips to the provider of the driver's training and pointing out the danger of not having me drive from my chair, VR finally agreed to let me drive from my chair. This was finally happening after two years from the time I started this process.

I then spent over fifty hours of successful, and I repeat successful, on-the-road driving in a major city in Maine. When my instructor felt I was ready to for my license, VR was then contacted by the service provider. The service provider told VR I was ready to take my road test to obtain my license, however, I could not use the same vehicle I had received my training on. VR was furious and stated that paying them for my on-the-road training was so that I could use that vehicle to take my road test. The service provider refused to let me use their vehicle and VR refuses to modify my van for me to drive until I have a driver's license in my hand.

There is no vehicle in New England that is designed for me to drive to take a road test on. At this time Pennsylvania was the closest state that had a driver's training course to get me my license and VR refused to send me because they claimed we already had a similar one in Maine. This was four years ago I received my training. I still do not have my license, VR still refuses to modify my vehicle, and the service provider still refuses to let me use their vehicle to take my road test!!! This past summer I went to California to a national conference for folks with O.I. I talked to several people who have O.I. to the same degree I have and who are also driving their own vehicle. All of them received the license through the help of VR with no problems. They were surprised to hear what VR had put me through and I still have no license.

Over the past six years I have put in alot of physcial and emotional energy in successfully overcoming every stumbling block VR has set before me. The State of Maine is spending thousands of dollars a year to provide me with a driver in order for me to be "gainfully employed". I strongly feel that VR has discrimminated against me personally every step of the way since this process began and it has to be stopped.

Mr. Owens. Ms. Cindy Miller.

STATEMENT OF CINDY MILLER

Ms. **Miller**. This is a day in my diary of discrimination. My day started at 5:30 a.m. with my roommate getting me out of bed. Because of the personal care assistant rates of pay, it is impossible to attract qualified personal care attendants to work as overnight attendants and to require them to come early enough to get me out of bed for work. Consequently, I have to offer free rent as an incentive. It is not my choice to live with a roommate, but it is my survival within a health care system that does not provide decent working wages for personal care attendants. It does not provide decent working wages, because it does not value the people for whom the work is being done: Americans with disabilities.

I live in constant fear that the economics argument subsidizing personal care assistants programs will be lost and I will be institutionalized. Because independent living is not a right to freedom for Americans with disabilities, this is a realistic fear. But it will not be my choice.

As a rehabilitation counselor, I have seen these institutions. The smell of human waste and detergent has stuck in my throat. I have looked into the vegetative eyes of its inmates and the sterile environments. I have heard of the premature death rates and prevalence of pneumonia, literally allowing them to rot in their beds.

I have witnessed their jailers rational taking away their wheelchairs as a form of punishment as if that is different than punishing prisoners by breaking their legs. I have witnessed their jailers taking away their food as a form of punishment, as if that is different than starvation. I have witnessed their jailers talk about them in their third person and leave them naked to the public as if that does not strip them of their human dignity.

I left my house at 7:30 a.m. to be at work at 9:00. It is a 20-minute bus ride, but I have to leave an hour and a half early because the bus lifts are not maintained. All the buses do not have lifts. But sometimes, like this morning, the bus with the lift just does not stop for me. The transportation authorities in America do not provide accessible transit because it does not value people with disabilities or the contributions that are gained by Americans with disabilities being able to get to work, vote, medical appointments, or cultural events. It does not matter the concept of equal accessible public transit in a free society. It again concerns itself only with an economic argument. I pay taxes. Are blacks, or Jews or Hispanics or American Indians, or Asians or women or children or criminals on furloughs, or aliens or tax evaders or anyone else who touches American soil besides Americans with disabilities limited to a specific kind of transportation or no transportation. Was it not local auction that allowed slavery in States?

I live in constant fear that what accessible transportation does exist will disappear. May I just summarize?

Mr. Owens. Yes.

Ms. **Miller**. I made a list of things to do based on today. I thought of doing all of these things, but the list seems to grow every day. Instead, I got angry and depressed. I got angry and depressed because after I work all day, fight the barriers to get to work, fight the barriers to do things all Americans do, like shop—I have meetings and phone calls and letters and other things I have to do to fight for my equal rights as an American with disability. I am tired of being tired, fighting angry, and depressed every day fighting for my rights. And now I am writing a stupid diary until 2 in the morning to prove that discrimination exists, to my Congress. Why does Congress think so many Americans are fighting this battle if discrimination does not exist? Does Congress think we enjoy or prefer to fight for equal rights before we eat or sleep. I would like Congress to know that I would like to watch the Cosby show with slippers on my feet and time on my hands like other Americans. Please enact the ADA quickly. I am missing a lot of episodes and I am missing a lot of life. I do not want to be Rose Parks, I just want to be Cindy Miller. And I have some petitions that I would like to submit.

[The prepared statement of Cynthia L. Miller follows:]

IV

Americans with Disabilities Act

Hearing Diary

Cynthia L. Miller
100 S. Huntington Ave
Apt 612
Boston, MA 02130
(617) 731-6228

Friday, 9/9/88

As I write this, I am exhausted. My day started at 5 30 am with my roommate getting me out of bed. Because of the Personal Care Assistant rates of pay, it is impossible to attract qualified Personal Care Attendants to work as overnight attendants and to require them to come early enough to get me out of bed for work. Consequently, I have to offer free rent as an incentive. It is not my choice to live with a roommate; but, it is my survival within a health care system that does not provide decent working wages for Personal Care Attendants. It does not provide decent working wages because it doesn't value the people for whom the work is being done--it doesn't value Americans with disabilities--it doesn't value me. The health care system also does not value the contributions to society that are gained by the independ...

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ADA DIARY
MILLER, p. 2

of Americans with disabilities. It does not value the concept of Independent Living as a right in a free society. It concerns itself only with whether the costs of subsidizing Personal Care Assistance is less than the costs of imprisoning me in an institution.

As I write this, I am frightened. I live in constant fear that the economic arguement will be lost and I will be institutionalized. Because independent living is not a right to freedom for Americans with disabilities, this is a realistic fear. But, it will not be my choice. As a rehabilitation counselor, I have seen these institutions. The smell of human waste and detergent has stuck in my throat. I have looked into the vegatative eyes of its inmates in their sterile environments. I have heard of the premature death rates and prevalence of pneumonia and necrotic decubitis, literally allowing them to rot in their beds, these living dead, our imprisoned Americans with disabilities. I have witnessed their jailors rationalize taking away their wheelchairs as a form of "punishment" -- as if that is different than punishing prisoners by breaking their legs. I have witnessed their jailors taking away their food

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ADA DIARY
MILLER, p. 3

as a form of "punishment" -- as if that is different than starvation. I have witnessed their jailors talk about them in the third person and leave them naked to the public -- as if this doesn't strip them of their human dignity. We have laws to protect animals from these conditions, ~~but~~ while Americans with disabilities continue to suffer.

As I write this, I am tired. I left my house at 7:30 am to be at work at 9:00 am. It is a 20 minute bus ride, but I have to leave an hour and a half early because the bus lifts are not maintained, all the buses don't have lifts (sometimes I wait for seven buses before a bus with a lift comes), or sometimes, like this morning, the bus with the lift doesn't stop for me. The transportation authorities in America does not provide accessible transit because it doesn't value people with disabilities -- it doesn't value me. The DOT doesn't value the contributions to society that are gained by Americans with disabilities being able to get to work, vote, medical appointments or cultural events. It doesn't value the concept of equal, accessible public transit in a free society. It concerns itself only with providing transportation

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ADA DIARY
MILLER, p. 4

within a 3% cap of an authorities operating budget and gives each authority "local option" to decide what kind of transportation is provided. I pay taxes. Are blacks, or jews, or hispanics, or American Indians, or Asians, or women, or children, or criminals on furloughs, or aliens, or tax evaders, or anyone else who touches American soil, besides Americans with disabilities, limited to 3% or a specific kind of transportation? Wasn't it "local option" that allowed slavery in states?

As I write this, I am frightened. I live in constant fear that what accessible public transportation does exist will disappear. Because accessible public transportation is not a right of freedom for Americans with disabilities, this is a realistic fear. Infact, the accessible bus route that I use to get to work is being replaced by inaccessible trolleys. This means that I will have to use the DOT's "local option"--paratransit. Paratransit is segregated and unequal. It's a Nigger bus. On the Nigger bus, I am denied trips, I have to request trips 9 days in advance, I am consistently late for work, I have bee

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ADA DIARY
MILLER, p. 5

sexually harrassed by drivers, I have had drivers who were drunk and on drugs, I have had drivers who drove dangerously, I have seen equipment literally fall off vehicles, I have seen vehicles literally burn to the ground, and I have permanently damaged my neck, shoulder and arm in multiple incidents. I live in fear to leave my street because accessible, equal public transportation is an economic, local decision and not a right of Americans with disabilities.

As I write this, I am tired. Work today was busy and, like many days, I used my lunch and breaks advocating for the rights of Americans with disabilities. Yesterday, I went to the bank and withdrew money for groceries, but I had to go again today because someone stole the money. Crimes against Americans with disabilities is an ignored epidemic in America. The Police do not provide crime prevention, apprehension or prosecution because they see it as fate that Americans with disabilities will be victims.

As I write this, I am frightened. Yesterday's theft was not unusual for me. As an American with a disability, I have experienced many crimes.

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ADA, DIARY
MILLER, p. 6

As a child, I was sexually abused by supposed care providers. People have attempted to kidnap me. Someone tried to run me down with a motorcycle. I have been robbed countless times. I have given up on police protection because of their attitude that Americans with disabilities are natural victims. Never was this so graphic as when an officer pointed his gun at my head, cocked it, and (unknowingly to me) pulled the trigger on an empty barrel because he thought it would be "funny" since I have quadraparesis and couldn't flee or fight. I live in fear of crime because equal protection under the law is not seen as a right of Americans with disabilities because Americans with disabilities are seen as natural victims rather than equal citizens.

As I write this, I am tired. After work I went grocery shopping. The grocers in my neighborhood have erected barriers to prevent people from stealing their shopping carts. The barriers prevent entrance and egress by Americans with disabilities too, but they don't care because they value their shopping carts more than consumers with disabilities.

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ADA DIARY
MILLER, p. 7

The grocery store has a gate at the barrier with an access symbol, but they keep the gate pad locked. I have to wait for a volunteer to go in the store, find the manager, and for the manager to find the key to open it. There is a bank and pharmacy behind the barrier too and, when the grocery store is closed, Americans with disabilities have no access, but the bank and pharmacy do not take action to change this. After I enter the store, they pad lock the access gate again; and, in the event of a fire, I would have to hope that the manager arrived with the key to escape. Fire codes prevent the locking of fire exits, but the fire department has done nothing to prevent this. I presume that the fire department allows this violation because the only people who would die as a result of it would be Americans with disabilities.

As I write this, I am tired. It is now 2:00 am and I have been up since 5:30 am. This has been a typical day and, more than my physical exhaustion, I am tired of being discriminated against as an American with a disability.

ADA DIARY
MILLER, p. 8

Saturday 9/10/88

I got up this morning at 9:30 am and like most working Americans rushed out to do my Saturday morning errands. When I got to the cleaners, someone had parked in the HP parking space. There was a garage attached to the lot, but it could not accomodate a van with a raised roof. I left my van parked perpendicular to the illegally parked car. I suppose that I could have called the police, but when I have in the past, the police have taken a long time to get there and, besides, they usually don't ticket HP violators, they just excusingly ask them to move. Lack of police enforcement of HP violators since many a police cruiser has blocked my path to curb cuts.

Once, police cruisers blocked all of the curb cuts in front of a police station to the entire block. I had someone bounce me onto the curb and went to the station to ask them to move their cruisers. The police station was inaccessible and I wondered what I would do if I was alone and needed the police. Someone opened the door and I shouted up the stairs at them.

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ADA DIARY
MILLER, p. 9

Their expressions and tones demonstrated their annoyance when they came down and I asked them to move the cruisers blocking the curb cuts. They moved one of the cruisers and promised to do the same with the others, but, as I rode down the sidewalk, I looked back to see them pulling the cruiser in front of the curb cut again.

After I dropped off the cleaning, I went back to my van. The illegally parked car owner was angry that he had to wait for me to move my van. He said he was only there 5 minutes as if that justified it.

Then I went to pick up a present. The stores were inaccessible so I had to send someone in to bring out items for me to choose from.

After shopping, I went to the Registry but it was closed. So, I went to a pay phone to call another branch to see if it was open. But, the pay phone was inaccessible.

Then, I went to the hospital to visit my sister. I needed to use the bathroom, but it was inaccessible.

I got home late this evening and did the things most Americans do like cooking,

ADA DIARY
MILLER, p. 10

cleaning, feeding the cat. Then I made a list of things to do based on yesterday and today:

1. Improve health care systems belief in independent living as a right of Americans with disabilities.
2. Improve laws to ~~provide~~ protect civil rights ~~to~~ of institutionalized Americans with disabilities.
3. Improve laws to provide accessible, equal transportation for Americans with disabilities
4. Improve equal protection under the law by police for Americans with disabilities.
5. Improve access to public stores for Americans with disabilities
6. Improve fire department enforcement of codes to protect Americans with disabilities
7. Improve police enforcement of HP parking laws for people with disabilities
8. Improve accessibility of public communication systems for Americans with disabilities.
9. Improve accessibility to public rest rooms for Americans with disabilities.

I thought of doing all these things, but the list seems to grow every day. Instead, I got

ADA DIARY
MILLER, p. 11

angry and depressed... I got angry and depressed because after I work all day; fight the barriers to get to work; fight the barriers to do the things all Americans do like shop; I have meetings and phone calls and letters and other things I have to do to fight for my equal rights as an American with a disability. I'm tired of being tired, frightened, angry and depressed every day fighting for my rights. And now, I'm writing a stupid diary until 2:00 in the morning to prove that discrimination exists to my Congress! Why does Congress think so many Americans are fighting this battle if discrimination doesn't exist? Does Congress think we enjoy or prefer to fight for equal rights before we eat or sleep sometimes? Diary, I would like Congress to know that I would like to watch The Cosby Show, with slippers on my feet, and time on my hands, like other Americans. Please enact the ADA quickly... I'm missing alot of episodes... I'm missing alot of life. I don't want to be Rosa Parks... I just want to be Cyndy Miller.

Mr. **Owens**. Thank you very much. You may submit the petitions along with your written testimony that we did not get to. The petitions will be kept on file. We would be happy to have them. Thank you very much for testifying.

Our next panel consists of Kathleen Mulligan, Lelia Batten, and Barbara Johnson.

Would you like to begin, Ms. Batten?

STATEMENT OF LELIA BATTEN, PORTLAND COALITION FOR PSYCHIATRICALLY LABELED, PORTLAND, ME

Ms. **Batten**. Yes. My name is Lelia Batten and I have been diagnosed as having a mental illness. It is not important that I share with you my specific psychiatric label as it is time that we stopped looking at people as labels. It is important that we start seeing people who are gifted and unique in spite of their pain.

And I am going to start midway in my testimony due to lack of time. State hospitals in the State of Maine are notorious for using medication for controlling the behavior of clients and not for treatment alone. Seclusion rooms and restraints are used to punish clients. In spite of the client's rights passed in the State of Maine, people are treated deplorably. Rights are treated as privileges rather than as rights. If you cooperate, you are allowed your rights. And if you do not, you are forced and overmedicated.

The side effects of medications are often seen as symptoms of the illness and treated as such. This summer, four deaths occurred in one of our State hospitals. At least one person experiencing medical problems from the heat was treated as if it was a symptom of his psychiatric illness and put in restraints where that client died. Lack of medical care is common among the mentally ill. If you can afford medical treatment and seek it out, then, once they find out you have a psychiatric history, your symptoms are seen as a part of your psychiatric problems. If you go to the emergency room in my city, then they pull your psychiatric chart before they will even listen to your symptoms.

Just the other day, a gentleman walked into my office and said he had just gone to apply for a job for which he was not hired because a question on the application asked him if he had ever had a psychiatric hospitalization. Those kinds of questions are still being asked on job applications today.

Vocational rehabilitation, often the solution for receiving job training and ultimately a job for other disabilities is not even recommended to the mentally ill.

If consumers of mental health services contact vocational rehabilitation on their own, they are put through the same testing and training as people with mental retardation. One gentleman I know, before his illness, had received a Ph.D. in chemistry, was sent to Goodwill to sort socks as a part of his training and testing.

It is my belief that the mentally ill would like to work also, but are discouraged because they have no way of obtaining the quality of jobs and careers as other citizens.

Discrimination was experienced by our organization, the Portland Coalition for the Psychiatrically Labeled when we tried to find wheelchair accessible office space. Several landlords ready to sign a lease with us refused to do upon finding out what disability we represented.

Being mentally ill is a poverty issue as well as a disability. Finding affordable housing is a real problem. Often, affordable housing means cockroach infested, dark small rooms or apartments. Subsidized housing is often a warehousing of the mentally ill and elderly into certain buildings in the city. Thank you.

[The prepared statement of Lelia Batten follows.]

PORTLAND
COALITION
For the Psychiatrically Labeled

My name is Lelia Batten. I have been diagnosed as having a mental illness. It is not important that I share with you my specific psychiatric label as it is time that we stop look at people as labels. It is important that we start seeing people who are gifted and unique in spite of their pain.

Mental illness is an illusive disability. Since it is invisible it is often overlooked and ignored. Psychiatrists themselves can only therorize as to the causes and cures of mental illness. Heredity, enviroment , and chemical causes are some of the suggested causes and the cure depends on which theory the doctor you are presently seeing believes is the cause.

It is at this point discrimination starts. Seldom is the client listened to. After all they are ill and can not best decide what is best for them or even set appropriate goals for themselves or so psychiatrists tell us. Medication, often the opiate of the psychiatrist's conscience, is usedto manage client's behavior rather than to provide relief from the client's suffering. Clients are over-medicated and released into the community without sufficient monitoring on extremely high dosages of psychotropic meds and are expected to lead active and fufilling lives.

Patients who are requesting psychtherapy to supplement the chemotherapy are prevented from receiving therapy by the attitudes of service providers and economic factors. Service providers are more often than not led to believe that medication is the only neccessary treatment and clients are not given the chance to benefit from other treatments. If a patient is given the option of receiving psychotherapy than they have to find a therapist who is medicaid reimbursable. Most psychiatric clients do not have insurance because of their poverty levels. Most private therapists do not take Medicaid aand most clinics do not promote any treatment besides medication. State hospitals in the state of Maine are notorious for using medication for controlling behavior and not for treatment alone. Seclusion rooms and restraints are used to punish clients. In spite of the client's rights passed in the state of Maine people are treated deplorably. Rights are treated as privileges rather than rights. If you cooperate you are allowed your rights and if you don't you are forced and over medicated.

Side affects of medications are often seen as symptoms of the illness and treated as such. This summer four deaths occured in one of our state hospitals. At least one person experiencing medical problems from the heat was treated as if a symptom of the illness and put in restraints where this client died . Lack of medical care is common among the mentally ill. If you can afford medical treatment and seek it out then once they find out you have a psychiatric history your symptoms are seen as a part of your psychiatric problems. If you go to the emergency room in my city then they pull your psychiatric chart before they listen to your symptoms.

Just the other day a gentleman walked into my office and said he had just gone to apply for a job for which he was not hired because a question on the application asked him if he had ever had a psychiatric hopitalization.

Vocational Rehabilitation often a the solution for receiving job training and ultimately a job for other disabilities is not even recommended to the mentally ill. If consumers of mental health services contact Voc. Rehab. on their own then they are put through the same testing and training as people with mental retardation. One gentleman I know who before his illness had received a Ph. D. in Chemistry was sent to Goodwill to sort socks. It is my belief that the mentally ill would like to work also but are discouraged because they have no way of obtaining the quality of jobs and careers as other citizens.

Discrimination was experienced by our organization, the Portland Coalition for the Psychiatrically Labeled, . when we tried to find wheel chair accessible office space. Several landlords ready to sign a lease with us refused to do so upon finding out what disability we represented.

Being mentally ill is a poverty issue as well ad a diability. Finding affordable housing is a real problem. Often affordable housing menas a cockroach infested, dark, small room or apartment. Subsidized housing is often a warehousing of the mentally ill and the elderly into buildingss. This does not allow mentally ill person to feel normal and a part of society.

Finally I woould like to talk about the need to educate society on the issues of disabilities. People need to be made aware of the abilities of those who are disabled. I would like to tell you about something that happened to me just after I got out of the hospital I had applied to social security for SSDI and gone through the process. I had received word that I was eligible and that it had been granted and I went to sign the final papers. Wondering what the next step was in the process I asked the worker what I had to do next. Looking through the file I saw his eyes fall on the statement that my disability had been due to a psychiatric disability. His whole response to me changed. Very slowly he said to me, " Go...home... and...find... someone...to..help...you...spend... your... money." Obviously this worker had his own preceptions about what a psychiatric disability meant. As long as people with disabilities are being treated differently even in attitudes our work is not finished. Thank-you.

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Mr. **Owens**. Thank you. Ms. Mulligan.

STATEMENT OF KATHLEEN MULLIGAN

Ms. **Mulligan**. My name is Kathleen Mulligan and I am appearing before you today to state my strong objection to a Federal Social Security policy that continues to discriminate against parents who choose to raise their severely disabled children at home. Current Social Security eligibility criteria require me to get divorced or put Caley in an adoptive home, foster home, or institution before she can qualify for benefits.

Families like mine have seen their American Dreams turn into nightmares, solitary struggles to survive in the face of the Federal Government's ignorance and apathy. My family has been somewhat fortunate. People in the Merrimac Valley started the Caley Mulligan Foundation to build bridges between the urgent unmet needs of these families and the time when the Federal Government finally wakes up to the fact that these children are a part of us and not apart from us. As the president of that foundation, I can report two things with absolute certainty.

First, my foundation, unlike the executive branch of the Federal Government, wastes neither a minute nor a dime in getting immediate help to these families.

Second, the number of these families will continue to increase as advances in medical technology enable more and more of these children to survive. That is a reality that no amount of empty rhetoric can refute.

Additional help has come from the Commonwealth of Massachusetts. A medicated waiver program has been implemented, also named after my daughter. And this effort provides insurance coverage to some of the children with severe disabilities. Congressman Donnelly and Senator Carey have filed legislation designed at ending the discrimination against these children and their families.

But as of these today, these families are still considered outcasts by the executive branch of the Federal Government. Our children are disavowed by our Federal bureaucrats and denied the equal protection of our laws.

Secretary of Health and Human Services, Dr. Otis Bowen, could change that situation at anytime with a simple stroke of his pen. To date, he has declined to exercise the authority he already possesses. He has turned his back on these children and ignored the crisis confronting their families.

So, we continue to struggle. But no longer in solitary silence. I will leave with you nearly 100 newspaper articles that have appeared on this issue in metropolitan Boston newspapers over the past year. Be assured that this is only the beginning. More and more of these children are being born every day. And fewer parents are willing to quietly accept the Federal Government's continued indifference. The Americans With Disabilities Act is an important piece of civil rights legislation. As the parent of a severely disabled child, I support it along with other legislative efforts. They are essential steps at making this kind of inclusive and empathetic world within which all of our children will grow up and grow old. I believe that all three branches of the Federal Government have an absolute obligation to aid our most vulnerable and voiceless citizens. The executive branch appears to have abdicated their responsibility. My hope is that your response affirming the human dignity of everyone with a disability will be decidedly different. Thank you.

[The prepared statement of Kathleen Mulligan follows. Additional material submitted by Ms. Mulligan will be kept in subcommittee files.]

Remarks by Kathleen Mulligan before the House Select Education Sub-committee hearings in Boston on October 24, 1988./

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My name is Kathleen Mulligan and I am appearing before you today to state my strong objection to a federal social security policy that continues to discriminate against parents who choose to raise their severely disabled children at home. Current social security eligibility criteria require me to get divorced or put Kaileigh in an adoptive home, foster home or institution before she can qualify for benefits.

Families like mine have seen their American dreams turn into nightmares: solitary struggles to survive in the face of the federal government's ignorance and apathy.

My family has been somewhat fortunate. People in the Merrimac Valley started the Kaileigh Mulligan Foundation to build bridges between the urgent unmet needs of these families and the time when the federal government finally wakes up to the fact that these children are a part of us and not apart from us.

As the president of that foundation, I can report two things with absolute certainty. First, my foundation — unlike the executive branch of the federal government — wastes neither a minute nor a dime in getting immediate help to these families. Second, the number of these families will continue to increase as advances in medical technology enable more and more of these children to survive. That is a reality that no amount of empty rhetoric can refute.

Additional help has come from the Commonwealth of Massachusetts. A medicaid waiver program has been implemented, also named after my daughter, and this effort provides insurance coverage to some of the children with severe disabilities. Congressman Donnelly and Senator Kerry have filed federal legislation designed at ending the discrimination against these children and their families.

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are disavowed by our federal bureaucrats and denied the equal protection of our laws.

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The Americans with Disabilities Act is an important piece of civil rights legislation. As the parent of a severely disabled child, I support it along with other legislative efforts. They are essential steps in making this the kind of inclusive and empathetic world within which all of our children deserve to grow up and grow old.

I believe that all three branches of the federal government have an absolute obligation to aid our most vulnerable and voiceless citizens. The executive branch appears to have abdicated their responsibility. My hope is that your response, affirming the human dignity of everyone with a disability, will be decidedly different.

Thank you.

Mr. OWENS. Thank you. Ms. Barbara Johnson.

STATEMENT OF BARBARA JOHNSON, ORONO, ME

Ms. JOHNSON. Thank you, Mr. Chairman. I am going to cite problems with the availability of the insurance in this country, the criteria having come from the U.S. Insurance Manual. And, hopefully, I will have time to give examples from my own life.

The first type of availability problem with insurance involves new kinds of risk. The tradition of American insurance is to view new risk with suspicion, pending the gathering and the analysis of pertinent loss data. As a result, coverage is usually very slow in forthcoming if it is offered at all.

The second type of availability problem is closely related to the first and involves situations where a currently insured peril becomes unpredictable in character and catastrophic in its consequences. In this instance, insurers are prone to not only withhold coverage, but actually withdraw existing coverage. Should no alternative source of coverage exist, a major availability problem will arise.

A third instance in which availability of insurance becomes an issue is when an insurer sees a particular group of insureds as consistently costing more in claims than they are paying out in premiums. In these cases, the insurer may choose to either limit or restrict the type of coverage or the amount of coverage available to the insured.

I myself was a product of Blue Cross-Blue Shield failure on several occasions. I suffered from seizures for several years. The seizures were under control, but I lost my Blue Cross-Blue Shield when I was hospitalized with a reoccurring attack because they called it a preexisting condition. I am getting sick of the word, "preexisting condition."

Today, I am a coordinator for the Maine Independent Living Center and I cannot afford to take out insurance because of preexisting conditions. And I had the inability to get insurance when I left the State hospital after 20 years because, again, preexisting conditions and too much medication.

Then I had brain surgery. I had a bilateral lobotomy in 1960 and my insurance bill for the surgery was astronomical. My father's business was attached and he was forced to sell to pay my bills and I was over 18 years of age. I was actually over 21. And he was forced to sell his business to pay my bills because Blue Cross said I had a preexisting condition. And now, I have had four—I have had three back surgeries, I beg your pardon, I have applied insurance through a previous employer and, again, I am told because of preexisting conditions I am unable to get the insurance I so desperately need.

I feel the ADA can do something about this. And I wish you most success in all of your endeavors. We really need your help. Thank you.

[The prepared statement of Barbara Johnson follows:]

Problems with Availability of Insurance

The first type of availability problem involves new kinds of risk. The tradition of American insurers is to view new risks with suspicion, pending the gathering and analysis of pertinent loss data. As a result coverage is usually slow in forthcoming, if it is offered at all.

The second type of availability problem is closely related to the first and involves situations where a currently insured peril becomes unpredictable in character and catastropic in its consequences. In this instance, insurers are prone to not only withhold coverage but actually withdrew existing coverage. Should no alternative source of coverage exist, a major availability problem may develop.

A third instance in which availability of insurance becomes an issue is when an insurer sees a particular group of insureds as consistently costing more in claims and expenses then they contribute in premiums. In these cases, the insurer may choose to either limit or restrict the type of insurance or the amount of coverage available to the insured.

Example #1-Loss of Blue Cross because of seizures.

Example #2-Inability to get insurance-to much medication.

Example #3-Insurance dropped and parents business attached to pay existing bills.

Example #4-Unable to get insurance because of pre-existing condition.

Barbara Johnson
Peer Co-ordinator
Box 926
Bangor, Me.
04401

Mr. **Owens**. Thank you very much, all three of you. I have one question for Ms. Batten. Has discrimination against the mentally ill, in your opinion, kept people in the hospital longer than they needed to stay in the hospital? And is this a great waste of money?

Ms. **Batten**. Yes, it is. Often, in the State of Maine, as I said before, it depends on how cooperative you are whether you stay in the hospital. If you cooperate and take all your medication and they see that as getting well, and if you do not—if you do not agree with the treatment that they advise you to take and you do not cooperate, then you are seen as being iller and you are not allowed to leave the hospital. And I think this is a wasted condition, a waste of money because if you listen—if they would ask the clients and listen to what the clients have to say about what treatments are necessary for them, then people would get out of the hospitals sooner.

Mr. **Owens**. Thank you.

Our next panel is Tim Foley, Larry Espling, Ruth Long, Nancy Husted-Jensen.

Would you like to begin, Mr. Foley.

STATEMENT OF TIM FOLEY

Mr. **Foley**. Thank you, Mr. Chairman.

Boston, MA is a good place in 1988 for people with disabilities to tell Congress that we want some basic rights that our Founding Fathers wanted for all Americans.

> We hold these truths to be self-evident that all people are created equal. That they are endowed by their creator with certain inalienable rights. That among these are life, liberty and the pursuit of happiness.
>
> We, the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves to our posterity do ordain and establish this Constitution of the United States of America.

All our lives, we have read these lines and these fine words from the Declaration of Independence and the Preamble of the U.S. Constitution. Today, after over 200 years after these principles were articulated, we, the people with disabilities respectfully urge you, our representatives in the Congress, to make these words finally come true, to declare that all of us are truly equal under law. And, second, to form a more perfect union, but establishing justice for all persons. Thank you.

[The prepared statement of Tim Foley follows:]

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS DEVELOPMENTAL DISABILITIES COUNCIL
600 WASHINGTON STREET, BOSTON, MA 02111

October 24, 1988

MICHAEL S. DUKAKIS
GOVERNOR

THOMAS J. LARKIN
CHAIRMAN

(617) 727-6374

JODY SHAW
EXECUTIVE DIRECTOR

TO: Chairman Major R. Owens, Committee on Education and Labor, Subcommittee on Select Education

FR: Tim Foley, for the Massachusetts Developmental Disabilities Council

RE: H.R. 4498, **AMERICANS with DISABILITIES ACT**

I am pleased to testify on behalf of the Massachusetts Developmental Disabilities Council, of which I am a member. The Council consists of 59 persons appointed by the Governor to advocate for the estimated 86,000 persons with developmental disabilities in Massachusetts. Developmental disabilities are severe, chronic conditions which a person is born with or attains before his or her twenty-second birthday. These disabilities can be physical, mental, sensory, medical or emotional--or any combination of these. They limit major life functions such as self-care, mobility, learning, expressing oneself, among others. Because of the early onset, severity, and long-term nature of developmental disabilities, people with these kinds of conditions are especially eager to have basic legal protections such as those included in the Americans with Disabilities legislation.

Boston and Massachusetts make a good place--in 1988--for people with disabilities to tell the Congress that we want some basic rights that our founding fathers wanted for all Americans:

> We hold these truths to be self-evident, that all [people] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.
>
> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

All our lives we have all heard these fine words from the Declaration of Independence and the preamble of the United States Constitution.

Today, over 200 years after these principles were first articulated, WE THE PEOPLE WITH DISABILITIES respectfully urge you--our representatives in the Congress--to make these words come true:

- to declare that ALL of us are truly equal under law
- to form a more perfect union by establishing justice for ALL of us.

Thank you.

Mr. **Owens**. Thank you. Ms. Long.

STATEMENT OF RUTH LONG, PEER ADVOCATE COUNSELOR, VERMONT CENTER FOR INDEPENDENT LIVING

Ms. **Long**. Thank you. I am here to represent people in the State of Vermont. I work as a peer advocate counselor for the Vermont Center for Independent Living. There were a number of us who were going to be here today, but evidently, I am the only one who made it.

Everyday when I work, I hear stories about discriminations, about segregation, about poverty, about trying to overcome attitudinal barriers. The list goes on and on. I, myself, am very concerned about the lack of adequate transportation in the State. We are a very rural community. We have very little public transportation. What we have is very inadequately accessible. People do not get out. They do not make themselves known. Nobody believes that there is really a disabled community in the State of Vermont because they are invisible.

Very often, when I go out, I have to think about where I am going: Is there going to be handicapped parking space? Is that space going to be occupied by somebody who is not a disabled person? If that is a space that is incorrectly occupied, is there going to be any penalty? Is that going to be policed? Am I going to be able to get where I want to go? Very often, you can call ahead, as I do very often, to find out whether a place is really accessible and you are told, "Oh, yes. Just a few steps." Or else, "It is accessible." And I recently had an occasion where I went to a place where there was an elevator. However, the elevator had no light and I accepted on faith that I would get to the second floor, but I got into this elevator with no light, went up to the second floor, found myself going down again because where I was going on the second floor was blocked. It was blocked by a band that was in the middle of a set and just could not be bothered to move away from the elevator door. So, what often is supposed to be accessible is not accessible.

And I do not want to be carried up a flight of stairs. People in Vermont have very hard times with transportation. Taxi cabs will not take people who have a disability. I guess that is all I want to say.

Mr. **Owens**. Thank you, Ms. Long.

Mr. Larry Espling.

STATEMENT OF LARRY ESPLING, WALTHAM, MA

Mr. **Espling**. Thank you for giving me this opportunity.

[Some portions of Mr. Espling's testimony were incomprehensible.]

I want to get a job, but it is hard to get a good job. There are many people who have gone to college but they cannot get a good job.

May I read to you——

[Mr. Espling asked an interpreter to read from his prepared statement.]

Most people view employment as economic self-sufficiency and personal and professional identity. As Kiernan and Start say in their book, "Pathways to Employment. The concept of work and the place that work occupies in the social structure of the United States is central to the establishment of a sense of belonging for most adults."

However, for many or most people with developmental disabilities, including cerebral palsy, the sense of belonging comes from holding a job is an experience that remains out of reach. Despite the rosy economic picture in Massachusetts, between 50 and 80 percent of people with developmental disabilities are unemployed, according to the Boston Office of Handicapped Affairs."

[The prepared statement of Larry Espling follows:]

TO: Chairman Major R. Owens, House Committee on Education and Labor, Subcommittee on Select Education

FR: Larry Espling, Waltham, Massachusetts

RE: Testimony regarding H.R. 4498, "The Americans with Disabilities Act"

October 24, 1988

I am pleased to present the following materials in the hopes that my own experiences will help this committee and other members of Congress to understand the importance of passing legislation that will ensure basic civil rights for persons with disabilities in America.

The following appeared in Changing Waltham, a newspaper in my home city; it is written by Ms. Susan Burkhart, based on her interview with me. The final column is about employment, and was written by myself and published in the same newspaper.

LARRY ESPLING has been a Waltham resident for nine years; he also happens to be a person with a disability. At three years of age, he was diagnosed as having cerebral palsy. When he was five, his parents took him to a specialty clinic. There they were told by the physician that their son was mentally retarded and would never learn to walk or talk. He advised putting Larry in an institution. Luckily for Larry, he had parents who disregarded the doctor's advice. His mother, a teacher, and his father, a general store owner, chose to keep him at home and teach him themselves. Larry did learn to walk and talk, although both are done with some difficulty as are many functions involving his hands.

In spite of his disability, Larry graduated from the University of Maine, Presque Isle, in 1978 with a degree in Behavioral Science. He has lived independently since moving to Waltham in 1979. A member of the National Board of Church and Society, United Methodist Church, since 1984, he has traveled throughout the U.S. to attend board meetings. He has been a gubernatorial appointee to the Massachusetts Developmental Disabilities Council since 1985 and has served on the board of United Cerebral Palsy of Boston. He is also actively involved with St. John's Methodist Church in Watertown and Waltham Concerned Citizens. Larry has worked as a program aide for mentally retarded individuals, taught pre-vocational skills to the multiply-disabled, worked as a camp counselor, and has done disability research for the Department of Employment Services and the Boston Office of Handicapped Affairs.

S.B.: ***What are the major issues facing people with disabilities?***

L.E.: It depends on the disability. I'll talk about people who went to high school and college. Everybody is unique, but the major problem is finding jobs. Transportation, public attitudes and housing can be problems. Housing is sometimes difficult because of discrimination against the handicapped and because income is often low. There is a new bill before the Massachusetts legislature to prohibit discrimination in housing, but it hasn't passed yet.

S.B.: ***What in your own life are the major issues?***

L.E.: Jobs are the biggest problem I face—keeping a job, and finding the ideal job for me. The jobs I've had have been mostly with local or state government agencies. These jobs have tended to be temporary ones either because funding ran out or because they were only planned as short-term projects to begin with. It's very hard for someone with severe cerebral palsy to get a job in the private sector.

S.B.: ***How do you feel about being labeled as handicapped?***

L.E.: Handicapped means "hand in the cap," or to beg. It's an old English expression. Another meaning is in golf. You give someone a handicap so he or she can compete. I prefer the expression "person with a disability." Everybody has a disability of some kind, even if it's just wearing glasses. If anyone with a disability would like to get together to talk about common problems or to start a group in Waltham for those with disabilities, please call me at (617) 647-0017. People can get very isolated, especially if they live alone.

S.B.: ***What are the most common misconceptions people have about those who are disabled?***

L.E.: Some people think we are retarded. They don't know how to act. At the ethnic festival in Waltham in 1986, I wanted to buy a book on Lithuania at one of the booths. The person sitting there said, "Why do you want this book? You can't read." Another misconception is that if a person with cerebral palsy marries, any children will have C.P. I know of two C.P. couples with normal children. It's not hereditary.

S.B.: ***Are there unhelpful ways that people deal with those who are disabled?***

L.E.: Many programs that work with the disabled can be harmful. They can be overprotective, in part because they get money from the government and don't want anyone to get hurt. They don't encourage people with C.P. to be independent. I was lucky to grow up in a tiny town in Maine where there were no programs. My parents let me work. I helped in the small general store they owned, mowed the grass and did other yard work, shoveled snow, piled wood and brought it into the basement, and picked potatoes. . . . People say things sometimes as if you can't hear them. I was on a bus and two men near me said, "He'll be put away." I've had things like that happen before.

S.B.: ***How would you like to see things improve or change?***

L.E.: In the last 20 years there's already been a big change. I don't think I could have gone to college before I did. Congress passed a bill in 1975 mandating that handicapped people be allowed to enter public schools. I would like to see more programs that encourage people who were born with disabilities to become more independent.

Larry Espling. Photo by Dick Crowley.

Employment Obstacles and the Developmentally Disabled

Most people view employment as economic self-sufficiency and personal and professional identity. As Kiernan and Stark say in their book *Pathways to Employment*, "The concept of work and the place that work occupies in the social structure of the United States is central to the establishment of a sense of belonging for most adults." However, for many or most people with developmental disabilities,* including cerebral palsy, the sense of belonging that comes from holding a job is an experience that remains out of reach. Despite the rosy economic picture in Massachusetts, between 50 and 80 percent of people with developmental disabilities are unemployed, according to the Boston Office of Handicapped Affairs.

The major reason for this high unemployment rate has been the perceptions of professional rehabilitation counselors, employers and some of the disabled themselves. They have felt that people with developmental disabilities couldn't hold a job in society. So those with cerebral palsy and other developmental disabilities who want work in industry or business are denied the chance to prove themselves.

We have all heard about how tight the job market is in Massachusetts and how Wendy's is paying $5.00 an hour. This has led employers to begin looking at the possibility of hiring people with cerebral palsy or other disabilities. Fortunately, employers are discovering that hiring people with developmental disabilities is highly cost effective and their fears that their insurance rates would go up as a result of hiring those people are unfounded.

Even though it is getting easier for people with developmental disabilities to get jobs, there is still a long way to go. We need new ideas for people who want to work. As I see it, this is the next new challenge for United Cerebral Palsy and other groups—helping people who want to get a job in the economy. As Phillip Johnston, Secretary of Human Services, has said, "If we can't give a job to every single person in Massachusetts, no matter how disabled, then we ought to be embarrassed."

—Larry Espling

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*Developmental disabilities are severe, chronic conditions which a person is born with or attains before his or her twenty-second birthday. These disabilities are mental, physical, or a combination of the two. They can limit function in such areas as self-care, mobility and expressing oneself, among others.

Mr. OWENS. Thank you very much.

Ms. Nancy Husted-Jensen.

STATEMENT OF NANCY HUSTED-JENSEN, CHAIRMAN, GOVERNOR'S COMMISSION ON THE HANDICAPPED, PROVIDENCE, RI

Ms. HUSTED-JENSEN. Thank you. I am the chairman of the Rhode Island Governor's Commission on the Handicapped. And I have submitted testimony in writing to you, but there is an important issue I would like to speak on at this particular time.

It is an extremely important issue facing citizens with disabilities. The problem concerns voting. Since 1980, the Rhode Island Governor's Commission has registered citizens with disabilities to vote. In fact, this year, we registered 10,000 citizens. The Rhode Island constitution enfranchises every citizen over the age of 18 with the right to vote. The only exceptions are those people who are in prison for 1 year or more or those people who are deemed incompetent by the courts for whatever reason. Only the courts are empowered in Rhode Island to take away a person's right to vote.

The problem exists now that many social workers feel they also have the right to decide who can vote and who cannot vote. Recently, I participated in this year's voter registration. I was sworn in statewide registrar for the board of elections. I visited an association of retarded citizens work activities workshop. I had spoken to the director several days before and explained to him our procedure. And we invited residents from the group homes in the area to the center so they could hear my speech and decide whether or not they would like to participate in voting.

Upon arrival, I was met by only four people. Before I had come, I was told it would be groups of 15 to 18 people that I could talk to and then they would decide whether or not they wanted to be registered to vote.

I spoke to one of the social workers who came to me and explained to me that in the group homes, the people who were running the group homes, the social workers and the supervisors, were deciding who they deemed competent to vote and who they deemed not competent. They were not telling all the people about this opportunity to be registered.

Another problem arose when I took a registration card from that meeting to a local town board of canvassers. The voter has cerebral palsy and is blind. The clerk of the board of canvassers looked aghast as soon as I showed her the card and said to me, "Is that person competent? Look at that signature."

I guess the look on my face did not really please her and I protested. And she then announced to me that there was no such street that existed in that town. After I checked the post office, the person's personal identification in the telephone book, I went back and demanded the person be put on the voting roll. I knew when I left there, the person was not going to be put on the voting rolls. So, I went back to the Commission's office. I had the director of the Commission contact the Rhode Island Board of Elections and Senator Chaffe's office. After a lot of phone calls, the person was put on the board—on the voting list.

And I happen to be a real estate agent and one of my colleagues who was down at the town hall at the same time told me they had actually had to go out in the dumpster behind the town hall and dig out the registration card.

I cannot tell you, as a parent, how angry that made me. I have also been told by the Commission's director who was involved in Project Vote, in the past years people with disabilities have been turned away from the polling places after they have been registered to vote because they did not look competent. Thank you very much.

[The prepared statement of Nancy Husted-Jensen follows:]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Executive Department
GOVERNOR'S COMMISSION
ON THE HANDICAPPED
Building 51, 3rd fl, 555 Valley Street
Providence, R.I. 02908 - 5686
(401) 277 - 3731 (v/tdd)

The Honorable Major Owens Oct. 24, 1988
Chair. of the US House of Representatives
Subcommittee on Select Education
Boston, MA

Dear Representative Owens,
Members of the Select Education Subcommittee and Justin Dart:

I welcome this opportunity to present, on behalf of the R.I. Governor's Commission on the Handicapped and the people of the State of Rhode Island, our support of the Americans with Disabilities Act of 1988. All 167,200 Rhode Islanders with disabilities are proud that our entire Congressional Delegation have become co-sponsors of the ADA. The ADA will extend to all citizens of the United States the rights Rhode Islanders with disabilities now enjoy. The passage of the ADA will place the power of the Federal Government behind each individual with a disability as they exercise their rights as Americans.

As we in Rhode Island know only too well, passage of civil rights legislation is only the first small step on the long road to equality and dignity for all. Once enacted, the people most affected must be educated about their rights and feel comfortable in exercising them. The fear of retribution, whether well founded or not, is a powerful ally of bigots and hate mongers. Passage of the ADA will send a message LOUD and CLEAR to individuals with disabilities; that "they have arrived in the promised land", and that Uncle Sam is their ally.

State and local civil rights laws cannot address all problems facing people with disabilities. Many aspects of their lives: interstate commerce and transportation; telecommunications and broadcast communications etc. are federally regulated activities. The federal government must stop assisting in the segregation of Americans with disabilities.

I would like to take the few moments I have left to address an extremely important problem facing citizens with disabilities. The problem concerns voting. Since 1980, the R.I. Governor's Commission has registered citizens with disabilities to vote. The RI Constitution enfranchises every citizen over the age of 18 with the right to vote. The only acceptions are for those who are imprisoned for one year or more, or who the courts have decided are mentally incompetent.

Only the courts are empowered to take away a person's right to vote in Rhode Island. The problem is that many social workers feel that they also have the power to decide who is competent to vote and who is not ! Recently as part of this year's voter registration effort, I visited an Association of Retarded Citizens Work Activities/Sheltered Workshop. I'd spoken to the Director of the center several days before. He agreed to invite the residents of the group homes in the area to the center so they could hear my speech about voting and if interested then become registered voters. Upon arrival, I was met by 4 persons, and told, on the side, that the group home supervisors had decided who was qualified to vote and didn't tell any of the other residents about my visit.

Another problem arose when I took a registration card to the local town board of canvassers. The voter has Cerebral Palsy and is blind. The clerk at the board of canvassers said to me "Look at that signature, that person can't be competent!" When I protested, the clerk then announced that the street address was not correct. After I checked the Post Office, the person's I.D. card, and the telephone book, I returned with the registration card and demanded that they accept it. But feeling unsure that they would follow through, I had the Commission's director contact the RI Board of Elections, and with the help of Senator Chafee's Office we made sure the disabled person became a registered voter. I found out later that a board of canvasser's employee had to hunt through the trash container out behind town hall for the registration card, after the state board of election's started its investigation.

I was told by the Commission's director that in past years voters with disabilities have been turned away at the polling place for "not looking competent" even through they were registered to vote. One person running for state senator bragged about having torn up mail ballots one year because he did not think it looked right for him to have registered group home residents in his district to vote by mail. So these people voted but their ballots never made it to the "counting house".

Until universal voter registration is in place and a strong criminal penalty is available we will always have "well meaning" social workers / parents / and election officials who will deny individuals their right to be part of this great democracy because they DO NOT LOOK COMPETENT, or worse their signature doesn't look competent ! We need the ADA, but with strong criminal penalties for violating a person's rights. We need passage of HR 3950 and S 2061 the Universal Voter Registration Act, to establish a national standard for voter registration.

Until we are free from bigots and the uninformed, we will always need strong effective civil rights laws and fully funded enforcement agencies.

Sincerely,

Nancy Husted-Jensen

Nancy Husted-Jensen
Chairperson

cc: Governor DiPrete
Senator Chafee

Mr. **Owens**. Thank you very much. I want to thank you all for your testimony.

Our next panel consists of Judy Rogers, Phillip Campbell, Larry Urban, Denise Karuth.

Would you like to begin, Ms. Rogers?

STATEMENT OF JUDY ROGERS

Ms. **Rogers**. I am Judy Rogers and I went as far as ninth grade. And when someone sees that you went as far as ninth grade, you know, when you are filling out a job application, they say, without even knowing your background, they will say, "Oh, she is retarded. She's this. She can't do it." They do not give you the chance to prove you can. And they automatically say, "Why give her a chance." And I have been turned down several times because I am over the borderline retardation. And they say, "Why should I give them the opportunity." They give it to someone else who is more capable and turn you down, which they do all the time to me. I have not worked since 1979. I am on SSI now which I have been remaining on since.

Mr. **Owens**. Thank you. Mr. Campbell.

STATEMENT OF PHILLIP CAMPBELL, EXECUTIVE DIRECTOR, ASSOCIATION FOR RETARDED CITIZENS OF MASSACHUSETTS

Mr. **Campbell**. Good afternoon. First, let me thank you for the opportunity to submit some testimony today. My name is Phillip Campbell. I am the executive director of the Association for Retarded Citizens of Massachusetts. I am here in an attempt to represent the thousands of individuals and families across the Commonwealth who experience the disability of mental retardation. We are comprised of 25 local ARC's and thousands of members from one end of the State to the other.

During the 1950's, the United States recognized the need to become proactive in the steps to guarantee access and opportunity for all Americans in the civil rights movement. Yet, at that time, in effect, America was able to be passive in its support to different groups in accessing their civil rights. Now, as we end the 1980s, what is necessary is an act like the ADA in which there is an active role for Government that provides the necessary supports and requires that we, as a society, provide the supports for persons with disabilities to access our society as a whole and have an opportunity to excel based upon their abilities.

Persons with mental retardation have experienced some of the grossest examples of discrimination during the last 100 years. They have been relegated to segregated congregate facilities across the Nation. Only after multiple court inquiries have the courts concluded that the treatment offered to these individuals in the name of treatment and service was inhumane, degrading, and illegal in most cases. And this incarceration was only because of their disability. Enàctment of the Americans With Disabilities Act would further state person's rights to live in the community among their family members and their society as a whole.

As I began to prepare for these hearings, I realized that the strongest amount of testimony would not be given by someone like myself, but by those persons who had actually experienced discrimination themselves. As I talked to friends and acquaintances I have who are labeled mentally retarded, I realized that many of them have not even had the opportunity, as odd as this may sound, to experience the discrimination offered to others with disabilities because of that incarceration that has occurred.

Since the advent of the judicial intervention and Federal acts such as Public Education Law 94-142, we have seen that individuals with mental retardation have great ability and have many opportunities now to exercise their skills and jobs in communities across the Nation.

The ADA would provide a guarantee to fulfill people's desires and hopes based upon their abilities, not based upon the labels that they carry. Often persons with mental retardation have a secondary disability: an impairment either in communication or in mobility. The actions of this act when enacted into law, would further provide supports to families because one of the greatest barriers families that experience mental retardation have had is that the secondary disability, especially if it is in the area of mobility has prevented a family from vacations, from traveling, from accessing normal accommodations provided to everyone.

Over the last 30 years, thousands of people have demonstrated their ability to work and become taxpayers. The discrimination such as that that Judy just related to you would become illegal through this act.

I think, to summarize, the reason we are here today and that so many people have testified before you is that in America, in effect, discrimination is legal. Only until we declare that discrimination exists and that it is prejudicial and it is based on erroneous generalizations is it then illegal. And, so, with the enactment of the ADA, then this type of discrimination will change from being legal to illegal. Thank you.

Mr. OWENS. Thank you. Ms. Denise Karuth.

STATEMENT OF DENISE KARUTH, CHAIR, MASSACHUSETTS COALITION OF CITIZENS WITH DISABILITIES

Ms. KARUTH. Good afternoon. My name is Denise Karuth. I am the chair of the Massachusetts Coalition of Citizens with Disabilities and the Governor's Commission on Accessible Transportation.

As a young visually impaired child in public school in Buffalo, NY, I had to fight to sit in the front row of my classes so that I could participate and try to see the board. No effort was made until the exams of my junior year in high school to accommodate for my disability. Instead, I was held back from advanced classes and told that because of my disability I should take easy courses.

At the State University of New York, as a music major, I had to drop a required theory course because I was unable to read the photo-reduced score of a Bach cantata. As a special education minor, I informed one of my professors that I was legally blind. He replied, "What are you doing in this program if you can't see?" And refused to accommodate me in any way.

In 1976, my counselor at the New York State Commission for the Blind informed me that the Commission would not sponsor me for a masters degree in rehabilitation counseling because the State would not hire blind rehabilitation counselors, "Since," and this is a quote: "they could not drive to see their clients."

I then made the difficult decision to leave my home and family in order to pursue my goal in the more liberal Commonwealth of Massachusetts. After my first conversation with a blind worker at the Massachusetts Commission for the Blind, I felt like I had died and gone to heaven. Finding housing has been difficult, even before I started using a wheelchair. Affordable housing is in short supply and perspective landlords often told me they would not rent to someone with a guide dog. They said they did not care if it was illegal, knowing that in all likelihood I would be too busy trying to find a place to live, to fight them.

Once I became severely physically disabled due to multiple sclerosis, I found that housing was even harder to find and that I was discriminated against for a variety of reasons. Once I was refused housing in a new development despite the fact that I lived in the neighborhood the development was built to serve and was paying over 25 percent of my income to live in substandard inaccessible housing. The reason? Two of my personal care attendants were males. Furthermore, the application to the development asked many intrusive personal questions, such as: Do you use a catheter or other urinary appliance? In an apparent effort to determine if there was a risk of having their rugs soiled by urine.

Like all persons with disabilities, I face the discrimination in places of public accommodation from restaurants and taxis to accessible stores with inaccessible aisles and displays and new construction that does not meet architectural accessibility standards.

Like thousands of my peers, I am continually frustrated that the burden for enforcement of these regulations falls largely to disabled consumers through the complaint resolution process rather than through routine inspection and enforcement by building inspectors and responsible agencies. It is hard enough running into these barriers all the time knowing that you are the one that has to do something about it every time. It is infuriating.

One cannot speak of barriers without speaking of transportation. I have had pilots refuse to take my motorized wheelchair. I will try to summarize.

We talked about the difficulties of accessible transportation, talked about my role as chairperson in the Governor's Commission on Accessible Transportation. The need, the difficulty of not having Federal transportation regs. It is in the written testimony. I would like to read my concluding paragraph if I might?

The year 1988 marks the 40th anniversary of the signing of the United Nations Universal Declaration of Human Rights. Forty years later, we in the United States need the Americans With Disabilities Act, a declaration of rights for persons with disabilities so that we can fully join the human community which the United Nations document celebrates. We are not asking for your money. We are not asking for pity. We are not even asking for your sympathy.

All we ask is that you make real the promise and the opportunities that America strives to offer everyone, the respect and dignity we deserve as free and responsible citizens in a great Nation. Thank you.

[The prepared statement of Denise Karuth follows:]

TESTIMONY BRFORE MEMBERS OF CONGRESS REGARDING PAST DISCRIMINATION AND THE AMERICANS WITH DISABILITIES ACT

October 24, 1988

Good Afternoon. My name is Denise Karuth. I am the Chair of the Massachusetts Coalition of Citizens with Disabilities, and the Governor's Commission on Accessible Transportation. I am also a member of the Governor's Human Resource Forum.

As a young visually impaired child in public schools I had to fight to sit in the front row of my classes so that I could participate in class and try to see the board. No effort was made, until I took the NY State Regent's exams in 1971 at the end of my junior year in high school, to accommodate for my disability. Instead, I was held back from advanced classes and told that because of my disability I should take "easy" courses such as homemaking, rather than advanced courses such as physics.

At the State University of New York, as a music major in 1972, I had to drop a required theory course because I was unable to read a photo-reduced miniature score of a Bach Cantata. As a special education minor in 1975, I informed one of my professors that I was legally blind. He replied "What are you doing in this program if you can't see?" and refused to accommodate me in any way.

In 1976 my rehabilitation counselor at the New York State equivalant to the Commission for the Blind informed me that the Commission would not sponsor me for a Master's degree in rehabilitation counseling because the state would not hire blind rehabilitation counselors since, and this is a quote, "they couldn't drive themselves to their clients' homes." I then made the difficult decision to leave my home and family in order to pursue this goal in the more liberal Commonwealth of Massachusetts. I still remember my first phone call to the Massachusetts Commission for the Blind. When I heard the person I was talking to using a braille writer to take down my name and address I said to her "Pardon me for asking, but are you blind? Shr replied "Yes." I said "The Massachusetts Commission for the Blind hires blind people?" and she said "Of course. Lots of blind people work here." I felt like I'd died and gone to heaven!

Finding housing has been difficult, even before I started using a wheelchair. Affordable housing is in short supply and prospective landlords often told me they would not rent to someone with a guide dog. They said they didn't care if it was illegal knowing that, in all likelihood, I would be too busy trying to find a place to live to fight them. Once I became severely physically disabled due to Multiple Sclerosis I found that housing was even harder to find and that I was discriminated against for a variety of reasons. Once, I was refused housing in a new accessible development despite the fact that I lived in the neighborhood the development was built to serve, and was paying over 25% of my income to live in a substandard, inaccessible apartment. The reason? Two of my personal care attendants were males. Furthermore, the application to the development asked many intrusive personal questions such as "Do you use a catheter or any other urinary appliance?" in an apparent effort to determine if there was a risk of having their rugs soiled by urine.

Like all persons with disabilities, I have faced discrimination in places of public accommodation from restaurants and taxis which refused me because of my wheelchair or guide dog to accessible stores with inaccessible aisles and displays, and new construction that does not meet architectural accessibility standards. Like thousands of my peers, I am continually frustrated by the fact that the burden for enforcement of these regulations falls to largely disabled consumers through the complaint process rather than through routine inspection and enforcement by building inspectors and responsible agencies. It's bad enough running up against these barriers every time I leave my home. Knowing that, unless I report each violation, nothing is likely to be done about it is completely infuriating.

One cannot speak of barriers without speaking of transportation. I've had pilots refuse to fly my motorized wheelchair even though its sealed gell batteries were designed for safe transport and airline staff who tried to make me put my guide dog in a crate in the airplane's cargo bay. I've also experienced the major difficulties inherent in using advance notice dial-a ride services and fixed route accessible services from trips not available to drivers without lift keys to elevators and escalators out of service. In August of 1983 I traveled by train to Washington D.C. to commemorate the twentieth anniversary of the famous Civil Rights March , only to discover that our charter train had pulled up at an inaccessible platform. AMTRAK personnel told me, in all seriousness, that I would have to stay on the train for thirteen hours until it returned to Boston. I did not agree. I made them carry me down.

In my role as chairperson of the Governor's Commission on Accessible Transportation, I heard testimony from hundreds of persons with disabilities who face transportation barriers. One compelling testimony was presented by a woman who relied on a motorized wheelchair for mobility, had only one arm, and was deaf. She lost her Social Security disability because she had her PhD and, therefore, had been judged able to work. During the lengthy appeals process she had to sell her lift equipped van so she could eat. Now, several years later, she was ready to buy another van but could not obtain funding for accessibility modifications because of a policy which stated that only one vehicle would be modified per client. Fortunately, we were able to change the policy.

Normally, I would be travelling with a guide dog. But Irene is thirteen years old, and retired, and spends her days sleeping in the sun. I began using a wheelchair four years after I acquired Irene. Because I know use a wheelchair, there is not a single guide dog school in the entire country that is prepared to train me with another dog. And so because of discrimination against wheelchair users, I am denied the right to leave my apartment and travel in safety.

I know this is supposed to be a nonpartisan rally, but I feel it would be a disservice to the community if I did not bring up some of what has happened to us these past eight years. One of the first things that Mr. Reagan and Mr. Bush did when they came into office in 1981 was to rescind the Department of Transportation's 504 regulations. They held the new regulations hostage for six years until the courts forced their hand to release them in June of 1986. The new regulations, which allow for local communities to decide how they will comply and do not require any rail system accessibility, clearly serve the interest of transit providers and not disabled consumers. I cannot make this point strongly enough. In addition, the fact that transit authorities had until June of 1987 to submit a six year compliance plan and that these plans were not approved until the summer of 1988 means that, for all practical purposes, there has been virtually no regulation of accessible transportartion in this country since the Reagan/Bush administration came into office. This is discrimination on a grand and hideous scale. It must not be continued.

1988 marks the 40th anniversary of the signing of the United nations Universal Declaration of Human Rights. Forty years later, we in the United States need the Americans with Disabilities Act, a Declaration of Rights for persons with disabilities, so that we can fully join the human community which this sacred UN document celebrates. We are not asking for your money. We are not asking for your pity. We are not even asking for your sympathy. All we ask is that you make real the promise and opportunity that America strives to offer everyone: the respect and dignity we deserve as free and responsible citizens of a great nation. Thank you very much.

Respectfully submitted,

Denise Karuth

Denise Karuth

Denise Karuth
20 Washington Street Apt. 108
Brighton, MA 02146
(617) 232-2186

Mr. **Owens**. Thank you. Mr. Larry Urban.

STATEMENT OF LARRY URBAN, DIRECTOR, RENAISSANCE CLUB, LOWELL, MA

Mr. **Urban**. Good afternoon. I am director of the Renaissance Club, which is a comprehensive rehabilitation program for persons with mental illness. Discrimination against persons with mental illness is widespread. And, today, I am going to give several examples in the area of housing, public services, and education.

The stigma attached to persons labeled mentally ill is widespread. Evidence of the negative attitudes held by the general population toward persons with mental illness is vividly illustrated by the following letter to the editor printed in the Lowell Sun this past year concerning a State plan to provided community-based housing mentally ill.

This letter states, it is written by a person named Chris Dagle:

> Recent news reports have said that state hospitals would begin placing patients in private homes. Next to yours? Shortly. What are they thinking about? The streets are not safe to walk on now, let alone your yard for children to play next to a home where some mental patients are living. They named six or seven cities and two of them were Lawrence and Lowell. Why not spend a little money to fix up our state hospitals and make them homey and comfortable and keep the patients in their own environment. The state hospitals are on the best land in the cities. They are on perfect sites. Metropolitan State sits high on a hill overlooking Boston. Worcester State sits high on a hill overlooking Worcester. Both with beautiful grounds. Three-fourths of all mental patients are schizophrenic. Their moods can change in a second. Let's ask professionals, doctors, nurses, et cetera, if mental patients should live outside of the hospital. Now is the time to write to your state senators and congressman to get this stopped now.

OK. That letter reveals the negative attitudes and irrational fears that people have toward persons with mental illness. And these attitudes can be an insurmountable barrier to establishing housing programs for the mentally ill in residential neighborhoods. I know of two attempts to establish a supervised group home in Lowell that was stopped by irrational neighborhood reactions. In one case, derogatory graffiti were written on the proposed residential sites, such as "Nuts go home".

In both cases, the neighbors staged emotionally charged rallies that prevented any meaningful dialog concerning their stated objection such as property devaluation and the safety of their children. Under these circumstances, political pressures against agencies attempting to establish housing are often the deciding factor forcing the mentally ill out of the better, safer neighborhoods and into neighborhoods that are drug-infested and that pose other threats to their welfare.

I would like to, in the area of public services, inform you of an example of discrimination that occurred almost 2 years ago and it is still going on. Because of legal action, I cannot give names. This situation involves a restaurant which is in close proximity to a day treatment center for persons with mental illness. This restaurant was frequented by a number of people being served by the day treatment center until one day one of their members became disruptive and was rightfully asked to leave the restaurant. However, later the same day when several other members of the day treatment center attempted to get service at the restaurant, they were asked to leave. The owner of the restaurant directed negative comments toward them as a group and told them because of the incident that occurred earlier, he would no longer serve day treatment people again.

Now, almost 2 years later, people who are recognized as being from the day treatment program are still refused services. Thank you.

[The prepared statement of Larry Urban follows:]

Since 1966
Established by the
Mental Health Assoc. of
Greater Lowell, Inc.
Incorporated 1987

Renaissance Club, Inc.
Anne Kaplan Center
21 Branch Street
Lowell, Massachusetts 01851
(508) 454-7944

October 24, 1988

Major R. Owens, Chairman
Congressional hearing on H.R. 4498,
"Americans with Disabilities Act of 1988."
Lafayette Hotel, Boston, MA

Dear Chairman Owens,

The following reflects my testimony presented at the Congressional hearing on H.R. 4498 at the Lafayette Hotel, Boston, MA on October 24, 1988.

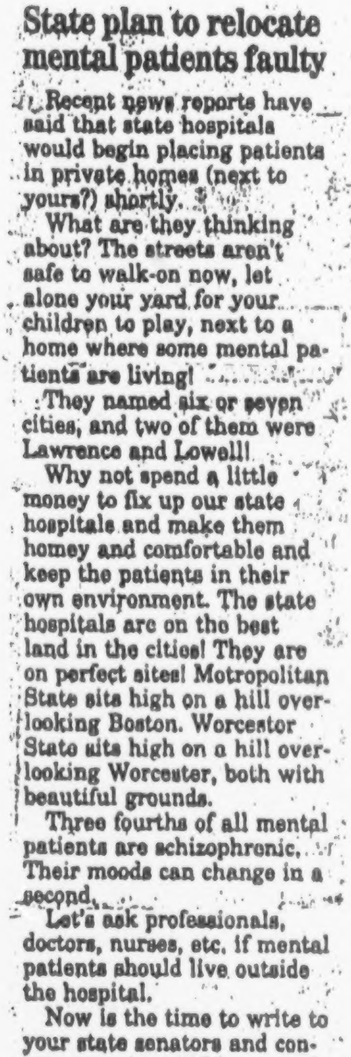
Discrimination against persons with mental illness is widespread and today I am prepared to give several examples of discrimination in the areas of Housing, Public Services and Education.

First, I would like to establish that I use the term "mental illness" to describe persons who have a psychiatric disability such as schizophrenia or manic-depression, which has usually required hospitalization in a psychiatric facility and treatment with antipsychotic medications.

The stigma attached to persons labelled mentally ill is widespread. Evidence of the negative attitudes held by the general population toward persons with mental illness is vividly illustrated by the following Letter to the Editor printed in the Lowell Sun this past year concerning a state plan to provide community-based housing for the mentally ill.

The letter printed in the Lowell Sun by a person by the name of Chris Daigle follows:

"for the red of courage and the gold of faith are woven whene'er a man looks in the face of failure and does the best he can . . . "



State plan to relocate mental patients faulty

Recent news reports have said that state hospitals would begin placing patients in private homes (next to yours?) shortly.

What are they thinking about? The streets aren't safe to walk-on now, let alone your yard for your children to play, next to a home where some mental patients are living!

They named six or seven cities, and two of them were Lawrence and Lowell!

Why not spend a little money to fix up our state hospitals and make them homey and comfortable and keep the patients in their own environment. The state hospitals are on the best land in the cities! They are on perfect sites! Metropolitan State sits high on a hill overlooking Boston. Worcester State sits high on a hill overlooking Worcester, both with beautiful grounds.

Three fourths of all mental patients are schizophrenic. Their moods can change in a second.

Let's ask professionals, doctors, nurses, etc. if mental patients should live outside the hospital.

Now is the time to write to your state senators and congressmen to get this stopped *now*!

CHRIS DAIGLE
Lowell

This letter reveals the negative attitudes and irrational fears that people have toward persons with mental illness and these attitudes can be an insurmountable barrier to establishing housing programs for the mentally ill in residential neighborhoods.

I know of two attempts to establish a supervised group home in Lowell that were stopped by irrational neighborhood reactions. In one case derogatory graffiti were written on the proposed residential site such as "Nuts go home!". In both cases the neighbors staged emotionally charged rallys that prevented any meaningful dialogue concerning their stated objections such as property devaluation and the safety of their children. Under these circumstances, political pressures against agencies attempting to establish housing are often the deciding factor forcing the mentally ill out of the better and safer neighborhoods and into neighborhoods that are drug infested and that pose other threats to their welfare.

While these situations do not constitute discrimination against specific individuals, they are symptomatic of society's attitude toward persons with mental illness and can be expected to operate in individual situations as well.

In the area of public services, I would like to inform you of an example of discrimination that occurred almost two years ago and is still going on. Because legal action may be pending, I cannot give names. This situation involves a restaurant which is in close proximity to a day treatment center for persons with mental illness. This restaurant was frequented by a number of the people being served by the day treatment center, until one day, one of their members became disruptive and was rightfully asked to leave the restaurant. However, later that same day when several other members of the day treatment center attempted to get service at the restaurant, they were asked to leave. The owner of the restaurant directed several negative comments toward them as a group and told them that because of the incident that occurred earlier, he would "no longer serve day treatment people again". Now, almost two years later, people who are recognized as being from the day treatment program are still refused service.

In the area of education, another example of discrimination was recently related to me by a person with a history of mental illness. This person was being interviewed for admission to a nursing school and she felt the interview was progressing very satisfactorally until she revealed that she had previously had two hospitalizations for mental illness. The interviewer then immediately informed her that there was no way she would be admitted to nursing school since nursing was a very stressful profession and her psychiatric history would indicate that she would not be able to deal with stress. However, since that interview occurred this person has obtained a B.A. in Liberal Arts and a Masters in Social Work from Boston University.

BEST COPY AVAILABLE

This last example suggests the pressures that people with a history of mental illness are often under when attempting to obtain educational or employment opportunities. Their fear of being rejected soley because they have a history of mental illness causes them to lie about their history. Over time, you can imagine the toll this can take on a person's integrity and the effect that it can have on a person's dignity and self-worth which is being constantly erroded by the effects of stigma and discrimination.

I hope that the "Americans with Disabilities Act of 1988" will help deal with some of these areas of discrimination against persons with mental illness that I have stated.

Sincerely,

Laurence E. Urban

Laurence E. Urban
Exectuve Director
Renaissance Club, Inc.

Mr. OWENS. Thank you. I want to thank all of the panelists for their testimony.

Our next panel consists of Stephen Cohen, Alan Wein, Peter Myette.

Mr. Cohen, you may begin.

STATEMENT OF STEPHEN COHEN

Mr. COHEN. My name is Stephen Cohen, and I am the co-coordinator for the Men's Project: The AIDS Memorial Quilt, in New England.

I am speaking here not as a representative of that group but more from my experience in working with that group and working with people who have AIDS. I see this bill as being very important to people who are either HIV positive or who have AIDS or some AIDS-related illness because they face discrimination in both housing and jobs. And I have seen it happen; in fact, there are people who might have wanted to speak tonight, but for fear of losing housing, would not be able to do so. I know of instances where people have been evicted by landlords, and when a person is struggling for medical treatment, for acceptance by family and friends, the last thing that person needs to deal with is a situation where there is discrimination in terms of housing or in terms of jobs.

I know there has been a breach of confidentiality with people who were actually HIV positive and who went on later to develop AIDS and subsequently have died, but where they had to file a suit in order to protect their job, in order to retain their job and retain medical insurance that came with the job. So, I would certainly offer my support in terms of including people with AIDS and people who are HIV positive as part of the people who are covered by a bill like this. I think it is an important one and needs support. Thank you.

Mr. OWENS. Thank you. Mr. Wein.

STATEMENT OF ALAN WEIN

Mr. WEIN. I want to thank you for the opportunity to speak before you. I am here today in support of the Americans with Disabilities Act. I am here to tell of the countless ways I have been discriminated against on the basis of my disability, of how I have not been able to participate equally with fellow human beings because there was discrimination taking place.

Discrimination, like the time I wanted to take a healing workshop to heal my mind and was told there were too many inaccessible buildings and bathrooms to accommodate my needs. Or the time I wanted to see a movie with a close friend and was told there was no wheelchair access to the second floor. The many times I simply wanted to use the facilities where a Federal program is housed, such as a U.S. Post Office, but found it inaccessible to me. Or the times that I attended concerts and have been unable to see the artist perform because the area designated for wheelchairs is behind people who constantly stood.

I ask you: Are these instances of the American constitutional promise of liberty and justice for all? Of not being able to gain access to a mass transit station because it was inaccessible to myself and another in a wheelchair. Of the numerous times I was unable to take my daughter to play with other children because there was no public transportation available to me. Of not being able to enter a coffee shop or a restaurant at my own discretion to eat and talk with family or friends.

The constant categorical discrimination that I and millions of others who have disabilities experience on a daily basis is depriving us all of equal participation in mainstream society. And we are here to show strong support for the ADA which would give the 36 million Americans with disabilities a comprehensive civil rights legislation on a scale similar to other civil rights bills of the last decade on the basis of race and sex, national original and religion.

America is supposed to be a beacon to the rest of the planet. I ask you: Is she doing that when she has no law which protects people from instances of categorical discrimination? All people should have the equal right to give input to this Nation of ours. You can no longer discriminate against the disabled population and truly be a great nation. The United States has to have a vision where all Americans have equal access to all of its greatness and it has not had this vision to this date. I present to you that America will not be a truly great nation until it stops discriminating against its disabled population. People with disabilities have countless abilities they have been deprived of contributing to society because of unequal access to the American Dream. This vision can greatly be enhanced by enactment of the Americans with Disabilities Act. Respectfully.

[The prepared statement of Alan Wein follows:]

October 24, 1988

Americans with Disabilities Act Testimony

I am here today to tell of the countless ways I have been discriminated against on the basis of my disability. Of how I haven't been able to participate equally with fellow human beings because there was discrimination taking place. Discrimination like the time I wanted to take a healing workshop and was told there were to many inaccessible buildings and bathrooms to accommodate my needs. Of the time I wanted to see a movie with a close friend and was told there was no wheelchair access to the second floor. Of the many times I simply wanted to use the facilities of a federal building such as a U.S. Post Office and found it inacessible to me. Of the times I have attended concerts and have been unable to see the artists perform because the area designated for wheelchairs was behind people who constanly stood. I ask you are these instances of the American constitutional promise of liberty and justice for all? Of not being able to gain access to a mass transit station because it was inaccessible to myself and another in a wheelchair. Of the numerous times I was unable to take my daughter to play with other children because there was no public transportation availible to me. Of not being able to enter a coffee shop or restaurant at my own descretion to eat and talk with family or friends. The constant categorical discrimination that I and millions of others who have disabilities experience on a daily basis is depriving us of equal participation in mainstream society. I am here to show strong support for the ADA which will give the 36 million Americans with disabilities a comphrehensive civil rights legislation on a scale similar to other civil rights bills of the last decade on the basis race, sex, national origin and religion.

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Respectfully,

Alan Wein

Mr. Owens. Thank you. Mr. Myette.

STATEMENT OF PETER MYETTE, MAYOR'S COMMISSION ON PERSONS WITH DISABILITIES, BOSTON, MA

Mr. Myette. Good afternoon. First of all, on behalf of the mayor, Raymond Flynn, I would like to welcome you to the city. I know you have been here for a long time or a long day. But this is when our turn was.

My name is Peter Myette. I am the acting director for the Boston Commission for Persons with Disabilities and a board member of the Massachusetts Coalition of Citizens with Disabilities. I have been active in advocating for and implementing Federal, State, and city civil rights laws for the past 14 years.

I would also just like to reemphasize what Mr. Cohen said. Americans With Disabilities Act without persons with AIDS included in that act is no American with disabilities act. It is so important that we not exclude in this movement any disability from this act.

Given the City of Boston has included persons with disabilities in its fair housing and human rights ordinance from its inception and the Massachusetts Constitution was amended in 1981 to prohibit discrimination on the basis of disability in any program or activity in the Commonwealth and that the U.S. Congress passed title V of the Rehabilitation Act in 1973, some people may ask why we are here again today. They are certainly not in this room and they certainly have not faced the exclusion, the rejection and the barriers we all know.

Today, persons with disabilities are not only out of the mainstream of society, they are also still outside of the mainstream of the civil rights movement. The laws are not enforced with equal jurisdiction. They are not understood in the private or public sector and investigators shy away from disability cases because they are too hard, too complicated and not reimbursed by the Federal Government.

Some civil rights coalitions in the area do not include persons with disabilities because it is too much for them to handle and the conferences on fair housing exclude disability cases.

While thousands of persons with disabilities have benefitted from the existing laws, millions of Americans with disabilities continue to be discriminated without help, discriminated against without help and it is not because their cases lack probable cause. There is, however, a lack of jurisdiction, a lack of enforcement, a lack of understanding of congressional intent, a lack of interest, and a lack of commitment. But there are no lack of cases.

Time after time as State and local laws come into effect, persons with disabilities and advocate will avoid or use as a last resort Federal investigative cases. Cases that used to be decided at the regional level now go to Washington, DC, for review and approval. And we wait and wait. And while we wait, we see the U.S. Government testifying in cases against our right. I refer you to the Justice Department and the *Alleen* case.

We have watched the U.S. Department of Housing and Urban Development, HUD, sell over 2,000 housing units in Boston last year without the assurances required by Congress in section 504.

While a mother in those units carries her disabled son down three flights of stairs and wonders how she will get him off to school if he gets any bigger or a grandmother in that same neighborhood talks to a neighbor from a second floor because she cannot get out of the building. And these are HUD-owned properties. These are HUD-owned properties with 15 years guaranteed of section 8s and with all the assurances for nondiscrimination on the basis of sex and race, HUD has simply put disability on the back burner.

When I read the Americans With Disabilities Act, I am reminded of past battles, unfulfilled hopes and some important victories. In 1973, the U.S. Congress passed the following words which became law, quote:

"It shall be the function of the board to insure that public conveyances, including rolling stock, are readily accessible to and usable by physically handicapped persons." Section 502. That is on the books today.

Today, 15 years after that law was passed, ADA repeats that promise. We in Boston hope, again, that it will mean the end of special orders to Japan for light rail vehicles designed to exclude persons with disabilities.

[The prepared statement of Peter J. Myette follows:]

**COMMISSION FOR
PERSONS WITH DISABILITIES**

Boston City Hall — Room 708
Boston, Massachusetts 02201
617-725-3682 (Voice/TDD)

RAYMOND L. FLYNN
MAYOR

CHARLES J. SABATIER, JR.
EXECUTIVE DIRECTOR

TESTIMONY BY PETER J. MYETTE
ACTING DIRECTOR
BOSTON COMMISSION FOR PERSONS WITH DISABILITIES
IN FAVOR OF THE PASSAGE OF THE

AMERICANS WITH DISABILITIES ACT

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 24, 1988
BOSTON, MASSACHUSETTS

MEMBERS OF THE COMMITTEE ON EDUCATION AND LABOR:

MY NAME IS PETER MYETTE, I AM THE ACTING DIRECTOR AND DIRECTOR FOR CIVIL RIGHTS OF THE BOSTON COMMISSION FOR PERSONS WITH DISABILITIES, I AM ALSO A BOARD MEMBER OF THE MASSACHUSETTS COALITION OF CITIZENS WITH DISABILITIES. I HAVE BEEN ACTIVE ADVOCATING FOR AND AN IMPLEMENTOR OF FEDERAL, STATE AND CITY CIVIL RIGHTS LAWS FOR PERSON WITH DISABILITIES FOR THE 14 YEARS.

GIVEN THAT:

> THE CITY OF BOSTON HAS INCLUDED PERSONS WITH DISABILITIES IN IT'S FAIR HOUSING AND HUMAN RIGHTS ORDINANCES FROM THERE INCEPTION;
>
> THE MASSACHUSETTS CONSITTUTION WAS AMENDED IN 1981 TO PROHIBIT DISCRIMINATION ON THE BASIS OF DISABILITY IN ANY PROGRAM OR ACTIVITY IN THE COMMONWEALTH; AND
>
> THE U.S. CONGRESS PASSED TITLE V OF THE REHABILITATION ACT IN 1973.

SOME MAY WONDER WHY WE ARE HERE AGAIN TODAY, BUT THE'RE NOT IN THIS ROOM AND THEY HAVEN'T FACE THE EXCLUSION, THE REJECTIONS OR THE BARRIERS THAT WE KNOW TOO WELL.

TODAY PERSONS WITH DISABILITIES ARE NOT ONLY OUT OF THE MAINSTREAM OF OUR SOCIETY, THEY ARE ALSO STILL OUTSIDE OF THE MAINSTREAM OF THE CIVIL RIGHTS MOVEMENT.

THE LAWS ARE NOT ENFORCED WITH EQUAL JURISDICTION. THEY ARE NOT UNDERSTOOD IN THE PRIVATE OR PUBLIC SECTORS. INVESTIGATOR SHY AWAY FROM DISABILITY CASES BECAUSE THEY ARE TOO HARD, TOO COMPLICATED AND NOT REIMBURSED BY THE FEDERAL GOVERNMENT. SOME CIVIL RIGHTS COALITIONS IN THE AREA DON'T INCLUDE PERSONS WITH DISABILITIES BECAUSE ITS TOO MUCH FOR THEM TO HANDLE AND CONFERENCES ON FAIR HOUSING EXCLUDE DISABILITY CASES.

WHILE THOUSANDS OF PERSONS WITH DISABILITIES HAVE BENEFITED FROM THE EXISTING LAWS. MILLIONS OF AMERICANS WITH DISABILITIES CONTINUE TO BE DISCRIMINATED AGAINST WITHOUT HELP AND IT IS NOT BECAUSE THERE CASES "LACK PROBABLE CAUSE".

THERE IS HOWEVER;

A LACK OF JURISDICTION,
A LACK OF ENFORCEMENT,
A LACK OF UNDERSTANDING OF CONGRESSIONAL INTENT,
A LACK OF INTEREST
AND
A LACK OF COMMITMENT.

BUT THERE IS NO LACK OF CASES.

TIME AFTER TIME AS STATE AND LOCAL LAWS COME INTO EFFECT PERSONS WITH DISABILITIES AND ADVOCATES WILL AVOID OR USE AS A LAST RESORT FEDERAL INVESTIGATIVE AGENCIES. CASES THAT USE TO BE DECIDED AT THE REGIONAL LEVEL NOW GO TO WASHINGTON FOR REVIEW AND APPROVAL AND WE WAIT AND WAIT AND WHILE WE WAIT, WE SEE OUR GOVERNMENT TESTIFY IN CASES AGAINST OUR RIGHTS.

WE HAVE WATCHED THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) SELL OVER 2,000 HOUSING UNIT IN BOSTON LAST YEAR, WITHOUT THE ASSURANCES REQUIRED BY CONGRESS IN SECTION 504. WHILE A MOTHER IN THOSE UNITS CARRIES HER DISABLED SON DOWN THREE FLIGHTS OF STAIRS AND WONDERS HOW HE GO TO SCHOOL IF HE GETS BIGGER OR A GRANDMOTHER TALKS TO NEIGHBORS FROM A SECOND FLOOR WINDOW, BECAUSE SHE CAN'T GET OUT.

WHEN I READ THE AMERICAN WITH DISABILITIES ACT, I AM REMINDED OF PAST BATTLES, UNFULFILLED HOPES AND SOME IMPORTANT VICTORIES.

> IN 1973 THE U.S. CONGRESS PASSED THE FOLLOWING WORDS WHICH BECAME LAW "IT SHALL BE THE FUNCTION OF THE BOARD ...TO INSURE THAT PUBLIC CONVEYANCES, INCLUDING ROLLING STOCK, ARE READILY ACCESSIBLE TO, AND USABLE BY, PHYSICALLY HANDICAPPED PERSONS." (SECTION 502). TODAY 15 YEARS AFTER THAT LAW WAS PASSED ADA REPEATS THAT PROMISE AND WE IN BOSTON HOPE, AGAIN, THAT IT WILL MEAN THE END OF SPECIAL ORDERS TO JAPAN FOR LIGHT RAIL VEHICLES DESIGNED TO EXCLUDE PERSONS WITH DISABILITIES.

LIVING IN THE AGE OF COMMUNICATION AND TECHNOLOGY WE HAD HOPED TO REACH OUT AND SHARE WITH ONE ANOTHER. SOME OF US SAW TELEVISION AS A DREAM OF THE THE FUTURE OTHERS WERE LEFT OUR OF THAT DREAM, WE SAW COMPUTERS AS OPENING UP EMPLOYMENT BUT SOME EMPLOYERS HAD OTHER IDEAS, OLD IDEAS THE WALLS AND BAGGAGE OF THE PAST THAT SAID ITS TO MUCH TROUBLE TO HIRE PERSONS WHO ARE DEAF OR BLIND EVEN IF WE CAN COMMUNICATE. WE HAD HOPED THAT IN TIME OF TROUBLE WE COULD CALL FOR HELP, AND WHILE WE HAVE 911 THAT RESPONDS TO TDDs, WE KNOW NOT TO GET INTO TROUBLE OR CALL FOR HELP FROM A PAY PHONE, EVEN THOUGH WE HAVE THE TECHNOLOGY TO RESPOND.

TODAY IT IS ALMOST IMPOSSIBLE, IF YOU ARE A STUDENT WITH A DISABILITY, NOT TO GET A DIPLOMA. IT IS ALMOST EQUALLY IMPOSSIBLE TO GET AN EDUCATION. AND WITH EQUAL OPPORTUNITY IN EMPLOYMENT THAT SAYS YOU MUST BE ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB WE NEED EQUAL OPPORTUNITY IN EDUCATION THAT SAYS YOU WERE GIVEN THE CHANCE TO READ AND WRITE AND ADD AND SUBTRACT AND THAT RIGHT WAS GIVEN IN THE COMPANY OF STUDENTS WITHOUT DISABILITIES. TODAY IN MASSACHUSETTS WE HAVE THE 100% RULE AND IT SAYS THAT IN ORDER TO BE APPROVED AS A SPECIAL ED SCHOOL YOU MUST SERVE 100% DISABLED STUDENTS. WHEN WE ASK THE U.S. DEPARTMENT OF EDUCATION IF THIS IS LEGAL THEY SAID THEY WOULD LOOK INTO IT, THAT WAS IN 1983 AND WE'RE STILL WAITING FOR THE ANSWER.

IF IN FACT CHILDREN ARE THE FUTURE, THEN WE ALL MUST LEARN THAT WE ALL GAIN WHEN WE LEARN TOGETHER, AND THERE IS NOTHING SPECIAL ABOUT A STUDENT WITH A DISABILITY AND FOR SURE THERE IS NOTHING SPECIAL ABOUT AN EDUCATION THAT DOES NOT PREPARE US TO WORK AND LIVE IN THE COMMUNITY.

THE AMERICANS WITH DISABILITIES ACT AGAIN PROVIDES US WITH HOPES, DREAMS, PROBLEMS, CHALLENGES AND OPPORTUNITIES. IF WE DO NOT EXCEPT THEM WE WILL CONTINUE TO FACE HIGH UNEMPLOYMENT, SUB-STANDARD LIVING, WASTEFUL SPENDING, FRUSTRATION AND DESPAIR.

I URGE YOU TO MOVE ON THIS BILL, WE CAN NOT AFFORD DELAY, WE MUST PASS ADA.

Mr. OWENS. Thank you, Mr. Myette. We have run out of time. Thank you very much, all the members of the panel.

Our next panel consists of William Fennessee, Jerry Johnson, and Pat Deegan.

Again, I apologize for our time limitations, but we are about to run out of time for this room already. It is very necessary for us to complete our testimony.

Mr. Johnson, do you want to begin?

STATEMENT OF JERRY JOHNSON, NAMES PROJECT NEW ENGLAND

Mr. JOHNSON. Good evening, sir. My name is Jerry Johnson. I am a member of the Names Project New England and Names Project DC. I am also HIV positive, asymptomatic, which means I have no symptoms.

As you can look at me and tell, I am still healthy, intelligent, have all my capabilities and capacity to reason and to carry on a normal decent life. On August 14, 1988, I was working for a company in the Washington, DC. metro area when they learned of my infection and I was immediately dismissed. They told me and I quote: "Your job is no longer needed. You are more of a liability to the company."

Later on that month, the home that I was living in, the landlord found out that I was HIV positive. And my landlord evicted me without notice. I was out with the Project, came out and my things were sitting on the front porch.

Mr. Chairman, I do say that HIV positive and people with AIDS are not lepers. They do not plan to infect the whole world. The education is getting better, but there is still a lot more that needs to be done. We can carry on in society and we can be an asset to society. Our time is limited. I do not feel that we need to have to keep proving ourselves and keep going into court and keep showing the world that we are somebody and that we have our feelings and our rights just as much as everybody else.

Mr. OWENS. Thank you very much. Mr. Fennessee.

STATEMENT OF WILLIAM FENNESSEE, RHODE ISLAND

Mr. FENNESSEE. My name is William Fennessee and I am a certified rehabilitation counselor, national certified counselor. I also have a doctorate in rehabilitation administration and a four-State experience including Texas, Tennessee, Illinois, and Rhode Island.

What I would like to speak to is regarding employment of the disabled people. The Rehabilitation Services Administration funds programs that are not required to have any affirmative duties relative to employment. By this, I am referring to the State rehabilitation agencies, the 6,000 rehabilitation facilities and some 80 or so odd college and university programs.

These programs have no affirmative action requirements whatsoever and, therefore, professional disabled people do not receive good opportunities and they are underrepresented in these programs.

I might also add that with the other two major Federal agencies, such as the Social Security Administration and the Veterans' Administration, of course, the service delivery process includes those individuals that are providing services at the local level to be Federal employees. These agencies include non-competitive placements for disabled individuals. However, at the State level, with the State agencies, with rehab facilities and with the college and university programs, no such requirement exists.

I submit to you that with the 1973 Rehabilitation Act and subsequent amendments have omitted consistently and persistently this reckless disregard for civil rights of disabled people in the main agency that provides services. I say that the Americans with Disabilities Act as it passed, I think this needs to be looked at very closely.

I would like to also add that section 504 of the Rehabilitation Act and its regulations, once upon a time when they first were submitted in 1977, included protection for any individual that complained or testified under the Privacy Act. However, under the current administration any individual that complains or provides testimony must sign an agreement that their name can be given to the respondent. This is a definite problem that will prohibit individuals from complaining and other individuals who are aware of disabled individuals being discriminated against from coming forth.

Likewise, with the Defense Department's current problem with whistle blowers, I think this current practice allows us to inhibit individuals from coming forward.

I would like to close by saying that I think that this has been an omission by the Congress and I wish that they would take action on it.

Mr. OWENS. Thank you very much, Mr. Fennessee. And thank you both for testifying.

Diana Viet, Speed Davis, and Bill Williams.

Diana Viet, Mr. Davis is not here. Marilyn Price-Spivack?

Would you like to begin, Mr. Williams?

STATEMENT OF BILL WILLIAMS, BROCKTON, MA

Mr. WILLIAMS. My name is Bill Williams. I would like to just talk a little bit about discrimination in employment. People with disabilities, they go through verbal "nos" as well as nonverbal "nos," that funny look as they see you in a chair or with braces or crutches. People that do not know anything about disabilities—I am mainly concerned about an awful lot of people who are in the positions to talk for and about people with disabilities. They do not know our feelings. They do not know what we live in, how we live in. And they do not represent us, they cannot. There is an awful lot of people, do gooders, that do help, but I think we not only need this bill to be passed, but we need people with disabilities in an awful lot of decision making slots.

I lost a job—the gentleman just testified a few minutes ago about the Mass Commission on Discrimination. We bought a house in New Bedford. I directed that house. I came down with MS and I was staggering—of course, that is one of the symptoms of MS. They fired me because they said I was drunk. I had not had a drink in 12 years at that time. I went back to school because in that particular field I was working in, they said you had to have a BA or above because they wanted you to be in the third-party building. I went back to school. As I was going to school, I applied for a probation officer's job over in Cambridge. The guy gave me the interview and I went over there. It was coming down more, so, I had a cane. He said, "Your qualifications is good." The second interview was set up.

So, I came back for the second interview and I could not hardly make it at that time. I had crutches. And when I walked in for the second interview he said, "Well, do not call me. I will call you." And he never called me.

Third, I went to school. I got my masters. First, I got a BA and I applied for a job and they said, the third-party building is not going to pay you with a BA. So, I went and got my masters. And I asked—two seconds and I am through. The Department of Rehabilitation would they pay for it? And they said, "No, we will not pay for it." But there was other people there that paid for them with their masters degree. They would not pay for my masters. OK. I got the masters degree. They in turn sent me for a job. The same thing happened. At the same time, I was investigating them because they had no people of color in that office to deal with people with disabilities. They did not give me the job.

As I began to raise hell about that, they in turn hired two people. I applied at Bridgewater in a unit there. They did not have no people of color in that unit. We need this. But we also need people with disabilities to be able to accept decisionmaking positions. Thank you.

Mr. Owens. Thank you very much, Mr. Williams. Ms. Viet. Diana Viet.

STATEMENT OF DIANA VIET, STATE OFFICE OF HANDICAPPED AFFAIRS

Ms. Viet. You probably have heard many, many stories today. I want to tell you about my story. These are our lives, all of our lives. We get up every day and do them over and over and over. I am tired of them. And I am sure everybody in this room is tired of them.

I grew up in Vermont and I moved to Boston about 6 months ago to join the disabilities rights movements here in Boston. I am going to tell you a story that I had not told yet in public but it is very difficult for me to tell.

I grew up in Vermont. I have three sisters and a mother who has been a major influence in my life and have known about the disability laws and equal education to all. So, I have had the opportunity to go to public school and to get a college education but with a lot of work.

About 2 years ago, after I graduated from a 2-year college, I took a year off. That year was very difficult for me, but it also changed my life and what I chose to do in my life. I did not want to live anymore. The first time I graduated from college, I wanted to end my life. I felt like I was not a good person, not a strong person. That reason is because I got up every day and walked down the street and kids stopped playing in the street to look at me. It is because I go to the bank and people stare at me when I am deposit-ing my check, my money that I earn every week. And in that year that I took off—I know that my time is up—but I have something to say. In that time I took off, I met people with disabilities come to Vermont Center for Independent Living and I learned about the disability rights movement. I started telling my story with other people with disabilities like we are doing right here. And I learned what happened in my life and I started using the energy that I have felt other stereotypes had done—have felt about myself, in a positive way towards create change. The Americans With Disabilities Act is one more step to that change. The discrimination that we feel every day is much.

Mr. **Owens**. Thank you very much, Ms. Viet.

Ms. Price-Spivack.

STATEMENT OF MARILYN PRICE-SPIVACK, NATIONAL HEAD INJURIES FOUNDATION

Ms. **Price-Spivack**. Thank you, Mr. Owens. It is not easy to follow Diane.

My name is Marilyn Price-Spivack. I am cofounder of the National Head Injuries Foundation. But more importantly, I am the parent of a severely brain damaged daughter who suffers a multitude of disabilities.

I am not here to talk so much about Debbie as I am to talk about all the victims of traumatic brain injury as they are added to the 36 million disabled Americans.

I am going to focus my short time on one area. And that is access to health care. One of the problems that we perceive and we see and witness and we try to deal with on a daily basis is that many people with disabilities cannot access appropriate health and rehabilitation care which is the presetter of acquiring human services and educational services.

People with traumatic brain injury—it is recognized as a new disability. And I plead with the public policy makers that if we are going to save people and we are going to commit to a heavy-duty up front medical costs, what are we going to do to improve the quality of their lives? We desperately need to begin to address the access to health care and medical services. I think that is probably the most important message that I want to bring: That we are not going to move into the community until we are able to rehabilitate people out of hospitals. And for that, we have a major problem.

Traumatic brain injury brings 60,000 to 70,000 severely disabled people to the population each year. We do not do anything that we should be doing in the area of prevention. We can prevent disabilities and we are not doing a good enough job in that area.

I would plead that this committee with the support of the Americans With Disabilities Act look to the development of those services that will enhance the future for those people who need to find quality in their lives.

In terms of what Diane has just said, we deal at our office with suicide calls on a regular basis, who cannot deal with the discriminations they face. I don't think a week goes by when we don't have a suicide call. The fact that people with disabilities such as this gentleman just referred to you, when you have communications disorders and ataxia, people assume that you are on alcohol, that you are a substance abuser. It is a unique experience to me because I am relatively new to the disability field. I am appalled by the general public's still ignorance as to what disability really means in this country. Thank you.

Mr. OWENS. Thank you very much. Ms. Deegan.

STATEMENT OF PATRICIA DEEGAN, NORTHEAST INDEPENDENT LIVING CENTER, LAURENCE, MA

Ms. DEEGAN. My name is Patricia Deegan and I carry a diagnosis of schizophrenia and have received treatment on both an in-patient and out-patient basis. I am also a clinical psychologist and I am currently working as program director with persons with psychiatric disabilities at Northeast Independent Living Program. I am the president of the Empowerment Sponsoring Committee. And we are working towards organizing a statewide organization of current and former consumers of mental health services.

It is my experience that the most depressive stigma and discriminatory attitude that persons with psychiatric disabilities face is the assumption that what we say about our own experiences is an expression of a disordered mind and can therefore be ignored. The assumption that what we have to say is crazy and can therefore be ignored sets the stage for the whole scale violation of our first amendment right to freedom of speech. Freedom of speech implies the right to be listened to and heard. Once it is known that we have a history of mental illness, our right to be heard and listened to is discriminated against.

For instance, this is a frequent occurrence in medical settings. Carolyn from Hyannis reported to her mental health workers that she was pregnant. She was assumed to be delusional and was ignored. Later, she sought services at the Cape Code Hospital Emergency Room with what was thought to be delusional and was ignored and later that evening, while wandering the streets, she miscarried with serious hemorrhaging.

Louis from Hyannis is mentally ill and mentally retarded. He is elderly and lives in single room squalor. He arrived at the Cape Code Hospital Emergency Room complaining of abdominal pains. He was subsequently discharged with a catheter in place, but was completely untrained and unable to irrigate the catheter due to his arthritic hands. He developed infections and was subsequently hospitalized at the facility for the indigent and poor. By the time he was released from that hospital, he had lost his rented room in the community due to nonpayment of rent and was resigned to existence in a rest home.

In the realm of psychiatric care, persons with psychiatric disabilities are frequently subjected to multiple forms of abuse and discrimination. Paramount among these is the fact that over 20 percent of persons treated with antipsychotic drugs are developing permanent irreversible tarta disconnesia as a result of this drug treatment and we are routinely not presented with consent to treatment forms. And this is a routine practice.

Mr. OWENS. Thank you very much. Our final panel, Ms. Eleanor Blake, Jim Brooks, Eric Griffith. And Mr. Davis, you are here already. Just remain seated. This is our final panel. The management is threatening to throw us out. Literally evict us.

Mr. Jim Brooks, Steve Davis. Eleanor Blake is here.

Ms. BLAKE. I am here.

Mr. OWENS. Mr. Davis.

STATEMENT OF SPEED DAVIS, ASSISTANT DIRECTOR, MASSACHUSETTS OFFICE OF HANDICAPPED AFFAIRS

Mr. DAVIS. Thank you. My name is Speed Davis. I am the assistant director of the Massachusetts Office of Handicapped Affairs. I want to thank you for the opportunity to speak today. I am here representing our director, Jim Black, who is a staunch supporter of the act. The OHA is a statewide——

Mr. OWENS. Excuse me, Mr. Davis.

Would you please close the door? We want to hear our last panelists.

You may continue.

Mr. DAVIS. Thank you. OHA is a statewide civil rights agency for persons with disabilities. We report directly to the office of the Governor and we have a long list of accomplishments which I will submit in our written testimony in the interest of time.

The message of our accomplishments is clear: Massachusetts which served as the cradle of liberty for soon to be born the United States of America has continued to provide leadership in protecting unalienable rights of all individuals to life, liberty and the pursuit of happiness. In spite of the progressive record of the Commonwealth, OHA daily receives confirmation that discrimination based on disability continues to occur.

Last year, our client services program received over 5,000 complaints that reflected some sort of discrimination based on disability. The complaints covered all aspects of a person's daily existence, from housing to employment, to transportation and to education, to architectural and communication accessibility. One woman called because her landlord would not widen the bathroom door to allow passage of a wheelchair. She was forced to crawl on the floor every time she wanted to use the bathroom facilities. Another woman displayed fresh burns on arms from reaching over a hot stove, burners. Her landlord would not provide her with a stove which had front-mounted controls.

Another man cannot get back into his building unassisted because the landlord will not install power opener on the entrance door.

Another man was nearly forced out of his long-time residence when a new landlord decided he did not like tenants with wheelchairs.

We regularly talk to individuals who have been forced to turn down job offers or have been fired or have otherwise left jobs because they could not arrange reliable transportation.

A young man with cerebral palsy was fired from his job as an elevator operator when his employer was told by a so-called rehab professional that it was unsafe for people with CP to work around electricity.

We can also go beyond individual cases for proof that disability-based discrimination still exists. We know from recent surveys that nearly 1 million people in Massachusetts have a disability. Half of them have not graduated from high school, nearly twice the percentage of the population as a whole. Half of the working aged individuals with disabilities are not even in the labor force, twice the percentage of the population as a whole, despite the Massachusetts unemployment level is under 3 percent. The majority of them have incomes below the poverty line, half again as many as the total population. Over 50,000 live in homes having one or more architectural barriers.

[The prepared statement of Speed Davis follows:]

AMERICANS WITH DISABILITIES ACT OF 1988

TESTIMONY OF SPEED DAVIS
ASSISTANT DIRECTOR, OFFICE OF HANDICAPPED AFFAIRS
BOSTON, MASSACHUSETTS

OCTOBER 24, 1988

I am Speed Davis, Assistant Director of the Massachusetts Office of Handicapped Affairs and I thank you for the opportunity to speak today. I am here today to represent our director, Jim Gleich, who is a staunch supporter of the Americans with Disabilities Act of 1988.

OHA is a statewide civil rights agency for persons with disabilities across the Commonwealth. We report directly to the office of the Governor. The list of our accomplishments and of the Commonwealth, is a long one.

The list includes:

1. Issuance by Governor Michael Dukakis in 1984 of an Executive Order that embodies the principles of the Americans with Disabilities Act.
2. Establishment and enforcement of a strong statewide architectural access code.
3. Passage of laws prohibiting discrimination against persons with disabilities in employment and public accommodations.
4. Implementation of the nation's first comprehensive health insurance program for children and adults who have disabilities.
5. Establishment of the nation's first program to provide continuing education and training to disabled youth who are losing their entitlement to special education.
6. Establishing the nation's first special education program guaranteeing the rights of children with

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disabilities to a free and appropriate public education in the least restrictive environment. This program became the model for Public Law 94 - 142, the federal Education for All Children Act.

The list goes on, but the message is clear: Massachusetts, which served as the cradle of liberty for the soon-to-be-born United States of America, has continued to provide leadership in protecting unalienable rights of all individuals to "Life, Liberty, and the pursuit of Happiness."

However, in spite of the progressive record of the Commonwealth, OHA daily receives confirmation that discrimination based on disability continues to occur. Last year, our Client Services Program received over 5,000 complaints that reflected some sort of discrimination based on disability from people with disabilities. The complaints covered all aspects of a person's daily existence, from housing and employment, to transportaiton and education, and to architectural and communication accessibility.

One woman called because her landlord wouldn't widen the bathroom door to allow passage of her wheelchair. She was forced to crawl on the floor everytime she wanted to use the bathroom facilities. Another woman displayed burns on her arms from reaching over hot stove controls. Her landlord would not provide her with a stove which had front mounted controls. Another man can't get back into his building unassisted because the landlord won't install a power opener on the entrance door. A man was nearly forced from his long-time residence when a new landlord decided he didn't want any tenants who used wheelchairs.

We regularly talk to individuals who have been forced to turn down job offers, or who have been fired, or who otherwise left jobs because they couldn't arrange reliable transportation. A young man with cerebral palsy was fired from his job as an elevator operator when his employer was told by a so-called rehabilitation professional that it was unsafe for people with CP to work around electricity.

We can also go beyond individual cases for proof that disability-based discrimination still exists. We know from recent surveys that nearly one million people in Massachusetts have a disability. Half of them have not graduated from high school, nearly twice the percentage of the population as a whole. Half of the working age individuals with disabilities are not even in the labor force, twice the percentage of the population as a whole, despite the fact that the Massachusetts unemployment level is under 3%. A majority of them have incomes below the poverty line, half again as many as the total population. Over 50,000 live in homes having one or more architectural barriers.

We don't have to look far to understand why people with disabilities are in such desperate straights. Since the time of Christ, and probably before, people with disabilities have been systematically denied the opportunity to take control of their own destinies. The dominant religion of the times have preached a gospel of charity and paternalism toward people with disabilities. We were portrayed as unfortunate, helpless individuals who needed looking after by our more fortunate bretheren. This attitude still exists today, as exemplified by the Jerry Lewis Telethon. No wonder they don't think we can do the job!

But that is beginning to change. Those of us with disabilities are beginning to demand that attitudes and practices change, that we gain control of our lives. The Americans with Disabilities Act of 1988 exemplifies the change. The Act was drafted by disabled people, for disabled people. It recognizes the broad pattern of discrimination which exists today, and proposes a broad range of measures to correct the problem.

But, best of all, it establishes, once and for all, that equal opportunity for people with disabilities is no longer the "charitable, kind" thing to do: it is a right, guaranteed by the same constitution that guarantees the rights of blacks, Asians, women, and all other groups that are not part of the power establishment. For too long we have not only not been able to sit in the front of the bus, we haven't been able to even get on the bus! For too long, we have not only not been able to use the "white" bathroom, we haven't been able to use any public bathrooms. This bill will change that.

The Americans with Disabilities Act will remove physical and attitudinal barriers that confront us. It will give control of our lives to us. It will move us from being objects of charitable acts to being self-determining individuals living in dignified independence.

The management and staff of the Office of Handicaped Affairs is committed to passage of the Americans with Disabilities Act of 1988 as a reaffirmation and extension of the progress we have made in Massachusetts. We will work long and hard for its passage.

In closing, I thank the House Committee on Select Education for coming to New England and listening to our stories. We have heard ample proof today that discrimination based on disability flourishes. Together we can, and must, put an end to it.

Mr. OWENS. Thank you, Mr. Davis. We have run out of time. Mr. Brooks.

STATEMENT OF JAMES BROOKS, PARALEGAL, DISABILITY LAW CENTER

Mr. BROOKS. Thank you for the opportunity of testifying here. My name is James Brooks. I am a paralegal at the Disability Law Center. We provide legal services to disabled people.

The significance of this legislation exists at different levels. For those of us who work at the Disability Law Center, this particular bill will afford our clients another level or layer of protection when all other recourse has failed.

I firmly believe that as an individual who faces discrimination on a day-to-day level, there can never be too much protection. One cannot put a price tag on freedom.

Day in and day out, we see clients whose lives will probably have been profoundly changed if this bill had existed. For instance, we have had an elderly couple who are mentally ill and were seeking a home interest loan. However, due to discriminatory attitudes, they were denied that loan. Or there was a homeless person with AIDS who was being denied public housing due to people's primitive values towards people with AIDS and due to the refusal to perceive this person as being part of the disability community.

Although we were successful in advocating for that elderly couple and that homeless person with AIDS, I cannot help but wonder if we would have —if we had already had a civil rights bill in place, would those two cases of injustice have existed.

In preparing this last night, a friend of mine called who is a disabled friend of mine and we talked about the real meaning of this whole thing. The real meaning beyond the fact of getting up and relating horror story after horror story about what it is to live day to day and face oppression. And she told me something very significant which I will want to pass on. She said that what this bill really means is that a person in a wheelchair will not have to, when they need to get on a train, have to go down an elevator that is usually not working, unsafe or smells. Or they will not have to, when they cannot get on a train, have to wait two hours for a cab that will not stop because the driver thinks it is too inconvenient to put you in his cab. Or for a person who when they complete their college education or their high school education has nowhere to turn and feels that the only recourse is to commit suicide. That is what this legislation really means.

Mr. OWENS. Thank you, Mr. Brooks.

Ms. Blake.

STATEMENT OF ELEANOR BLAKE, FITCHBURG, MA

Ms. BLAKE. Congressman Owens, committee members and all those present, good afternoon. My name is Eleanor Elizabeth Crow Blake, better known as Betsy. I am a victim of manic depression. I am a mental health advocate and I am a graduate student in rehabilitation counseling, specializing in psychiatric rehabilitation at Boston University.

As a mentally ill person, I have been discriminated in all areas of life, including socially. First of all, I live in poverty. This is because I need to get graduate training in order to be qualified for my chosen profession, yet, I cannot go to school and work, too, due to the amount of stress that would be placed on me and, thus, endanger my mental health. I have been discriminated against in the work place. I have often filled out job applications which ask the illegal question, "Have you ever had an emotional illness?" That has nothing to do with whether or not you can perform the job.

Gaps in work history is one of the biggest nemeses for mental health clients. In a job interview, I was repeatedly asked about these gaps. One time the interviewer pursued it with extreme, very annoying persistence, even though I told her that I would rather not talk about it. She kept saying, "It will not affect your chances to get hired." Finally, I gave in. I did not get the job.

I had another problem with my most recent employer, an activities director at a local nursing home. I was hired as an activities assistant. During that time, I never divulged the fact that I was mentally ill or what medications I was taking, fearing I would not get or retain the job. But after a year, my medication was reduced and changed. And I became actively mentally ill, again. I had been a success at the job, but my supervisor kept saying over and over: "Why didn't you tell me? Why didn't you tell me what medications you were taking?" Again, this was done obnoxiously.

It soon became clear by insinuations and stalling that I would not be rehired.

From 1981 to 1986, I was majoring in human services at Fitchburg State College. The human services major policy is that a person has to be quote/unquote, psychologically fit in order to graduate from their program. I had a straight A average both in the program and in general, but because I had to leave the college for hospitalization in our local state hospital, I was deemed not quote/unquote, psychologically fit, and bounced from the program. There was also talk of preventing me from graduating from college at all. But I spoke out and was allowed to. I had to switch my major and therefore take additional courses. I graduated in 1987, summa cum laude with a grade point average of 3.82.

Of course, in most cases of discrimination in work or education, there is no proof. There never is any proof, but the result is the same. I have a lot more to say, but I will give it in my report.

[The prepared statement of Eleanor C. Blake follows:]

ELEANOR "BETSEY" C. BLAKE

OCTOBER 24, 1988

TESTIMONY FOR THE CONGRESSIONAL HEARING
ON THE AMERICANS WITH DISABILITIES ACT OF 1988
BOSTON, MASSACHUSETTS

Congressman Owens, Committee Members, and all those present, Good Evening.

My name is Eleanor Elizabeth Crow Blake, better known as Betsey. I am a victim of manic-depression, a physical, genetic chemical imbalance of the brain. I am an active Mental Health Advocate who has served on the national, state, regional, and local levels. I am an Elected Representative (two from each state) for The National Mental Health Consumer Association and Treasurer of The Empowerment Sponsoring Committee, helping to support M*POWER, a statewide organization run by and for mental health consumers. I am doing well as a graduate student in Rehabilitation Counseling, specializing in Psychiatric Rehabilitation, at Boston University. This program is nationally recognized. I also have an extensive work history.

As a mentally ill person, I have been discriminated against in all areas of life, including socially. First of all, I live in poverty. This is because I need to get graduate training in order to be qualified for my chosen profession, Mental Health Advocate. Yet I cannot go to school and work too, due to the amount of stress it would place on me and thus endanger my mental health.

I have been discriminated against in the workplace. I have often filled out job applications which asked the illegal question, "Have you ever had an emotional illness?" That has nothing to do with whether or not you can perform the job. Gaps in work history is one of the biggest nemeses for mental health clients. In job interview, I was repeatedly asked about these gaps. One time, the interviwer pursued it with extreme, very annoying persistence, even though I told her that I would rather not talk about it. She kept saying, "It will not affect your chances to get hired." Finally I gave in. I did not get the job.

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From 1981 to 1986 I was majoring in Human Services at Fitchburg State College. The Human Services major policy is that a person has to be "psychologically fit" in order to graduate from their program. I had a straight A average, both in the program and in general, but because I had to leave the college for

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hospitalization to our local state hospital, I was deemed not "psychologically fit," and bounced from the program. There was also talk of preventing me from graduating from college AT ALL. But I spoke out and was allowed to. I had to switch my major and therefore take additional courses. I graduated in 1987 summa cum laude with a grade point average of 3.82.

Of course, in most cases of discrimination in work or education, 'there is no "proof." There never is any "proof." But the end result is the same. Qualifications don't matter. Readiness and willingness to do the work don't matter. Proven academic talent or performance doesn't matter.

I experienced the most grievous and heinous discrimination of all as a patient at Worcester State hospital, nine times between 1980 and 1988, for periods of time ranging from two weeks to two months. Worcester State has a federal lawsuit against it, which I am involved in and has never been completely resolved.

Allow me to read from my testimony of June 9, 1988, for the state hearing investigating the many recent deaths, and abuse and neglect at Worcester State Hospital.

To Lose Yourself

Our inquiry today is into the many recent actual deaths at Worcester State; but let us not forget the Living Death that patients go through there every day.

During the time I spent at Worcester State Hospital, I consistently received minimal, custodial, neglectful, abusive, or no care. My human rights were often violated. Much of this poor treatment was due not only to poor training, but to poor attitudes on the part of the staff. Let me describe a few "situations" I and others throughout the hospital had to endure. I was punished not because I met the supposed benchmark of being a physical harm to myself or others, but because attendants perceived me as an irritant.

Firstly: repeated, unecessary seclusions, often for endless hours (sometimes missing meals), usually with nothing in the cold room except ceramic-tiled walls (which are great for people who do want to hurt themselves), no handle on the inside of the door, which was often locked with virtually no monitoring, and no means of communication. Prisoners in this respect had it better than we, for they always had access to toilet facilities, whereas in our seclusion rooms there were none, causing at best an unpleasant situation.

I have been repeatedly restrained with four-point restraints - which means that you are splayed and your arms and legs are tied to the four corners of a bed - straightjackets, and straightjackets combined with four-point restraints.

I was also routinely forcibly injected with extremely sedating medications. The typical method for doing this was for six attendants to grab and restrain me, even when I agreed, while a nurse jabbed the needle into my rear end. This caused an excruciating pain. I was most often severely overmedicated into a stupor, and many different medications were tried on me. I began to feel like a human guinea pig. Improper dosages and types of medications were given to me upon several discharges, almost sending me back to the hospital.

T.V. and smoking were the only planned activities on 3A, until recently the admission ward for the Fitchburg-Leominster Unit. Smoking was encouraged as free cigarettes were handed to the patients. Ventilation was poor, so the air on the ward assumed a smoke-filled haze. T.V. was on all day from 6 A.M. to midnight, a constant annoyance and source of anger for many, including me.

At least prisoners have the right to fresh air and sunshine, whereas we mental health patients had to "earn" it through the privelege system. Thus, many patients vegetated for weeks on end in smoke-filled wards, never experiencing these precious, health-giving rights.

I can honestly say that virtually *never* did I hear an attendant or any other staff member use a common sense or caring approach when a patient was in trouble, for example, putting an arm around the person and saying, "What's wrong?", or even, "How can I help you?" Instead, we were locked up, had a Mayday called on us, etc. In fact, believe it or not, I was informed by a staff member that the attendants had been specifically told *not* to speak with the patients. Indeed, staff seldom interacted at all with patients, except to punish them.

The worst and certainly the most shocking thing that happened while I was there was a brutal rape. The men and women are all on one ward with no doors or security between them. A young man who was a repeat offender rapist came onto Ward 3A and, according to what an attendant later told me, wanted to rape a woman badly and therefore specifically asked the attendants to watch out for him. But they didn't. At suppertime he entered one of the seclusion rooms where an older woman had been placed, again not monitored by staff, and raped her. When she ran down the hall, wailing and totally confused, her nightgown soaked with blood, I knew the sharp fear of being where I was. The police came and said angrily, "We'll get him this time," while taking many photos of the evidence. To what avail. Less than two months later, while walking with my husband Bob in Fitchburg, I saw the rapist nearby, sporting a teenage girl on either arm.

Worcester State Hospital literally gave me terrifying nightmares, yet what I have described is only the tip of the iceberg. These personal experiences dehumanized, degraded, and humiliated me. Perhaps these problems might have been easier for me to deal with if I had been informed of my legal rights, as the hospital claims to do, but in actuality never does.

The conditions and atmosphere at Worcester State during the time that I have been there have been unmistakably unhealthy, oppressive, and stultifying. In terms of where our tax dollars are going, a staff member informed me that presently money is being put into the building, but not treatment or consulting. I would venture to say that such conditions exist in many other state hospitals across the country; some are probably even worse.

The notion of a hospital is a great one: to cure, and to help people beome well and whole again. But, somehow, the concept of the hospital for the mentally ill has become lost, and confused with the notion of prison. Conditions in prison are better in some ways than in many mental hospitals. For we mentally ill have committed NO CRIME. Most state mental hospitals are based on a system of reward and punishment, not care or health. If you behave in the way that the staff wants, you are rewarded. If you do not, you are punished. It is a system geared for the convenience and expediencey of the staff.

It is hard enough to deal with a devastating illness which, for me and too many, has robbed us of our young adulthood. Add to all this the abusive, often cruel, attitudes and treatment many of us have received at the hands of unscrupulous state hospitals, and the burden is almost too much to bear.

We hurt enough as it is. Stop imprisoning us, and help us! Let's start with the treatments of LOVE and CARE.

Thank you for your time, and listening.

Mr. **Owens**. Thank you very much. Please submit your written testimony.

It has been a long day, Mr. Griffin, and you are the final panelist.

Mr. **Griffin**. Mr. Owens, there you have it. There you have it. There is nothing more I can say. Our people are dying. Our people crying. Our people are beginning to get mad. And our people have a dream. And our people expect that the promise of the Constitution will be kept for people with disabilities. And I thank you for your contribution today for keeping that promise and make a commitment on behalf of us all to work with you in the future to keep that promise.

In May, people with disabilities from all over this country recognized your unique courage and compassion and since May, when we met in Washington and I met you there, you have done nothing but to further validate and bear out our faith and confidence and appreciation in you and the subcommittee as a partner in our struggle to make the dream of the Constitution come true for people with disabilities.

Since May, I have been carrying this around for you. And, today, I am going to give it to you. I thank you, again, on behalf of everyone here today and the thousands of people who were not able to come here today but who will join with me and with you in our fight next year to pass the Americans With Disabilities Act.

[Presents plaque.]

[Applause.]

Mr. **Owens**. Thank you very much.

We very much appreciate your faith in the whole process of government. We pledge ourselves to do everything possible to deliver, to make sure this bill is passed as it is. Thank you very much. The hearing is now adjourned.

[Whereupon, at 5:37 p.m., the subcommittee was adjourned.]

[Additional material being maintained in subcommittee files was submitted by the following: Audet, Patty; Blanchette-Fine, Christine E., Groton, CT; Bob and Crew; Cobb, Polyxane S., Cambridge, MA; Comegys, Addie and Brock, Wenham, MA: Cordrey, Joseph; Cordeiro, Antone; Ekizian, Charles Milton; Finnerty, Cheryl A., Fall River, MA; Hoff, Joseph K.: Higgins, Andrea (advocate) and Ross, Jim (executive director), Community Partnerships, Inc.; Kaiser, Nolan Dr., professor of philosophy, Central Michigan Unviersity; Mann, Marie, Lowell, MA; McBride, R.K., Lisbon, CT; O'Dell, Jonathan; Oliber, Zackary R., Somerset, MA; Sapei, Sue; Sawzin, Martin, Brookline, MA; Shea, Margaret, Massachusetts Nurses Association; Small, William E., Jr., Mansfield, MA; Smith, Eleanor O., resident, Hillsborough County Nursing Home, Goffston, NH; Strause, David C.; Wallace, Kim D., Augusta branch manager, Alpha One Center for Independent Living; Wallin, Jean, executive director, Community Services Council of Merrimack County; Anonymous No. 1; Anonymous No. 2; and Anonymous No. 3.]

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JOINT HEARING ON H.R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989

JOINT HEARING

BEFORE THE

SUBCOMMITTEES ON SELECT EDUCATION AND
EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JULY 18, 1989

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JOINT HEARING ON H.R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989

TUESDAY, JULY 18, 1989

House of Representatives,
Subcommittees on Select Education
and Employment Opportunities,
Committee on Education and Labor,
Washington, DC.

The subcommittees met, pursuant to notice, at 9:35 a.m. in Room 2175, Rayburn House Office Building, Hon. Major R. Owens [Chairman] presiding.

Members present: Representatives Martinez, Payne, Hayes, Jontz, Mfume, Hoyer, Bartlett, Gunderson, Ballenger, Smith, and Grandy.

Staff present: Maria Cuprill, Gary Granofsky, Wanser Green, Pat Laird, Laurence Peters, Bob Tate, Eric Jensen, Robert Terry Deshler, Michelle Beck, Pat Morrissey, and Randy Johnson.

Chairman Owens. The joint hearing of the Subcommittee on Select Education and the Subcommittee on Employment Opportunities will come to order.

I will read a portion of my opening statement. The complete statement will be entered into the record.

Chairman Owens. All over the world, from the townships of South Africa and the shipyards of Poland, to the students in Tiananmen Square in China, people who aspire to a better life look to the image of American democracy as their guiding star.

As Americans, it is our duty to work harder to guarantee that this image more and more becomes reality. At the same time, let us also work harder to maintain our leadership role, to extend the parameters of our democracy, to expand the scope of civil rights and human rights enjoyed by all of our citizens.

Today our immediate focus is on the launching of a comprehensive effort to reaffirm, expand, and more explicitly, delineate the rights of American citizens with disabilities. When we resolve to fully use the Federal Government's authority and resources to better protect and expand the rights of any group, we stimulate the processes of the empowerment within that group.

The release and recognition of new skills, talents, and new leadership will greatly enrich the fabric of our society. The nation's wealth of human resources will be greatly increased by this empowerment of people with disabilities.

A civilized and moral government which is also seeking to enhance its own self-interest must strive to maximize the opportunities for educational development, equal access and productive employment of all of its citizens.

This Americans with Disabilities Act is a far-reaching and complex legislative initiative. Many parts of the Act will require lengthy, technical discussions. At subsequent hearings, we will review formidable concepts of proposals.

Our purpose today, however, is to emphasize the fact that this Bill is first and foremost a civil rights initiative, a human rights initiative. There are many who will oppose this Act and condemn its basic thrust as being too far-reaching and too great a burden for government.

We must remember that conservatives of this same kind oppose the protection of the rights of laborers, they opposed Equal Rights for Women. They fought furiously against full civil rights for African Americans.

Disabilities Right's leaders understand that their struggle would be no less. Greater than all of the physical barriers are the barriers of entrenched attitudes and the silent insistence that people with disabilities should be grateful for minimal government protection and assistance.

The parallels with the civil rights movement constitute similarities that do not frighten, but instead, inspire the 43 million strong community of people with disabilities residing in every state and spread through every congressional district in the nation.

Forty-three million citizens in democratic America do not need to beg for anything. The Americans with Disabilities Act is the product of a new movement within the disability community. The spirit of the revolution of deaf students at Gallaudet University in the spring of 1988 is embodied in this Act.

This is a document which does not beg. Strong demands are made here; a noble trumpet is sounded here. In the months ahead as we fight for the passage of this long overdue legislation, we welcome the enlistment of all the soldiers who march under the rainbow banner of human rights.

The power, the solidarity, the technical assistance, the negotiating skills, and the ability to inspire; these qualities from all who have contributed to the legacy of civil rights and human rights must now come to the aid of the last of those who have been left out.

With the effect of assembly to support these forces, we have no doubt that this legislation can be passed. We shall overcome.

[The prepared statement of Hon. Major R. Owens follows:]

OPENING STATEMENT OF MAJOR R. OWENS, CHAIRMAN
SUBCOMMITTEE ON SELECT EDUCATION
JOINT HEARING ON THE AMERICANS WITH DISABILITIES ACT
JULY 18, 1989

ONE HUNDRED AND SEVENTY-EIGHT YEARS FOLLOWING THE BIRTH OF OUR NATION, AND AFTER TREMENDOUS STRUGGLE, TURMOIL, SUFFERING, AND THE QUIET AND NOT SO QUIET VIOLENCE THAT CHARACTERIZES THE OPPRESSION OF A MINORITY GROUP, OUR COUNTRY PASSED LEGISLATION ESTABLISHING THE CIVIL RIGHTS OF AFRICAN AMERICANS AND OTHER MINORITY GROUPS. NOW, TWENTY-FIVE YEARS AFTER THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964, 43 MILLION AMERICANS WITH DISABILITIES ARE DEMANDING THAT THEY, TOO, BE GRANTED FULL CIVIL RIGHTS PROTECTIONS UNDER THE LAW.

THERE ARE MANY PARALLELS TO BE DRAWN BETWEEN THE STRUGGLE FOR CIVIL RIGHTS FOR PERSONS WITH DISABILITIES AND PAST CIVIL RIGHTS STRUGGLES. THEY ARE FUELED BY A SIMILAR BELIEF IN THE AMERICAN DREAM THAT MARTIN LUTHER KING EXPRESSED BEST WHEN IN A 1961 COMMENCEMENT ADDRESS HE REMINDED HIS AUDIENCE: "I CAN NEVER BE WHAT I OUGHT TO BE UNTIL YOU ARE WHAT YOU OUGHT TO BE. YOU CAN NEVER BE WHAT YOU OUGHT TO BE UNTIL I AM WHAT I OUGHT TO BE. THIS IS THE WAY THE WORLD IS MADE. I DIDN'T MAKE IT THAT WAY, BUT THIS IS THE INTERRELATEED STRUCTURE OF REALITY. JOHN DONNE CAUGHT IT A FEW

CENTURIES AGO AND COULD CRY OUT, 'NO MAN IS AN ISLAND ENTIRE OF ITSELF; EVERY MAN IS A PIECE OF THE CONTINENT, A PART OF THE MAIN ...ANY MAN'S DEALTH DIMINISHES ME, BECAUSE I AM INVOLVED IN MANKIND, AND THEREFORE NEVER SEND TO KNOW FOR WHOM THE BELL TOLLS; IT TOLLS FOR THEE.' IF WE ARE TO REALIZE THE AMERICAN DREAM WE MUST CULTIVATE THIS WORLD PERSPECTIVE."

H.R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989, REPRESENTS A COMPREHENSIVE APPROACH TO ALLOWING MILLIONS OF DISABLED AMERICANS TO ENTER THE MAINSTREAM OF AMERICAN LIFE. NO PIECE OF DISABILITY LEGISLATION THE CONGRESS HAS EVER CONSIDERED WOULD APPROACH THE IMPACT WHICH THE AMERICANS WITH DISABILITIES ACT WOULD HAVE IN ESTABLISHING A NATIONAL COMMITMENT TO THE KINDS OF CIVIL RIGHTS PROTECTIONS ENJOYED BY OTHER MINORITY GROUPS AND WHICH WE TAKE TO BE FUNDAMENTAL TO FULL CITIZENSHIP RIGHTS.

UNDER CURRENT LAW, SECTION 504 OF THE REHABILITATION ACT OF 1973 PRECLUDES RECIPIENTS OF FEDERAL FUNDS, EXECUTIVE BRANCH AGENCIES, AND THE POSTAL SERVICE FROM DISRIMINATING AGAINST INDIVIDUALS WITH DISABILITIES. THE RESULTANT GAPS LEFT IN OUR NATION'S CIVIL RIGHTS UMBRELLA LEAVE MILLIONS OF DISABLED AMERICANS WITHOUT LEGAL PROTECTIONS SO THAT THEY ARE VULNERABLE TO EXCLUSION FROM EMPLOYMENT OPPORTUNITIES, ACCESS TO PUBLIC ACCOMMODATIONS AND TELECOMMUNICATIONS NETWORKS, AND TRANSPORTATION SYSTEMS.

THOSE DISABLED AMERICANS WHO SUCCEED IN ENTERING THE MAINSTREAM DO SO MORE IN SPITE OF, NOT BECAUSE OF, THE LEVEL OF SOCIETAL WISDOM IN ENABLING THEM TO LIVE FULLY IN OUR SOCIETY. ORDINARY CITIZENS ARE SURPRISED TO LEARN THAT PEOPLE WITH DISABILITIES DO NOT HAVE FULL CIVIL RIGHTS PROTECTIONS IN THIS COUNTRY. WE HAVE THE OPPORTUNITY IN THIS CONGRESS TO PUT THE UNITED STATES GOVERNMENT ON RECORD AS HAVING MADE AN UNEQUIVOCAL COMMITMENT: THAT NO LONGER IN THIS SOCIETY WILL WE INJURE OUR FELLOW DISABLED CITIZENS AND OURSELVES; THAT NO LONGER WILL WE ROB OURSELVES OF THE CONTRIBUTIONS TO CIVIC AND ECONOMIC LIFE WHICH 43 MILLION DISABLED AMERICANS HAVE TO OFFER; THAT NO LONGER WILL WE TOLERATE THE INJUSTICE AND WASTED HUMAN POTENTIAL THAT AMERICANS WITH DISABILITIES SUFFER BECAUSE WE DO NOT PROVIDE THEM WITH THE CIVIL RIGHTS PROTECTIONS WE UNDERSTAND AS NECESSARY FOR ALL OUR CITIZENS.

AT ISSUE IS WHETHER WE WILL RESPOND TO THE CHALLENGES WE FACE BY MAINTAINING AND IMPROVING THE QUALITY OF OUR LIFE AND OUR STANDARD OF LIVING, OR WHETHER WE WILL WILT IN THE FACE OF THESE CHALLANGES. I BELIEVE THAT WE CAN AND THAT WE WILL SUCCESSFULLY TACKLE THESE CHALLANGES ONLY TO THE EXTENT THAT WE TREASURE ALL HUMAN LIFE IN OUR SOCIETY, THAT WE CREATE A SOCIETY GEARED TO THE FULL ENHANCEMENT OF THE HUMAN POTENTIAL OF ALL OF OUR CITIZENS, THAT WE EXPAND HOPE AND CREATE OPPORTUNITY FOR INDIVIDUALS INSTEAD OF PURSUING POLICIES WHICH IMPLICITY REGARD MANY HUMAN LIVES AS

DISPOSABLE. WE NEED TO HAVE EVERYONE PULLING TOGETHER AND CONTRIBUTING IN WHATEVER WAY THEY ARE ABLE IF WE ARE GOING TO THRIVE IN THE DIFFICULT TIMES THAT LIE AHEAD.

FOR 43 MILLION AMERICANS, WE CAN BEGIN TO UNLOCK DOORS OF HOPE AND OPPORTUNITY AND DIGNITY THROUGH PASSAGE OF A STRONG AND EFFECTIVE AMERICANS WITH DISABILITIES ACT. IN DOING SO, WE RESPECT AND HONOR THE GIFTS, TALENTS, AND CONTRIBUTIONS THAT PEOPLE WITH DISABILITIES ALL HAVE TO MAKE IE WE ONLY REMOVE THE BARRIERS AND SIMPLY LET THEM LIVE THE FREEST, THE MOST INDEPENDENT, THE MOST DIGNIFIED, AND THE MOST SOCIAL LIVES THEY CAN LIVE.

THIS IS LEGISLATION THAT A MEMBER OF CONGRESS CAN SUPPORT WITH HIS HEAD EQUALLY AS WITH HIS HEART. YOU DON'T NEED TO BELIEVE, AS I DO, THAT DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IS MORALLY WRONG AND HAS NO PLACE IN OUR SOCIETY OR ITS LAWS, IN ORDER TO SUPPORT THIS LEGISLATION. YOU DON'T EVEN NEED TO BELIEVE IN A COMPASSIONATE AND JUST SOCIETY FOR ALL OF OUR CITIZENS, AS I DO, TO VOTE FOR THE ADA BILL. THE FEDERAL GOVERNMENT SPENDS ONE IN TWELVE TAX DOLLARS ON PROGRAMS FOR PEOPLE WITH DISABILITIES EVEN AS EIGHT MILLION OF OUR DISABLED CITIZENS NOT IN THE WORK FORCE WANT TO ENTER IT. AS THE BABY BOOM GENERATION AGES, SMALLER POOLS OF AVAILABLE LABOR MEAN THAT EMPLOYERS ALREADY ARE TURNING INCREASINGLY TO PEOPLE WITH DISABILITIES TO FILL THEIR MANPOWER REQUIREMENTS. THE DEMOGRAPHIC TRENDS ARE UNMISTAKEABLY

CLEAR; THE CURRENT DESPERATION ON THE PART OF MANY EMPLOYERS FOR QUALIFIED WORKERS IS LIKELY TO BE EXACERBATED IN THE COMING YEARS AS THE REPORT, OPPORTUNITY 2000, PRODUCED BY THE LABOR DEPARTMENT, INDICATES.

VICTOR HUGO ONCE SAID THAT THERE IS NOTHING MORE POWERFUL IN ALL THE WORLD THAN AN IDEA WHOSE TIME HAS COME. THE AMERICANS WITH DISABILITIES ACT IS INDEED SUCH AN IDEA--IT DESERVES SPEEDY PASSAGE.

Chairman OWENS. I yield to the chairman of the Employment Opportunities Subcommittee, Mr. Martinez, for an opening statement.

Mr. MARTINEZ. Mr. Chairman, I have a statement that I would like entered into the record in its entirety. I am anxious to hear from our colleague, Mr. Payne, who is representing Ron Dellums, and, of course, the Rev. Jesse Jackson.

Let me simply say that the issue is not new before us. It has been before us for a couple of sessions now. Hopefully this time we will have more success in passing a bill out. Protecting Americans with disabilities in the private sector and in the private work place, sharing equal access to all people, is something that all Americans should really be striving for.

The opposition to bills like this and to civil rights in general is obviously resistance to change simply because doing it the old way means that the control remains in the hands of a few. I think that there is always a fear from those who forget that their success was due to the fact that there was opportunity provided for them and that that opportunity was not hampered in any way and after they became successful. These few people really didn't want to really reach down and bring anybody along because it might mean that there would be competition for their jobs, I think.

This kind of short sighted thinking doesn't belong in the mainstream of America anymore and it certainly will not enhance opportunities to pull other people into the mainstream. I think we need to realize that this kind of shortsighted thinking really burdens society with supportive payment to people who are discriminated against without a means for self-sufficiency. Their plight is worse than the traditional minority groups in that people with disabilities oftentimes find themselves in that age old bind that handicapped people are not capable of accomplishing what a fully functional person can.

Well, I have news for you. Some people who are physically handicapped regard that as physical challenge rather than handicapped and have been able to accomplish a lot more than people with their full capability. The world is full of examples of that and I don't have to list them here today, but let me say that if we are going to move forward and truly be a country of opportunity for everyone, we need to pass this legislation.

We need to do the things that we haven't done in the past years because there are too many people of conscience out there that are not going to sit idly by while Congress sits and fiddles while Rome burns.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Matthew Martinez follows:]

STATEMENT OF CHAIRMAN MATTHEW G. MARTINEZ, JOINT HEARING ON THE AMERICAN DISABILITIES ACT OF 1989, HR.2273, WITH THE SUBCOMMITTEE ON SELECT EDUCATION, TUESDAY, JULY 18, 1989, 9:30 2175 RAYBURN

THANK YOU CHAIRMAN OWENS.

IT IS INDEED MY PLEASURE TO CO-CHAIR THIS HEARING TODAY ON THE AMERICAN DISABILITIES ACT. I WOULD LIKE TO THINK THAT OUR COMMITTEE IS TAKING THE LEAD ON THIS VITAL LEGISLATION, AND WILL BE THE FIRST COMMITTEE TO MOVE THE BILL ALONG IN CONGRESS.

PROTECTING AMERICANS WITH DISABILITIES IN THE PRIVATE SECTOR WORKPLACE AND ASSURING EQUAL ACCESS TO PUBLIC SERVICES AND ACCOMODATIONS IS A CIVIL RIGHTS PRIORITY WHOSE TIME HAS COME.

LIKE ANY OTHER PART OF OUR SOCIETY, FAILURE TO HARNESS THE FULL TALENTS OF OUR DISABLED CITIZENS, ROBS OUR NATION OF A PRODUCTIVE AND ENTHUSIASTIC HUMAN RESOURCE BASE. THIS NOT ONLY BURDENS SOCIETY WITH SUPPORT PAYMENTS, BUT PERPETUATES A HORRIBLE TRAGEDY OF DESTROYING THE LIVES AND ASPIRATIONS OF INDIVIDUALS WHO SEEK ONLY SELF-SUFFICIENCY AND TO JOIN MAINSTREAM SOCIETY.

THE PRIMARY RIGHTS AND ENFRANCHISEMENT WE ADDRESS TODAY IN THIS LEGISLATION, ARE TO GUARANTEE EQUAL ACCESS TO A GROUP OF CITIZENS WHO HAVE BEEN DENIED THEIR OPPORTUNITY TO ACHIEVE THE AMERICAN DREAM. THEY EXPECT NO MORE NOR NO LESS. WE SHOULD NOT STAND IN THE DOORWAY TO THEIR WANTS.

I LOOK FORWARD TO HEARING FROM OUR ESTEEMED GUESTS TODAY.

Chairman **Owens**. Mr. Gunderson, the ranking member of the Employment Opportunities.

Mr. **Gunderson**. Thank you, Mr. Chairman. First, I want to ask unanimous consent to insert a full statement into the record.

I simply want this morning to share with everyone a personal experience which I think is indicative of the reason that this legislation is, and ought to be, in front of not only these two committees, but the Congress at the present time. Many of you know that I happen to be a member of the Board of Trustees of Gallaudet University. It has been a great honor and privilege. As part of my working with the hearing impaired community, I felt it was important that I provide employment for one of these people in my office.

So, earlier this year, I hired a hearing impaired woman to work in my office. I was back in Wisconsin visiting with my father at the time and indicated to him that I had just hired a deaf woman to work in my office.

My father's response was, "Well, what can she do?" Now, the truth is, in all due respect to all of the staff sitting in this room, she is one of the few people in my office who is not distracted constantly by conversation. I would suggest she probably is a more efficient worker than most of the people in my office, but I think those innocent honest words by my father are indicative of the challenges facing the handicapped community as they seek full employment and participation in today's society.

Obviously the legislation in front of us is significant in its scope and its breath. Obviously, there are some areas where the language has produced some controversy, some questions over the technical intent. I have no doubt between our committee and the other committees that will look at this legislation, we can work those things out.

So, let's start out on a bipartisan commitment to a bipartisan solution to give every handicapped person full opportunities we now enjoy. Thank you.

[The prepared statement of Hon. Steve Gunderson follows:]

Remarks by the Honorable Steve Gunderson (R-WI)

AMERICANS WITH DISABILITIES ACT

Joint Hearing
Subcommittee on Employment Opportunities
Subcommittee on Select Education

July 18, 1989

Mr. Chairman, this morning's proceedings mark the commencement of a journey long overdue. For some time we have been making pledges and promises of our desire to empower the disabled community. Now it is time for us to deliver. Our deliberations will measure our commitment to this important task, and I look forward to working with you in the same spirit that has marked our past deliberations.

As with most discussions we undertake, it is the aim of today's hearing to begin rectifying a wrong and to fill a need in mainstreet U.S.A. I personally believe that some action needs to be taken; that we need to further displace the barriers which prohibit mainstreaming of disabled persons in our society.

There are few things more appropriate for us to do, Mr. Chairman, than to create an environment in which people can empower themselves and realize their dreams. I am reminded of the importance of this cause as I recall the struggle to overcome fears and to realize hopes within the deaf community that were demonstrated in the appointment of Gallaudet University's first deaf president.

The problem that marked Gallaudet's history prior to the appointment of I. King Jordan a year and a half ago pervades America. Our society has been, and in some sense continues to be, insensitive. Whether intended or unintended, insensitivity to culture and situation, and to one's predicament and past history, leads ultimately to the suppression of one's talents and to the oppression of one's God given rights. This should not and cannot be tolerated.

I look forward to today's discussion. Hopefully this morning's witnesses can be candid with us and share new insights. However, while harboring great hopes that our efforts will bear fruit and that we will indeed provide disabled persons the ability to become even more independent and productive, I am concerned about the scope and the ambiguity of the legislation currently framing our discussions. The "Americans with Disabilities Act", while positive in intent, now must be considered fully and carefully prior to enactment into law.

First and foremost I am concerned about pro-litigation and anti-education tilt. I am aware of claims that education is not enough, but concepts such as "potential discrimination," "undue burden," and "reasonable accomodation" are unclear and in need of clarification.

Attention also needs to be given to the costs of proposed legislation. We need to substantiate both the cost of lost tax revenues and increased transfer payments when individuals with disabilities are not accomodated. And we need to equate in the cost of accomodating such persons. Furthermore, I believe we would do well to re-examine the impact of this legislation upon small businesses and rural and small municipalities.

Finally, as we continue this dialogue we must stress consistency with past initiatives. The scope of public accomodation under the present legislation is, in my opinion, unrealistic. Of a similar quixotic shade is the inclusion of "drug-abusers" as disabled persons.

In sum, I am dedicated to legislation that will mainstream disabled persons and help them empower themselves. It is my hope that that legislation will be the "Americans with Disabilities Act." I pledged my willingness to work for an acceptable bill with Mr. Coehlo, and I will continue to work with the bill's new sponsor.

Thank you.

Mr. OWENS. Are there any more opening statements by members? We will proceed then with the statement from the chairman of the Congressional Black Caucus which usually does not support legislation or endorse legislation so far in advance.

However, because of the special nature of this legislation that parallels the civil rights movement, a request was made for their endorsement. I would like to note that all members of the Congressional Black Caucus are on the bill as co-sponsors. Chairman Ron Dellums has sent a statement of support which will be offered by a member of our subcommittee, Mr. Donald Payne.

STATEMENT OF HON. DONALD M. PAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PAYNE. Thank you very much, Mr. Chairman, and to Chairman Martinez. Before I give my statement, I might also mention, similar to Mr. Goodling, that I recently checked into a hotel and the hotel was all booked up, but the front desk manager said that there was only one room left and he apologized that it was a room for handicapped people.

So, once again, we see the stigmatization. We see the fact that people still have a way of making separate other people. The room was an adequate room. As a matter of fact, the room was more desirable than another room, but for this person to have to indicate with an apology that this is a handicapped person's room, I think, once again, shows the uphill battle that we have in this nation.

To our colleagues, Chairman Owens, and Chairman Martinez, the Congressional Black Caucus is pleased to offer testimony before this joint hearing on H.R. 2273, the Americans with Disabilities Act of 1989.

We salute your leadership on this most critical of issues for we come as proponents of a movement, as patriots in this struggle for decency and human dignity. As a member of the House Subcommittee on Select Education, it is an honor and special privilege to have been asked to make this presentation on behalf of the Congressional Black Caucus.

Twenty-five years ago, the Congress of the United States gave America a vehicle which changed the course of history. The passage of the 1964 Civil Rights Act made justice and morality the cornerstones of American democracy. Today we begin another trek toward equality.

Many have traveled a tortuous road in coming to this moment and on their behalf this Congress shall make critical decisions which will determine the quality of their lives far into the future.

This institution stands on the threshold of infinite possibilities, and we must not be reactive nor have historians write that we sat at the tail end of this struggle for justice. Rather, it is our duty and the commitment of the Congressional Black Caucus to champion and challenge this Congress to protect and advance the rights of those who some define by their disabilities—yet whose abilities we know have no bounds.

Those who sit in this room, who face the constant challenges of disabilities have an absolute understanding of what it means to be "at-risk." Let us not build hurdles to imperil their future by our failure to enact this legislation.

We, the members of the Congressional Black Caucus state here our unanimous and unequivocal support for the passage of this Civil Right act for Disabled Americans. We affirm our mutual kinship and interdependence as cohabitants of this land and we pledge to work toward the immediate passage of these guarantees.

As beneficiaries of the 1964 Civil Rights Act, we understand the legacy that comes with an appreciation for the universality of the human condition and the sharing of a common destiny. While the will of the majority prevails, circumstances forge a special alliance among those who have suffered injustice.

As African-Americans we have learned never to be intimidated because one is in the minority on an issue which you know to be right. This lesson we repeat for those who join us as advocates in seeking passage of these civil rights measures.

We sit before you today on behalf of those who cannot stand to implore justice, who cannot speak to demand equality, who cannot hear discrimination, and who cannot see their oppressor.

We must again place America on the right side of history with the passage of this omnibus civil rights statute that prohibits discrimination against individuals with disabilities—imposing guarantees and requiring enforcement in the private sector, all public services, public accommodations, transportation; and telecommunications.

Such a victory is won by a coalition beginning with one person with vision and commitment. As members of the Congressional Black Caucus, even in the most painful circumstances, we have seen ordinary people become catalysts for extraordinary movements.

An illiterate Black slave named Frederick Douglass learned to read and write and became a world acclaimed poet, orator, and statesman. A poor Alabama seamstress named Rosa Parks fueled the entire civil rights movement in America when she refused to sit in the back of a bus.

A small group of unrelenting warriors captured the eye of the nation in bringing disability rights and Gallaudet University onto the front pages of the world press. I am especially proud to sit before you today as the most recent member of the 65 Afro-Americans to have been elected to serve the United States Congress in the history of this nation.

Those who know the Congressional Black Caucus understand our collective mandate to serve, and our covenant to fight for justice and equality. This, too, is our battle.

The witnesses who will follow this presentation are the real experts. Their courage inspires us, and their will challenges the conscience of this Congress. We as members of the Congressional Black Caucus are not draftees, but enlistees in this mission to create a mutually supportive partnership with government, the private sector, labor and the courts to empower—with full rights and privileges—this nation's disabled citizens. To this end we pledge our allegiance.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Donald M. Payne follows:]

Augustus F. Hawkins, CA '63
John Conyers, Jr., MI '65
William Clay, MO '69
Louis Stokes, OH '69
Ronald V. Dellums, CA '71
Charles B. Rangel, NY '71
Walter E. Fauntroy, DC '71
Cardiss Collins, IL '73
Harold Ford, TN '75
Julian C. Dixon, CA '79
William H. Gray, PA '79
Mickey Leland, TX '79
George W. Crockett, Jr., MI '80
Mervyn M. Dymally, CA '81
Gus Savage, IL '81
Major R. Owens, NY '83
Edolphus Towns, NY '83
Alan Wheat, MO '83
Charles A. Hayes, IL '83
Mike Espy, MS '87
Floyd H. Flake, NY '87
John Lewis, GA '87
Kweisi Mfume, MD '87
Donald M. Payne, NJ '89

CBC

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Charles Hayes
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CONGRESSIONAL BLACK CAUCUS TESTIMONY

In support of the

"AMERICANS WITH DISABILITIES ACT OF 1989"

Joint Hearing

House Subcommittee on Select Education
and
House Subcommittee on Employment Opportunities

July 18, 1989
2175 Rayburn HOB

(Delivered by Congressman Donald M. Payne)

The Congressional Black Caucus is a Legislative Service Organization of the United States Congress

To our colleagues Chairman Owens and Chairman Martinez, The Congressional Black Caucus is pleased to offer testimony before this joint hearing on H.R. 2273 - The American's With Disabilities Act of 1989. We salute your leadership on this most crucial of issues, for we come as proponents of a movement -- as patriots in this struggle for decency and human dignity. As a Member of the House Subcommittee on Select Education it is an honor and special privilege to have been asked to make this presentation on behalf of the Congressional Black Caucus.

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This institution stands on the threshold of infinite possibility, and we must not be reactive nor have historians write that we sat at the tail end of this struggle for justice. Rather, it is our duty and the commitment of the Congressional Black Caucus to champion and challenge this Congress to protect and advance the rights of those who some would define by their disabilities - yet whose abilities we know have no bounds.

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BEST COPY AVAILABLE

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Mr. OWENS. Thank you, Mr. Payne. Before we proceed to our first witness, I would like to note that this particular bill has—four subcommittees of the House of Representatives have jurisdiction over this bill and it will be very difficult to pass the bill unless we have a great deal of coordination and support from our leadership.

The chairman of the Democratic Caucus Steny Hoyer, has volunteered to provide that coordination. He is here this morning and will have to leave. I yield to him for a statement.

Mr. HOYER. Thank you very much, Mr. Chairman. I am pleased to join you and Mr. Martinez in this committee, and Mr. Gunderson in very strong support of this legislation.

Congressman Payne has made an excellent statement as did Mr. Gunderson and yourself and Mr. Martinez. As you know, our former Majority Whip, Tony Coelho, was the principal sponsor in the House of Representatives of this legislation. Upon his resignation, he asked me to work with all of you to ensure the careful and prompt consideration of this legislation.

I have a prepared statement, Mr. Chairman, that I would like included in the record. I believe this to be "the" major civil rights legislation of the 101st Congress. There is no doubt about that. There are 43 million Americans who face discrimination.

Our country in the last 20 years has stated in emphatic terms that it is our policy not to discriminate against any Americans. Notwithstanding that annunciation of policy, the tragic fact for America, not only for those who are discriminated against, but for those who have lost the full services of those 43 million Americans, is that we do discriminate.

A full two-thirds of the disabled are unemployed. In a time when America is challenged both at home and abroad, that is unacceptable. So from the most practical of standpoints, Mr. Chairman, we need to overcome this discrimination, whether it is in employment, public facilities, transportation, telecommunications, whatever it might be.

I want to pledge to you, Mr. Chairman—or to the chairmen, Mr. Martinez and Mr. Owens and this committee that we will work very, very hard following up on the work of this committee and the other subcommittees of jurisdiction to see that this matter is passed just as soon as possible, while I understand Mr. Gunderson's point that there are technical, perhaps corrections, improvements that may be made in this bill.

I was at a town meeting last night, Mr. Chairman, and a victim of cerebral palsy attended with a family member and their plea was not to allow this bill to be corrected or amended to the extent that it became less protective than state's statutes that now exist and that, in fact, it might be a step backward and not forward.

I know the distinguished witness from whom we are about to hear, my good friend Jesse Jackson, will say that there are always those who want to temporize in the face of discrimination.

It is far too late for that and I would hope that we would move quickly and decisively to protect the rights, not only of those 43 million Americans, but, that too, as a policy of our country utilize their talents, their energy and their commitment to the fullest possible extent.

Thank you very much, Mr. Chairman, for allowing me to participate.

[The prepared statement of Hon. Steny Hoyer follows:]

STATEMENT OF THE HONORABLE STENY H. HOYER
JULY 18, 1989
BEFORE THE HOUSE COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON SELECT EDUCATION
AND
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

MR. CHAIRMAN, AS YOU KNOW, SINCE CONGRESSMAN TONY COELHO'S RESIGNATION FROM THE HOUSE OF REPRESENTATIVES, I HAVE TAKEN OVER AS ONE OF THE LEAD SPONSORS OF H.R. 2273, THE AMERICAN WITH DISABILITIES ACT. I WOULD LIKE TO COMMEND BOTH SUBCOMMITTEE CHAIRMEN, CHAIRMAN MAJOR OWENS AND CHAIRMAN MATTHEW MARTINEZ, AS WELL AS CHAIRMAN GUS HAWKINS, FOR HOLDING TODAY'S HEARINGS ON H.R. 2273 AND BEGINNING THE COMMITTEE'S CONSIDERATION OF THIS MEASURE.

THE AMERICANS WITH DISABILITIES ACT WOULD GUARANTEE THAT THE PERSON WITH EPILEPSY WOULD NOT BE IMMEDIATELY DISMISSED FOR CONSIDERATION FROM A JOB SOLELY ON THE BASIS OF HIS DISABILITY, AND THAT THE PARALYZED VETERAN, WHO HAS ALREADY GIVEN MORE TO HIS COUNTRY THAN WE CAN ASK, WOULD HAVE ACCESSIBLE TRANSPORTATION TO GET TO WORK.

MR. CHAIRMAN, THE ADA IS BASED ON THE RECOMMENDATIONS OF THE NATIONAL COUNCIL ON DISABILITY. AFTER EXTENSIVE AND EXHAUSTIVE STUDY AND REVIEW, THE FIFTEEN MEMBER COUNCIL, APPOINTED BY PRESIDENT RONALD REAGAN, FOUND THAT AMERICANS WITH DISABILITIES FACE DISCRIMINATION IN ALMOST EVERY ASPECT OF THEIR LIVES INCLUDING, EMPLOYMENT, HOUSING, TRANSPORTATION, COMMUNICATIONS, AND RECREATION.

MR. CHAIRMAN, THE COSTS TO OUR NATION OF THIS DISCRIMINATION ARE TREMENDOUS. IN ADDITION TO THE LOSS OF THE PRODUCTIVE TALENTS AND CONTRIBUTIONS OF THESE AMERICANS, OUR NATION IS SPENDING ALMOST $170 BILLION ON MAINTAINING THE DEPENDENCY OF THE DISABLED. A STUDY BY RUTGERS UNIVERSITY SHOWED THAT THE FEDERAL GOVERNMENT ALONE SPENDS UP TO $75 BILLION ANNUALLY ON SUCH MAINTENANCE. THESE FUNDS WOULD BE AVAILABLE FOR OTHER NATIONAL PRIORITIES IF THE DISABLED, WHO ARE BARRED FROM WORKING BECAUSE OF THE BARRIERS OF DISCRIMINATION, WERE ABLE TO LEAD PRODUCTIVE LIVES.

H.R. 2273 WILL ENSURE BASIC CIVIL RIGHTS FOR 43 MILLION DISABLED AMERICANS, BY PROHIBITING DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES IN EMPLOYMENT, IN PUBLIC SERVICES, PUBLIC ACCOMMODATIONS, TRANSPORTATION AND TELECOMMUNICATIONS. THE AMERICANS WITH DISABILITIES ACT, WHICH WAS INTRODUCED A SHORT WHILE AGO, ON MAY 9, IS ALREADY COSPONSORED BY 195 OF OUR COLLEAGUES IN THE HOUSE.

THE IMPORTANCE, NECESSITY AND URGENCY OF THE AMERICANS WITH DISABILITIES ACT CANNOT BE OVEREMPHASIZED. I DO NOT BELIEVE THAT OUR GOVERNMENT SHOULD DO EVERYTHING FOR ITS CITIZENS, OR BE ALL THINGS TO ALL AMERICANS. HOWEVER, I DO BELIEVE THAT ONE OF THE FUNDAMENTAL PRINCIPLES ON WHICH OUR NATION WAS FOUNDED IS THAT ALL AMERICANS SHOULD HAVE AN EQUAL OPPORTUNITY TO LIVE IN OUR SOCIETY AND TO LIVE PRODUCTIVE LIVES.

IF AN INDIVIDUAL CHOOSES NOT TO MAKE THE MOST OF HIS OR HER TALENTS, THEN SO BE IT. BUT IN AMERICA, ONE MUST NOT BE DENIED AN OPPORTUNITY BECAUSE OF IGNORANCE OR PREJUDICE.

A 1987 LOU HARRIS SURVEY FOUND THAT 72 PERCENT OF THE TOP MANAGERS IN AMERICA FEEL THAT DISABLED AMERICANS ENCOUNTER DISCRIMINATION WHICH KEEPS THEM FROM EMPLOYMENT. AND THE FACT IS, THAT THE DISABLED WANT TO WORK. ALTHOUGH TWO-THIRDS OF ALL DISABLED AMERICANS BETWEEN THE AGE OF 16 AND 64 ARE UNEMPLOYED, SIXTY-SIX PERCENT OF THE NON-WORKING DISABLED AMERICANS SAY THEY WANT TO WORK.

H.R. 2273 IS A REASONABLE AND EFFECTIVE RESPONSE TO THIS DISCRIMINATION AND PARALLELS THE SUCCESSFUL MODEL USED BY THE FEDERAL GOVERNMENT IN ELIMINATING DISCRIMINATION BASED ON DISABILITY IN FEDERALLY-FUNDED ACTIVITIES.

MR. CHAIRMAN, TWENTY-FIVE YEARS HAVE PASSED SINCE THE ENACTMENT OF THE CIVIL RIGHTS ACT. WE ARE NOW MORE THAN READY TO EXTEND CIVIL RIGHTS PROTECTIONS TO DISABLED AMERICANS. I FIRMLY BELIEVE THE ADA IS ONE OF THE MOST IMPORTANT BILLS OF THE 101ST CONGRESS AND I LOOK FORWARD TO WORKING WITH YOU AND THE MEMBERS OF THE COMMITTEE ON THIS HISTORIC LEGISLATION.

Mr. **Bartlett**. Would the gentlemen yield?

Mr. **Owens**. Mr. Bartlett.

Mr. **Bartlett**. Mr. Chairman, I don't have an opening statement at this time because I know Reverend Jackson is on a timetable and I'll forego for that, but I do want to say while Mr. Hoyer is here that, in fact, this legislation does enjoy bipartisan support as far as its intent.

It is far too early and I know the gentlemen didn't intend to say that, to adopt a no compromise or no change kind of policy to legislation that this is the first hearing for. I want to make two points with regard to that.

I look forward to working with Mr. Hoyer, as well as Mr. Owens and others. First, there is broad bipartisan support beginning with the President of the United States for legislation of this type for the first time in the history of this country to adopt a prohibition against discrimination against persons with disabilities.

But secondly, there has to be a bipartisan commitment to do it right, to adopt legislation that accomplishes what we say we want to accomplish, to take the speeches and the commitment that we all have and convert that into legislative language that, in fact, maximizes the positive impact of this type of legislation and minimizes the disruption that could otherwise occur to persons with disabilities.

So, I look forward to working with the gentlemen in drafting the legislation the way that we all intend to have it drafted and to working through each line by line of the legislation to make sure that we accomplish what we set out to accomplish. I thank the chairman.

Mr. **Owens**. Thank you. Our first witness is quite well-known and he wears many hats, but I think it is important to note here that as a former presidential candidate in both his campaigns in 1984 and in 1988, he gave very high visibility to the community of people with disabilities, very high visibility and very great participation in that campaign.

We are pleased to welcome Reverend Jesse Jackson, the president of the National Rainbow Coalition.

STATEMENT OF REVEREND JESSE JACKSON, PRESIDENT, NATIONAL RAINBOW COALITION

Reverend **Jackson**. Chairman Owens and members of the committee, let me express to you my gratitude for giving me the opportunity and the privilege to address this committee today and the speaker of this most critical moral issues of our time.

The eyes and hearts and hopes of Americans have, over the past several months, been focused on Chinese students and their struggle for dignity and democracy. As I watched their struggle, heard their eloquence, and understood their place on the right side of history, I was reminded of another group of students who fought for what they believed in, another group of students who led in the fight for justice.

I thought of the students at Gallaudet College here in Washington, DC. I am told that the hearing impaired refer to the struggle at Gallaudet as "our Selma." I support the Americans with Disabilities Act, the ADA bill, because I believe in civil rights, because I believe in human dignity. From Selma to Gallaudet is a straight line—the line of justice.

If there is to be any modification, it ought to be the Differently Abilities Act. All of us have some ability and their simply different abilities. I devoted much of my life to fighting for civil rights. It is that devotion that brings me before this subcommittee today.

Mr. Chairman, members of Congress, we all know that the fight for the Civil Rights Act of 1964 was long and hard. The triumph was great, but the struggle is not over. There is more work to be done and the ADA represents an important step.

There are now tens of millions of Americans who lack basic civil rights protections, men and women who can be turned away from a lunch counter, who can be refused a hotel room, who can be cast out for no reason other than ignorance and fear.

Americans with disabilities do not receive the protection of the Civil Rights Act of 1964, and the ADA would right that wrong. Work places will become accessible, opening the opportunity of participation and accomplishment to millions of Americans.

We spend $170 billion a year on disabled adults—too much of it is spent maintaining dependency and activity. Public accommodations, transportation, and telecommunications would no longer be unfairly and unjustly denied to disabled Americans. When we open work places, we empower men and women; we also save money.

Fewer dollars will be spent maintaining dependency; more dollars will come in from taxpaying workers, and that is one of the key issues—empowerment and participation for minorities benefit all Americans.

We know that integrating our society increases our moral integrity as a nation. We must also remember it strengthens us in practical terms. When the deaf can communicate more freely, through TDD devices, we all benefit from what they have to say. When a woman in a wheelchair can work instead of remaining locked into a second class existence, we all win.

When people with AIDS are guaranteed basic civil rights, we all benefit. That is what the AIDS Commission understood when it called the ADA "model" legislation—civil rights literally protect the public health.

The support for this bill is widespread; the Leadership Conference on Civil Rights leads the list. They understand that as long as any civil right is abridged, no civil right is secure.

We have seen many try to turn back the clock on civil rights. The Supreme Court has now thrown obstacles in the way of decades of progress. This bill offers us a chance to just say no to injustice. This bill offers us a chance to make our country stronger.

Romanticized versions of the pre-civil rights past have made this country weaker—too many young Americans have grown up knowing too little of the struggle and triumphs of the civil rights movement.

We have a chance to turn away from this "nightmare recast as dream" approach to history. We have a chance to continue to open up our nation, a chance to continue to "form a more perfect union."

We have a chance to pay real tribute to our flag. How does the Pledge of Allegiance conclude? "And to the nation, for which it stands—one nation, under God, indivisible, with liberty and justice for all."

For all. Not just for White male landowners, not just for the conventionally abled, not just for the HIV negative, not just for the English speaking, "Liberty and justice for all."

Doctor King made it clear to Rosa Parks that it was better to walk in dignity than ride in shame, and for some real sense in many ways, for some people, race is a handicap. Our sex is a handicap. Our class is a handicap. Alienage is a handicap.

I say, "let freedom ring for all Americans." History has since given us a glimpse of how much better still it is to ride in dignity. The Americans with Disabilities Act will fulfill this dream for millions more Americans. We should all be proud to work for this landmark legislation.

I support this bill for the differently able. None of us are perfect. We possess high and lows on the chart of efficiency and capabilities. I think of President Franklin D. Roosevelt in a wheelchair.

His contributions: he stood America paradoxic on its feet from a wheelchair. Reagan put us on back from a horse standing upright. We must tie people's rights to their humanity, their character and their will to serve, not to their eyes, their legs and their arms.

Stevie Wonder, no eyesight, but insight, a will to serve and character, and it is cost efficient the idea about building some extra passage ways or making some extra provisions. We should never again in our right mind discuss making America available for all the people and speak, of course.

I looked this morning and saw that flying "Batmobile," "Stealth Bomber," a half billion dollars each and we would debate access to people in a wheelchair. The S&L ripoff, $200 billion; the morally disabled; the HUD scandal, $2 billion and rising, the morally disabled.

I say let us reinvest in America; bridges are falling every day. Let's reinvest in Americans. People are falling; let all of us stand together.

Thank you very much.

[The prepared statement of Reverend Jesse Jackson follows:]

Statement of
Reverend Jesse Jackson
President
National Rainbow Coalition

before the

Committee on Education and Labor
Subcommittee on Select Education

July 18, 1989

Statement of Reverend Jesse Jackson

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Thank you.

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Chairman **Owens**. Thank you, Reverend Jackson. I yield to my co-chairman, Mr. Martinez, for questions.

Mr. **Martinez**. Yes, I am not too sure I need to ask questions after that dynamic statement, but maybe we can enter into a dialogue because I think that we should talk about some of the things that might cost us the ability to move ahead expeditiously with this and we need to move ahead expeditiously now.

It has been several years that the rights of the handicapped have been debated and I can remember since first coming into Congress some seven years ago, that we were talking about doing something about it then.

Seven years later, we still haven't done it adequately and I think it is time that we need to move ahead, but you know, you were talking about people that are handicapped one way or another, I am not sure that we are not all handicapped in one way or another as you point out, except maybe if you are endowed by the grace of God with some special talent or some special ability of some kind that sets you apart and gives you preferential treatment in the world. But even then, I am not too sure that even the people who are that way are not handicapped in some other way. We are all somehow handicapped.

We talked earlier, and Mr. Gunderson talked about the individual that he hired in his office who was deaf, about the issues I think we all have had the experience of hiring someone at some point in time in that regard, and I don't think we should stand on our laurels and pat ourselves on the back or break our arm patting ourselves on the back for doing that. It is not doing anything that is extraordinary, I believe.

It is doing something that you normally should do if you thought right. The fact is that we hired a blind person into our office and we never gave it much thought. After working with us a year, he proved his merits to so many people that he was offered being the admissions director of a university at twice the salary we were paying him.

We couldn't much hold him back at that, but he was an individual that was sightless, but I think he saw much farther than many of us with sight. Working with him in that year, we became aware of his insight, as well as far-sightedness into the problems and situations that confront us on a daily basis in our office and was able to resolve many of the problems that we had there with constituents we had.

I think that deaf people hear beyond just the words. They hear the sentiments and feelings that many of us don't hear. But, what I really need to talk to you about is something that Mr. Bartlett said: "this is a bipartisan bill, but we have to do it right." You know so many times—and this is no reference to Mr. Bartlett himself, as I have sat with him now for seven years and know that he is very sincere in his desire to do the right thing—that "do it right" bit gets to mean that it doesn't cost me anything and it doesn't disturb the status quo.

I know that in your travels and your talking to people all over the country when you were running for the presidency, that you encountered opinions and ideas and opposition to the things we are trying to do. You have seen firsthand that some people oppose people being treated equally in any way or providing the opportunity for them to have access to mainstream society despite the Constitution saying, "all people are created equal." But, we know that they are not, because people do not live by that.

All people should be treated equally under the law. We are not saying that the strong and the swift shouldn't win the race; they should, but there are all kinds of races that people can win, and they can do it with different talents as you described.

What I think we need to talk about here is how do we overcome the narrow-minded thinking, the tunnel vision thinking, that exists in many places on this Hill and many places in our society. People just won't open their eyes to see that when they hire on people with disabilities give them an opportunity, and allow them to succeed, that we all succeed and benefit by it and because as citizens they become less of a liability to society.

There are so many cases in which we have been so shortsighted in government that when we hold forth to people opportunity to become what we call "self-sufficient or independent," we sometimes take away the very tools that they need to become self-sufficient and independent. This is done in the name of cost, without realizing that paying the cost now, in the long run brings us back dollars.

There have been other programs like Job Corps and the JPTA and a lot of the training programs that have brought back to us a $1.40, $1.75 for every dollar invested by the Federal Government. And yet, we can't get these short-sighted, penny-pinching people to see. What is it? What do we need to do?

Reverend JACKSON. Well, what we are looking at is a deficit in our character. We are looking at the impact of the sin or arrogance and contempt for other people. The only moral justification for looking down on someone is you are going to stop to pick them up.

We have been in this contradiction from the very founding of our country. After all, when the constitution was written, everybody was handicapped except White male landowners. Even White males who didn't own land couldn't vote. Their mothers and wives and daughters and aunts, White women couldn't vote.

African Americans were considered three-fifths human; just a little higher than animals, a little lower than people, three-fifths of the human beings in the constitution. Native Americans couldn't live. All of America was handicapped except the aristocracy. The struggle has been to open the aristocracy, those who taught democracy, but looking for a king.

This is a democracy; bottom up, people out. It will cost to build the necessary facilities to let people in. It will cost more to lock them out. It will cost us morally. It will cost us money as well.

Democracy does not guarantee success. It guarantees opportunity and we are talking about people's opportunity being denied based upon base of some physical situation and I say let's accommodate.

I would say that we who would be blessed to walk upright, must behave upright and treat physically disabled people as if they were our mother or our father or our son or our daughter, and tragedy should not have to strike to the depths of our humanity to be touched and our humanity come alive.

Mr. **Martinez**. Thank you, Mr. Jackson. Let me ask you just one last question. One of the things that we have to be constantly aware of here is what the political climate is in order to have success with any particular piece of legislation.

Even though it was tough back in the '60s during the civil rights marches and everything else and the demonstrations, there was enough political pressure and enough political sense that we did the right thing. Recently with the Supreme Court decision that had been made, I think we are going backwards.

Do you believe we have enough political sensitivity on the Hill here to really enfranchise these people?

Reverend **Jackson**. Well, what we did in the '60s was when we sought judicial remedy and couldn't get it and sought legislative remedy and couldn't get it, we then hit the streets and so maybe, Congress can get a better view of physical disabled or different abled people, get up about a thousand up and down these halls in their chairs and about ten thousand coming down the highway and the drama of that might make up come alive.

I am convinced that if people cannot get legislative remedy, they must otherwise redrift their grievances through mass demonstrations. We will not allow this narrow view of America an opportunity to, in fact, roll back the clock and blow up the graves of the martyrs who made the new America possible.

So, whether we come in wheelchairs or combat without shoes, we will not as a nation go back; we must go forward, and I say affirming the humanity, the differently abled is the way of going forward.

Mr. **Martinez**. Thank you. Thank you, Mr. Chairman.

Mr. **Owens**. The co-chairman and I did agree on an informal five-minute rule for each member. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman. I found myself in agreement with a good deal of what Reverend Jackson said and very much appreciate his testimony. I particularly agree with two items. One is that, in fact, if we pass legislation like this that empowers people to be able to control their own lives, there will be a cost savings to the Federal Government and that is true as we give people the chance to be independent to provide for their own employment, their own income, their own housing, their own transportation, that, in fact, would save the taxpayers substantial sums from the alternatives.

Secondly, it is an empowerment issue. It is an opportunity to write legislation that will empower people to be able to control their own lives. I do have a specific question on the legislation. As I said earlier, I think that we should go through the legislation line by line to determine that we pass exactly what we intend to pass, not creating unintended negative consequences and not changing something for the negative, but accomplishing the mission.

My question is on the section that deals with drug and alcohol abusers as defined in the current section code of Section 504 for persons with disabilities.

The legislation, Reverend Jackson, only provides one exception for an employer to be able to deny employment to someone who is a current abuser of alcohol or drugs—by an alcohol, liquor, or drug abuser, and that is, if that person would pose a direct, words of the bill, a direct threat to the property or safety of others in the work place or in the program. My question is, in your judgment, should there be other exceptions, that is, should employers be able to deny employment to persons who are current abusers of alcohol or illegal drugs if, in fact, for other reasons, if the employer, for example, wants to maintain a drug free work place?

A classic example: Should a stockbrokerage house on Wall Street be able to make it a condition of employment that their stockbrokers not do cocaine on their lunch hour even though it is not going to impair their health or safety of others in the work place?

Reverend **Jackson**. The victims of alcohol and drug abuse take focus away from people who, in fact, are drug free, who otherwise need grants, who otherwise need scholarships, who otherwise need opportunity, who otherwise need extra counseling.

I would hate to see the meat of this proposition be lost in the extremities of that situation. I take the position that those who are on coke, or crack or heroin, they need to get well. That is the first issue there and you know we decry now the growing impact of drugs.

We have not yet attempted to put a price tag to what it is going to cost to get people well and that becomes significant to me, but I would hope that the message that you raise that we would not—as I look at the people who are sitting here today, some of whom are deaf, some of whom are otherwise in wheelchairs who are ready to go right now and become Congress people and be senators and soon able to be vice president under this arrangement.

Let's focus on all these possibilities out here and not get caught up, it seems to me, Mr. Bartlett, on the extremities. I think in some of those situations, it is almost case by case. Some people who are really drug and alcohol abusers are not capable of working because they cannot stay awake long enough.

Mr. **Bartlett**. Reverend Jackson, I am not sure I understand your response. It is in the bill. I mean, the bill says that an employer cannot maintain a drug-free work place unless it impairs the property or safety in the work place.

I agree with you. It is one case, it is an extreme case. I also concur that those drug and alcohol addicts should not be placed into the same categories as those with physical and mental impairments, but they are in the bill. That is the problem, so would you change the bill?

Reverend **Jackson**. I assume that you and Mr. Owens and Mr. Martinez would deal with the ramifications—by the way, we are losing 360,000 thousand people a year to smoking cigarettes, more than they were losing to alcohol, and coke, crack and heroin combined and so that seems to me to be an issue kind onto itself and I would hope that we would not allow that issue and its debate to, in fact, water down the honest-to-God, the real needs of people who otherwise are looked upon in ways that are not right and not kind.

Let me say this to you, Mr. Chairman, in closing. Another reason why this cost efficient is important, many people have disabilities, impairments that start in the womb and early detection in their formative years can go through substantial correction.

If a woman has prenatal care for nine months, even a city like New York will cost less than a thousand dollars for nine months. Without prenatal care, a low-birth weight baby, and what could by then become an impaired baby, cost up to $2 thousand a day, usually minimum 20 weeks in the hospital.

Add to that any other kind of physical complication, you are looking at maybe $3 thousand a day for 20 weeks and then maybe some adjustment for the rest of their lives. That prenatal care and that early detection and that support in people's formative years will, in fact, save us money and make us stronger and make us more productive.

Mr. **Bartlett**. Mr. Chairman, I would hope that perhaps we can deal with this section of the law without debating it. I look forward to that and thank the Reverend for his testimony.

Reverend **Jackson**. Thank you.

Chairman **Owens**. Mr. Hayes?

Mr. **Hayes**. Thank you, Mr. Chairman. I am going to be very brief. I want to commend, though, my colleague, Payne, and my constituent, Reverend Jesse Jackson, for what has been excellent testimony. I do want to sound a word of warning.

This distinctly is not one of the legislative priorities before the 101st Congress unless we make it that. It appears to me that much more interest is going to be focused in the direction of trying to undue the recent Supreme Court decision in relation to desecration of the flag which I am opposed to too, but this is high on the legislative agenda as you might understand and the press is helping to mode it in that direction.

The other thing that tends to take priority, as you might have noticed yesterday, that the stealth bomber got, I think, ten thousand feet into the air, so we have to justify spending that if we do.

Reverend **Jackson**. Batmobile.

Mr. **Hayes**. Batmobile, at $500 million for that kind of thing and then, I think, our chairman here, Owens, has mentioned another thing. We caught up in what could become a legislative quagmire over jurisdiction at which subcommittee has jurisdiction over this piece of legislation.

I raise these kinds of things only to indicate, as you said, Reverend Jackson, we have to develop sensitivity to this issue. It is not known, not among many of our colleagues in Congress and I would hope that we understand that what you suggested that we had to do in the '60s as a course of action to develop the kind of interest and attention to this kind of necessity for this kind of legislative issue by marching if necessary, doing whatever is necessary to make it a priority of this Congress.

I just want to close by saying that as we spread democracy abroad, and spend so much time talking about the right to life versus choice, we had better understand that people with handicaps who are already here, certainly have a right to life and some of the millions that we spend abroad could very well be used in this country to support this kind of legislation.

I just wanted to close with that statement.

Chairman **Owens**. Mr. Grandy?

Mr. **Grandy**. Thank you, Mr. Chairman. Reverend Jackson, let me just say that I find myself in complete concurrence with my colleague from Chicago. I think that this Congress is better served by discussing, debating, and implementing this piece of legislation than tearing ourselves apart over an issue such as flag burning and things of that nature, because I think this will have an immediate and lasting dividend whereas the other may merely just subdivide into other forms of debate.

Because I would like to see this legislation put on a fast track and I would like to see the consensus formed over the method as well as the intent, I would like to hear your definitions of two areas of concern under the general title of discrimination that have given some some pause over this legislation.

One is anticipatory discrimination; the other is unintentional discrimination. Categories of unclarity that are causing particularly people in the business community to wonder what this means, how they are subject to litigation, how these can be clarified. Could you give this Committee your definition of those two?

Reverend Jackson. Well, I suppose a bill of particulars shouldn't be drawn up. Now, here is what I mean. I remember when we were marching for the right to vote in Selma, and we were challenged by the Congress to write the bill explaining how it works.

We were doing the marching and taking the risk; we thought the Congress could at least write up the bill of particulars. In a sense that there are things you can anticipate. We know that we need riding ramps for public transportation; you can anticipate that, that the people need access to buildings for work or living. We can anticipate that.

The schools need to accommodate this reality. We can anticipate that, so that they are given a number of needs that we know must be served based upon diverse categories of different abilities and needs that people have and if you, in fact, build a new building and are not taking this into account, you structure people out.

It seems to me you then are moving into murky water, given what the law would, in fact, represent. I would think that would be in the realms of one might call anticipation. I also think that anticipation should not be so negative. For example, we may have given more access for fewer dropouts among the differently able.

We might have far less, far fewer people who will engage in crack and cocaine and killing people. We may, in fact, have more mileage out of people who otherwise are not distracted by the coke, the crack, the killing. I said that because that is the number one threat that lies on our streets today and so there may be a factor of dedication, if you will, the laws of compensation here that is greater than we have ever even discussed.

I think it should not just be anticipation in the negative, but also anticipation in the productive and anticipation in the positive. What was the other point?

Mr. Grandy. Unintentional discrimination which is also covered by this legislation.

Reverend Jackson. Well, that is the murky one, you know, where if you now file a suit based upon discrimination, you cannot just deal with the fact, you must prove intent which requires heart surgery which is illegal.

That is a very tricky business proving intent. You go to a situation where you have all physically abled people and no differently abled people there, the effect is that directly or indirectly, they have been locked out. If you go there and it is all male, all one race, you assume others have been locked out, and now you must prove intent.

That is one of the damaging aspects of these Supreme Court rulings. For example, if you had filed as a plaintiff, as a plaintiff of race or sex or disabled suit two months ago, it would have cost about $5 thousand. Now, it would cost about a $100 thousand, and you cannot recover fees for expert witnesses in the process.

If it is a class action, it would have cost $50 thousand; now it will cost $500 thousand to a million dollars which means that under these rulings is that civil rights then become more distant and more expensive and less likely.

We are very vulnerable as a nation based upon these recent decisions and so whether you are female or African American or Hispanic or physically differently abled a worker, we now find ourselves with another set of struggles and we must prove not only that we can raise the money for the suit, but prove intent which is much more difficult to prove.

Mr. **Grandy**. The reason I raise this question is because when you are talking about anticipatory discrimination in housing, you have a case there and that has been reflected in some of our fair housing statutes, but I see two concepts that seem to be in vague contradiction to one another that may produce an unnecessary fury of lawsuits and hardships for the disabled in this bill.

Take a case where you have unintentional discrimination on one side, and undue hardship on the other side. For example, use the instance where a theater has taken a section of its auditorium to accommodate the handicapped—let's say they have earpieces for people who are hearing impaired; let's say they have wider aisles—are they unintentionally discriminating because they have only adapted a portion of their theater or does the person who owns the theater have the claim under undue hardship to say, "If I take out more seats to make more spaces and to spend x amount of dollars, I will be forced to close this facility."

Do you see what I am saying? There are areas of ambiguity here that I think we want to get cleared up before this bill goes to the floor and I would like——

Reverend **Jackson**. I would certainly hope that in the more private sessions with the leaderships, the representatives of the physically differently abled communities and members of this Committee, those kinds of extremities will be ironed out.

My fear is that if the press has only the most extreme and the most negative, they will so dignity that until they will wipe out the means, people who were caught in the broad middle. So, where there may be ambiguity, let's have clarity and where there may be contradictions, let's iron them out and where there may be some confusion, then again, let us get clarity, but I would hope to think if we have the will to do the right thing, just the will to do the right thing, then we will do the right thing.

Mr. **Grandy**. Well, let me just say, I concur with you totally on your quest for clarity because I think the greater the clarity, the more the good faith on both sides and I think that is what is going to drive this piece of legislation. Thank you, Mr. Chairman. Thank you, Reverend Jackson.

Chairman **Owens**. Mr. Hoyer?

Mr. HOYER. Thank you very much, Mr. Chairman. First let me say, I appreciate the observations made by Mr. Grandy, the gentleman from Iowa. There is, of course, language in the current, as I understand, Rehabilitation Act which deals with this and, of course, the language itself was an attempt to meet the problem that is raised by the gentleman from Iowa of a theater owner, et cetera.

How much is enough, how much meets the burden, I think Reverend Jackson is correct. I think we will be able to work on those if we work in good faith and I think everybody will work on this matter with good faith. But, if we accommodate too much in the framework of the language of the bill, we will then articulate a right without a remedy, and I think that that is what we have to protect against.

Now, Reverend, let me ask you a question. You mentioned in your testimony—I am sure I know the answer, but dealing with public accommodations; restaurants, and hotels, obviously the bill goes further than that and it is my assumption that although you referenced those, you referenced them as examples.

Other, for instance, places of critical public accommodations: banks, savings and loan, cleaners, shoes repair stores, all sorts of accommodations which are critical for us to utilize in our daily lives are also included. I presume that you agree with the bill's incorporating and including those areas as well, although you referenced as, I think, solely examples, restaurants and hotels.

Reverend JACKSON. I do.

Mr. HOYER. Mr. Chairman, I have a number of other questions. I will be talking to Reverend Jackson and Donald Payne in the caucus on this and am very interested in hearing the following witnesses and I will pass on other questions.

Chairman OWENS. Thank you. I appreciate your patience, Reverend Jackson. We just have two more members. I know you have a time problem, but, Mr. Smith.

Mr. SMITH. I will be brief given the time constraints. Reverend Jackson, I want to thank you for being here and joining others and thank you for your presence. As a co-sponsor of this bill, I wanted to have an opportunity to clarify what I mean by "getting it right." One is that we produce a bill that passes this Congress in this session and two, that we produce a bill that delivers the dream and is not found wanting one, two, or five years down the road.

I appreciate very much what I think I have heard you say today. Sometimes you confound us, those of us with poor understanding because we ask you what we think is a good rational question and you tell us a story back and you have to listen to the story to get the answer.

As I have listened, what I have heard you say is "use your common sense; don't get sidetracked; understand where the gains are and lock them in; look for the extreme cases and solve them if you can, if you can't put them aside and work on them next year. Use your heads." Have I got it? I am just a simple kid from Vermont.

Reverend JACKSON. Use your heads and use your hearts. We might call it "common sense." The broad base of people may be deaf, and then today's technology is getting to be accommodated.

The broad base may be on a wheelchair and need an access, but all of these persons have the will to study, to learn, to work, to be productive.

There may be some very extreme cases and somehow we must have the judgment to put them in extreme category, but in the meantime, do not hold up the broad flow of Americans who are locked out and then looked down upon in negative and unkind ways because we have not affirmed their humanity.

To me, if nothing else comes out of this but an affirmation of the dignity of people, this affirmative dignity, the long ways beyond what we are now.

Mr. SMITH. Thank you very much.

Mr. OWENS. Mr. Mfume and then Mr. Jontz—I didn't see you come back.

Mr. MFUME. Thank you very much. I want to preface my remarks by commending both you and Congressman Martinez for convening this joint hearing. It goes without saying that those of us here, both on this panel and those in the audience, obviously understand and believe in the merits of this.

You have brought a special sensitivity to it in this Congress and I commend you for that. I think it is fair to say that all of my colleagues appreciate it.

Reverend Jackson, as a co-sponsor of this legislation, it is particularly a good feeling for me to see you at the forefront of this and to point out that you just didn't get there yesterday, that has been a priority for you for a number of years, that you kept it on the national agenda when we were concerned with others things and that your presence here today is just an affirmation of a long going commitment that you brought to this issue.

I would also say that it is through the simple eloquence of your example that the inspiration that many of those in this room with disabilities feel, perhaps, can be kindled and those of us with disabilities who are unaware of them so that we understand that we have a special sort of rendering and a special mission, as you indicated earlier, to affirm the dignity and the worth of all human beings.

One of the saddest things I witnessed is to argue on behalf of the disabled in this nation and to hear people tell me that it is not important, only to find out a month or year or ten years later, that through a twist of fate that they themselves have become or developed a disability or someone in their family and then they become sensitive to this issue.

It reminds me of the man who lived to be a hundred who 99 years sinned without remorse and in the 100th year decided to be born again. While we rejoiced in his salvation, we agonized at the loss opportunity of those 99 years.

Congressman Hayes raised a very important point. Unfortunately, with a great deal of sadness, it is true that this issue is not a priority before this Congress and that those of us who have worked long and hard and who have supported the efforts of Congressman Owens on this year after year, really have to make it one.

That is why it is so very important that you yourself are here, that Congressman Payne has decided to speak on behalf of the caucus, that other members of the body who have an understanding of what we must do, must move beyond point "a" to point "b" and I would simply urge, Mr. Chairman, that you make a special commitment along with the chairman of the Democratic caucus, Mr. Hoyer, who has indicated through his presence today and his statement, a very strong willingness to bring this before the Congress of the United States "this" year and to make it a priority in this session. We must move ahead and do that and rededicate and pledge ourselves to doing that so that it doesn't get lost in the shuffle that takes place around here in November when everybody wants to leave while people who really want their dignity affirmed by this body and this nation have to suffer under the strange and twisted way that we do business sometimes.

So, I again, want to thank you, Reverend, for appearing here and thank you, Mr. Chairman, for convening this hearing.

Reverend JACKSON. Mr. Chairman, the matters that he raises of the Congress' priorities dealing with ethics and corruption and priorities and bailout, non-created by physically different abled people. There is a HUD scandal of $2 billion plus the cutback on this budget; it was created by the morally disabled who walked upright.

There is a $200 billion S&L bailout. It was not created by the people in wheelchairs or people who were deaf. If there is this flying batmobile without a mission and a heavy price tag, that was not created by the people who are differently able, who may in wheelchairs or have some other motor transportation, so they should not bear the burden of the collapse and ethics and corruption and misplaced priorities.

It seems to me that one redeeming feature of this Congress could be to assert. We might say that Congress could not stop the Supreme Court for making these decisions, to set back our rights for workers, women and historical minorities, but the Congress cannot say the Supreme Court is stopping this legislation.

It ought to affirm this legislation while it wants—fighting for civil rights restoration for the rights that have been lost during the session of this past court.

Chairman OWENS. One last question. Mr. Jontz just returned.

Mr. JONTZ. Mr. Chairman, I have no questions. Both witnesses have very eloquent statements and have been very generous with their time and I want to thank them.

Chairman OWENS. Again, I want to thank you, Reverend Jackson, for taking time out of your busy schedule to help us launch this very important bill.

Our next panel of witnesses consist of Mr. Justin Dart, Jr.; Ms. Sandra Parrino; Brother Philip Nelan and Mr. Joseph Rauh. I neglected to say before that we welcome the submission of any additional answers or statements in reply to the questions by Reverend Jackson in the future and we will hold the record open for such submissions.

Mr. Joseph Rauh, from the Leadership Conference on Civil Rights, has a time problem and for that reason we are going to let Mr. Rauh begin and ask that he accept written questions at a later date since he won't have the time to stay for questions from the members of the Committee.

You may begin, Mr. Rauh.

STATEMENTS OF MR. JOSEPH RAUH, LEADERSHIP CONFERENCE ON CIVIL RIGHTS; JUSTIN DART, JR., CHAIRMAN, TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES; MS. SANDRA PARRINO, CHAIRWOMAN, NATIONAL COUNCIL ON DISABILITY; AND BROTHER PHILIP NELAN, DIRECTOR, HANDICAPPED EMPLOYMENT PROGRAM, NATIONAL RESTAURANT ASSOCIATION

Mr. RAUH. Thank you, Mr. Chairman, and you are very kind to accommodate my time problem.

Mr. Chairman and members of the subcommittees, my name is Joseph L. Rauh, Jr. I am the Counsel to the Leadership Conference on Civil Rights, a coalition of 180 national organizations representing minorities, women, persons with disabilities, older Americans, labor, religious groups, and minority businesses and professionals.

On behalf of the Conference, I want to do two things: thank you for allowing us the opportunity to testify today and tell you that we have never had such unanimity on issues as we have today behind this most important bill and if it doesn't have a priority in Congress is wrong not the bill.

Now, let me just say a word from the heart. I have been in the civil rights movement for going on half a century and the thing that has mattered the most to me is the ripple effect of the civil rights movement.

What we did was to turn the law upside down for Blacks. We turned it from segregation and discrimination to barring segregation and discrimination, but the wonderful thing that happened in America was the ripple effect of that.

You can go back to 1941 when President Roosevelt signed the first executive order against discrimination. That was an order that was caused by Blacks. A. Philip Randolph threatened to march on Washington, but looks at its ripple effect. President Roosevelt realized that polls were being discriminated against.

That is where you got discrimination barred against national origin. Then what happened in '64 in Title VII. That was just to be race, color, or creed and the sex discrimination was added in '64. Then in '75, the Voting Rights Act was broadened to include Hispanics; 504 for disabled people is a direct copy of Title Six of the '64 law.

The great thing about the civil rights revolution for Blacks is that it hasn't been limited that way, that it has created America where all is discrimination. This is one of the final acts in building a country where there is no discrimination, where all people who have wrongful discriminations are going to be protected and we say in the Leadership Conference, we want this bill.

We started out as a bill really to help Blacks. It started back in 1950, but now almost forty years later, the effect of that has been felt all over the United States. We have got one last job to do and that is the priority here.

The ADA which extends civil rights protections to 30 to 43 million Americans with disabilities is a historic measure. It is a 25th anniversary of the Civil Rights Act and this bill will help complete the job. The ADA embodies the principals of non-discrimination and equal opportunity which our country embraced in 1964.

Persons with disabilities, like racial and ethic minorities and women have been subject to a long history of exclusion and segregation based on stereo types, misconceptions, and prejudices. In fact, disability often places an additional burden on these already disenfranchised groups.

Disability knows no race, class, age or sex. Persons with disabilities are members of racial and ethnic minorities and women. They are children and ethnics and elders and this is a minority group that any of us can join at any time and I can say for myself, I started out with discrimination on being Jewish and then found discrimination on being elderly and now I find discrimination on being disabled.

It all works together, dear friends, and we have got to do this job this year while there is chance. We have the administration, we have the leadership; if we can't do it, it is our fault. I include myself in that. If we cannot find words to solve the problems that have been raised—they are problems; nobody challenges that there are problems—if we can't find the right words to solve these problems, it is your fault and my fault too.

Our society has viewed people with disabilities as inferior and has developed without consideration of their needs. Being disabled has meant far more than having a physical or mental impairment. It has meant being shut in and shut out.

During the ADA hearings in the Senate, a Black Vietnam veteran testified about returning home in a wheelchair. He couldn't get to his apartment without his elderly grandmother carrying him. He couldn't go anywhere alone because of inaccessible streets and transportation, and he couldn't get a job because of stereotypes about his abilities, or more correctly, presumptions of inabilities.

He said that he learned that he was not welcome in the country he had fought for. This experience is unacceptable in a just society and that is really what the flag salute case is all about, not about an emblem, but about the fact that it will fly much more beautifully over this country when all discrimination against any of its citizens are stopped.

The ADA is a pronouncement that our society will no longer tolerate lost potential. We will no longer judge people by their disabilities, but by their disabilities. We will no longer design a society which excludes, but one that includes. The ADA is vision of the future which must be embraced by all who believe in the principle of equality on which this country is based.

The ADA is a well thought-out, well reasoned piece of legislation and it is moderate. It represents a compromise which considers the interest of all aspects of society. In employment, the ADA extends Section 504 of the 1973 Rehabilitation Act to the same entities that are covered by Title VII.

Every government and private study on this subject has documented pervasive bias by employers against hiring persons which disabilities. This is not an anti-employer thing. There is so many employers that want to do the right thing. We had this in every single situation in the civil rights case.

Employers wanted to do the right thing, but other people were getting ahead of them and they were doing the wrong thing. If you make a law on what has to be done, that law is going to be obeyed, and let me tell you that I think you will find employers want a rule that they can follow just as much as everyone else.

Now, I recognize the time problem and I am going to put the whole statement in the record, but I would like just to go ahead for a few more minutes with part of the statement that I consider so important.

Persons with disabilities are also excluded from employment because they need modifications in order to perform the job. The Section 504 concept of reasonable accommodations is incorporated in the ADA. An employer is not required to provide an accommodation which would result in an "undue hardship."

In sum, the employment provisions of the ADA reflect sound public policy, to allow persons with disabilities to contribute their skills, to become taxpayers and not to force qualified people who want to work and who can work onto the welfare rolls.

In the area of public accommodations, the ADA prohibits all types of businesses from excluding persons with disabilities, a practice which is still all too common today. This exclusion is based on discomfort, revulsion or misconceptions about what disabled persons can or should do.

When there is no outright exclusions, persons with disabilities are excluded by architectural and communication barriers in the past. These barriers were not built with the intent to keep persons with disabilities out but the effect was the same—exclusion. The ADA does not require existing buildings to be made accessible unless it can be done easily, without much difficulty or expense—a modest requirement.

However, the ADA makes a strong commitment to an accessible future. New commercial buildings are required to be build in a manner that is "readily accessible to and usable by" persons with disabilities.

It is one thing to tolerate past neglect of the needs of the persons with disabilities, it would be another thing to entirely to perpetuate that neglect into the future. Accessible design does not cost more money—the human costs of inaccessible design are tremendous. Our society must open its doors to all.

This view of the future is reflected in the requirement that new buses must be accessible to persons with disabilities. Transportation is basic to all other rights—if you can't get anywhere, you can't work or participate in the life of the community.

The literal imprisonment of millions of disabled people because of an inaccessible transit system is a national disgrace. The ADA, again, takes a moderate approach to this problem. It does not require all current buses to the accessible—it simply requires that new buses must be accessible.

To allow otherwise is to compound a problem, not help solve it. The future envisioned by the ADA is one where transportation is a right of all members of our society.

Finally, 25 years of experience in the area of civil rights has taught us that a right without a remedy is no right at all. The ADA incorporates remedies currently available in civil rights laws. An injunction to discontinue a discriminatory practice is little solace to a person who has already been harmed by the discrimination.

Fairness demands that victims of discrimination be compensated for the harm they have suffered, and punitive damages are sometimes necessary to stop a willful violator from continuing to discriminate. Without the possibility of punitive damages, willful violations may be cost-effective.

Finally, Mr. Chairman, the ADA must become law of our nation if we are to continue our commitment to equal opportunity. Citizens with disabilities have been shut out long enough. The ADA opens the doors of America to the millions of men, women, and children of all races and ethnicities who have disabilities and who have waited long enough to be extended the same rights as we all take for granted.

The Leadership Conference urges quick pages of the ADA—the most important disability civil rights legislation of our time. The flag will fly with more beauty over a nation that has finished the job against discrimination. Please, please, do it this year while the time is ripe and when we can feel that what started as a revolution on behalf of former slaves has now brought fair treatment to all Americans.

Thank you and thank you for letting me to go on because I do have the time problem, sir.

[The prepared statement of Joseph L. Rauh, Jr. follows:]

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Statement of the Leadership Conference on Civil Rights Supporting the Americans with Disabilities Act

Joseph L. Rauh, Jr., Counsel

July 18, 1989

Mr. Chairman and members of the Committee, my name is Joseph L. Rauh, Jr. I am the Counsel to the Leadership Conference on Civil Rights, a coalition of 180 national organizations representing minorities, women, persons with disabilities, older Americans, labor, religious groups, and minority businesses and professionals. On behalf of the Conference, I want to thank the Committee for allowing us the opportunity to testify today.

I am proud to be here today to represent the Leadership Conference on Civil Rights in support of the Americans with Disabilities Act (ADA). The ADA which extends civil rights protections to 43 millions Americans with disabilities is, indeed, an historic measure. On the 25th anniversary of the 1964 Civil Rights Act, this legislation is long overdue. The ADA embodies the principles of non-discrimination and equal opportunity which our country embraced in 1964.

"Equality In a Free, Plural, Democratic Society"

BEST COPY AVAILABLE

Persons with disabilities, like racial and ethnic minorities and women, have been subject to a long history of exclusion and segregation based on stereotypes, misconceptions and prejudice. In fact, disability often places an additional burden on these already disenfranchised groups. Disability knows no race, class, age or sex bounds. Persons with disabilities are members of racial and ethnic minorities and women. They are children and elders. And this is a minority group that any of us can join at any time. The members of LCCR recognize that the ADA is for all of us.

Our society has viewed people with disabilities as inferior and has developed without consideration of their needs. Being disabled has meant far more than having a physical or mental impairment, it has meant being shut-in and shut-out. During the ADA hearings in the Senate, a black Viet Nam veteran testified about returning home in a wheelchair. He couldn't get to his apartment without his elderly grandmother carrying him. He couldn't go anywhere alone because of inaccessible streets and transportation. And he couldn't get a job because of stereotypes about his abilities, or more correctly presumptions of inabilities. He said that he learned that he was not welcome in the country he had fought for. This experience is unacceptable in a just society.

The ADA is a pronouncement that our society will no longer tolerate lost potential--that we will no longer judge people by their disabilities, but by their abilities--that we will no longer design a society which excludes, but one that includes. The ADA is a vision of the future which must be embraced by all who believe in the principle of "equality" on which this country is based.

The ADA is a well thought-out, well reasoned piece of legislation, and it is moderate. It represents a compromise which considers the interests of all aspects of society. In employment, the ADA extends Section 504 of the 1973 Rehabilitation Act to the same entities that are covered by Title VII.

Every government and private study on the subject has documented pervasive bias by employers against hiring persons with disabilities. This bias is based on misconceptions and unfounded fears. Employers, like other members of the general public, see disabilities and not abilities. The ADA would assure that disabled people are judged as individuals on their merit by eliminating bias in the selection procedure. Employers could no longer bar classes of disabled people because of stereotypes, a practice that is widespread today. Many employers simply refuse to consider persons with a variety of disabilities. For example, many employers refuse to hire persons with epilepsy, even though at least 85% are seizure-free through medication. Others refuse to hire persons with a history of cancer. No disability is immune from stereotypes. Where there is no outright exclusion, persons with disabilities are disqualified because of job qualifications which bear no relationship to the performance of the job. The ADA would require that job qualifications are, in fact, necessary to the performance of the job.

Persons with disabilities are also excluded from employment because they need modifications in order to perform the job. The Section 504 concept of reasonable accommodations is incorporated in the ADA. An employer is not required to provide an accommodation which would result in an "undue burden." In sum, the employment provisions of the ADA reflect sound public policy--to allow persons with disabilities to contribute their skills--to become tax payers and not to force qualified people who want to work and who can work onto the welfare rolls.

In the area of public accommodations, the ADA prohibits businessess from excluding persons with disabilities, a practice which is still all too common today. This exclusion is based on discomfort, revulsion or misconceptions about what disabled persons can or should do. When there is no outright exclusion, persons with disabilities are excluded by architectural and communication barriers.

In the past, these barriers were not built with the intent to keep persons with disabilities out but the effect was the same--exclusion. The ADA does not require existing buildings to be made accessible unless it can be done easily, without much difficulty or expense--a modest requirement. However, the ADA makes a strong commitment to an accessible future. New commercial buildings are required to be built in a manner that is "readily accessible to and usable by" persons with disabilities. It is one thing to tolerate past neglect of the needs of persons with disabilities, it would be another thing entirely to perpetuate that neglect into the future. Accessible design does not cost more money--the human costs of inaccessible design are tremendous. Our society must open its doors to all.

This view of the future is reflected in the requirement that new buses must be accessible to persons with disabilities. Transportation is basic to all other rights--if you can't get anywhere you can't work or participate in the life of the community. The literal imprisonment of millions of disabled people because of an inaccessible transit system is a national disgrace. The ADA, again, takes a moderate approach to this problem. It does not require all current buses to be accessible--it simply requires that new buses must be accessible. To allow otherwise is to compound a problem, not help solve it. The future envisioned by the ADA is one where transportation is a right of all members of our society.

Finally, twenty-five years' of experience in the area of civil rights has taught us that a right without a remedy is no right at all. The ADA incorporates remedies currently available in civil rights laws. An injunction to discontinue a discriminatory practice is little solace to a person who has already been harmed by the discrimination. Fairness demands that victims of discrimination be compensated for the harm they have suffered. And punitive damages are sometimes necessary to stop a willful violator from continuing to discriminate. Without the possibility of punitive damages willful violations may be cost-effective.

The ADA must become the law of our nation if we are to continue our commitment to equal opportunity. Citizens with disabilities have been shut out long enough. The ADA opens the doors of America to the millions of men, women and children of all races and ethnicities who have disabilities and who have waited long enough to be extended the same rights we all take for granted. LCCR urges quick passage of the ADA--the most important disability civil rights legislation of our time.

Thank you.

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Chairman **Owens**. Thank you very much, Mr. Rauh. We salute your long years of fighting discrimination. We understand that you have a representative, Ms. Feldblum, who will stay and answer questions later.

Mr. **Rauh**. That is correct. She will take my seat.

Chairman **Owens**. Welcome, Ms. Feldblum, to the table.

Mr. **Rauh**. Thank you very much, sir, and thank the members of the Committee.

Chairman **Owens**. Our next witness is Mr. Justin Dart, Jr.

Mr. **Dart**. Mr. Chairman, it is an honor to——

Mr. **Bartlett**. Mr. Dart—Mr. Chairman, before Mr. Dart goes on, I would like to take note that Mr. Dart is a long time friend of mine and a fellow Texan and we Texans do tend to stick together, so I want to vouch for Justin Dart, Jr., as a long time advocate for independence and independent living and he does so from a Texas perspective and I hope that doesn't bother anyone on the Committee, but I like it.

Chairman **Owens**. Not at all. We hope you stick with him as we develop this bill.

Mr. **Dart**. Thank you. Mr. Chairman, it is an honor to appear today before your distinguished committees. My fellow members of the disability community and I commend you and your colleagues for empowering people with disabilities through the unprecedented establishment of the Task Force on the rights and empowerment of Americans with disabilities composed of 35 outstanding Americans who are authentic representatives of every major disability constituency.

It has been a real privilege and a pleasure to work with you and your magnificent staff and I would also like to take the opportunity to say that I am equally happy and honored to be here today with my distinguished fellow Texas, Congressman Steve Bartlett who for many years, I have known as a foremost supporter of the independence and the productive independence of people with disabilities.

I am also honored to set at the table today with my distinguished colleague, Sandra Parrino, the chairperson of the National Council on Disability, who has been a stalwart leader for ADA since the time when it was only a concept.

Mr. Chairman, I submit our written statement for the record. I address you today not simply as chairperson of a task force, but also as an active Republican, a fiscal conservative and above all, an advocate for the principles of individual responsibility, individual productivity and individual rights which have made America brave.

Mr. Chairman, it is absolutely imperative for the integrity and for the prosperity of this nation that the Americans with Disabilities Act become law. During the past 15 months, I have personally presided at 63 public forums on ADA, at least one in every state and I have made 88 presentations at numerous other gatherings.

I heard and saw things in those forums that shook me to the foundations of my being. Thousands of persons with disabilities and their advocates provided overwhelming evidence of massive discrimination and segregation in all aspects of life and I submit several thousand documents to you, Mr. Chairman, and they are piled up over there in a number of boxes.

Chairman OWENS. Without objection, they will be noted for the record.

Mr. DART. There is blatant infringement of personal rights. There is the most extreme isolation, unemployment, poverty, psychological abuse and physical deprivation experienced by any segment of our society. The Task Force concludes that these problems will never even begin to be solved until this nation makes a clear, enforceable statement of law that people with disabilities have the same inalienable rights as other people.

The Task Force has found united disability community support for the Americans with Disabilities Act. Of more than 23,000 persons with disabilities and their advocates attending my ADA related presentations, not one single individual expressed opposition to the Act.

Every major disability constituency organization that I know of supports the passage of ADA. As an American, I am proud that 243 distinguished member of the House and of the Senate have co-sponsored ADA. As an American, I am proud that the President of the United States has on numerous occasions pledged his support for the protection of the rights of people with disabilities and that the Attorney General has called for the passage this year of a bipartisan version of ADA.

However, there has been opposition to ADA by sincere, well-meaning persons who perhaps have not had an opportunity to review all of the evidence in depth. Cost. Is ADA affordable? While we all agree that equality is not contingent on economic expediency, we also agree that there is always the responsibility to implement equality as affordably as possible.

As a former CEO of both large and small enterprises, employing persons with severe disabilities and constructing accessible facilities, I know that ADA is affordable for business and that ADA is good business and this is not simply my personal opinion. Every significant requirement of ADA is now being implemented successfully by progressive, public and private entities somewhere.

The National Council on Disability, 15 distinguished Reagan appointed Republicans ably led by my esteemed colleague, Sandra Parrino, studied the problems of people with disabilities for more than three years. They concluded that the cost of discrimination far exceeds the cost of eliminating it.

After consulting with people with disabilities and their advocates throughout the nation, the council wrote the original Americans with Disabilities Act and unanimously recommended it to the President and to the Congress.

Mr. Chairman, cost and physical responsibility provide the strongest possible arguments for the Americans with Disabilities Act. ADA is an authentic issue for conservatives. It is the status quo discrimination and segregation that are unaffordable, that are preventing persons with disabilities from becoming self-reliant and that are driving us inevitably toward the economic and moral disasters of giant, paternalistic welfare bureaucracies, businesses, families, taxpayers, are already paying unaffordable and rapidly escalating billions in public and private funds to maintain ever increasing millions of potentially productive Americans in unjust, unwanted dependency.

As with the issues of drugs, competitive productivity and the national debt, we must summon the courage and the self-discipline of our pioneer forefathers. We must modify obsolete and self-indulgent practices. We must defer instant ratifications in favor of responsible maximally productive democracy.

We must not, once again, by our refusal to fulfill our responsibilities pass unconscionable, social, and financial burdens to our children. The economic and moral greatness of America is based on providing equal opportunity to way after way of previous oppressed and dependent groups, providing such opportunity to Americans with disabilities will result in yet another period of dynamic growth in the productivity, prosperity, quality of life, and international moral leadership of this nation.

Mr. Chairman, we have given you thousands of documents, but no document can express the impact of disability on the life, the self-image of a human being, of a family. My mother, my brother, and my niece lost their will to live and their lives to the horror of disability discrimination.

My beloved daughter with MS lives in paralyzing terror of the rejection she faces every day and hundreds of thousands of other American families have their own experience of tragedy. A California woman, a mother, a TV director before becoming disabled speaks for unseen millions and I quote as she wrote to the Task Force.

"We can go just so long, constantly reaching dead ends. I am broke, degraded and angry. I have attempted suicide three times. I know hundreds. Most of us tried, but which way and where can we go? What and who can we be? If I were understood, I would have something to live for."

Mr. Chairman, distinguished members of the Congress, Mr. President, give us something to live for. We appeal to you not for more welfare, not for more segregation in nursing homes, but to be recognized as equal human beings, to have equal opportunity to succeed or to fail in the productive mainstream of society.

Mr. Chairman, the eyes of history are upon us. Like the founders of our nation who launched a worldwide democratic revolution, we face a decision which will shape human cultural. We have a profound responsibility not only to 43 million Americans with disabilities, but also to hundreds of millions of the earth's most disadvantaged in this and in future generations.

We cannot betray these people. Like our founding fathers, we must find the inspiration to rise above the traditional limitations of ego, personal animosities, in short range, economic and political expediency. We must unite Republicans, Democrats, Conservatives, Liberals to act, to act with responsibility to the foundational values of America and to the future of human being.

Mr. Chairman, Congressman, I will do anything, literally anything, to cooperate with you to prevent my grandchildren and yours from being subjected to the purgatory of subhuman existence which my mother and my brother could not face.

The Americans with Disabilities Act must be passed. Of course, in a form that does not impose unnecessary burdens on anyone, but certainly, in a form that lays the foundation for full equality because partial equality is not equality. Partial equality is simply guarantees more discrimination, more segregation, more social welfare, and more public and private debt.

Now is the time for those who believe in the great moral and economic principles of American democracy to keep the sacred pledge of liberty and justice for all.

I thank you.

[The prepared statement of Justin Dart, Jr. follows:]

TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

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TESTIMONY PRESENTED BY JUSTIN DART, CHAIRPERSON OF THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES, BEFORE THE JOINT HEARING OF THE HOUSE SUBCOMMITTEES ON SELECT EDUCATION AND EMPLOYMENT OPPORTUNITIES ON THE AMERICANS WITH DISABILITIES ACT OF 1989, JULY 18, 1989.

MR. CHAIRMAN, IT IS AN HONOR TO APPEAR BEFORE THESE DISTINGUISHED COMMITTEES, WHICH HAVE GIVEN STAUNCH SUPPORT TO AMERICANS WITH DISABILITIES OVER THE YEARS. I BELIEVE THAT I SPEAK FOR ALL OF MY FELLOW MEMBERS OF THE DISABILITY COMMUNITY WHEN I COMMEND YOU FOR YOUR PERSONAL LEADERSHIP IN ADVOCATING FOR OUR RIGHTS. WE ALSO COMMEND YOU AND YOUR COLLEAGUES FOR EMPOWERING PEOPLE WITH DISABILITIES THROUGH THE UNPRECEDENTED ESTABLISHMENT OF THIS TASK FORCE - COMPOSED OF 35 OUTSTANDING AMERICANS WHO ARE AUTHENTIC REPRESENTATIVES OF VIRTUALLY EVERY MAJOR DISABILITY CONSTITUENCY. IT HAS BEEN A PRIVILEGE AND A PLEASURE TO WORK WITH YOU, MARIA CUPRILL, BOB TATE, PAT MORRISSEY AND THE OTHER VERY CAPABLE MEMBERS OF YOUR STAFFS.

I SPEAK TODAY AS CHAIRPERSON OF THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES, TO GIVE OUR REPORT ON THE MOST IMPORTANT DISABILITY-RELATED LEGISLATION IN THE HISTORY OF THIS NATION, THE AMERICANS WITH DISABILITIES ACT.

AMERICANS WITH DISABILITIES

DISABILITY HAS BECOME A MAJOR FACTOR IN THE LIVES OF ALL THE MEMBERS OF OUR SOCIETY. PRESENTLY THERE ARE AN ESTIMATED 43 MILLION AMERICANS WITH DISABILITIES. THIS FIGURE IS INCREASING RAPIDLY AS MODERN MEDICAL SCIENCE ENABLES MORE AND MORE PEOPLE TO SURVIVE PREVIOUSLY FATAL BIRTH DEFECTS, INJURIES AND ILLNESSES AND TO LIVE MANY POTENTIALLY PRODUCTIVE AND HAPPY YEARS WITH SIGNIFICANT DISABILITIES. THESE DISABILITIES RESULT FROM NUMEROUS PHYSICAL AND MENTAL CONDITIONS, INCLUDING THE NORMAL PROCESS OF AGING AND IMPAIRMENTS OF VISION, SPEECH, HEARING, LEARNING, INTELLECTUAL FUNCTION AND MOBILITY. ALTHOUGH NOT ALL CHRONIC ILLNESS IS DISABLING, MUCH DISABILITY IS A CONSEQUENCE OF DISEASES OF THE CIRCULATORY, RESPIRATORY, URINARY, NEUROLOGICAL, SKELETAL, MUSCULAR, GLANDULAR, DERMATOLOGICAL, AND DIGESTIVE SYSTEMS; OF ARTHRITIS, CEREBRAL PALSY, EPILEPSY, DIABETES, MENTAL ILLNESS, CANCER, TRAUMATIC BRAIN INJURY, MULTIPLE SCLEROSIS, MUSCULAR DYSTROPHY, AIDS, AUTISM, ALLERGIES, AND MANY OTHER DISORDERS. SOME RESEARCHERS ESTIMATE THAT THE PROPORTION OF OUR POPULATION WITH DISABILITIES, NOW MORE THAN 15%, WILL DOUBLE WITHIN THE NEXT 30-50 YEARS. IT IS HIGHLY PROBABLE THAT ANY PERSON BORN IN 1989 WILL EXPERIENCE AT LEAST TEMPORARY DISABILITY DURING HIS OR HER LIFETIME. IT IS VIRTUALLY CERTAIN THAT ONE OR MORE MEMBERS OF ALMOST EVERY AMERICAN FAMILY WILL BECOME DISABLED.

ALTHOUGH THIS DRAMATIC INCREASE IN THE LIFE SPAN REPRESENTS AN HISTORIC ENLARGEMENT OF THE HUMAN POTENTIAL, OUR CULTURE HAS NOT YET MODIFIED ITS PRACTICES TO FULFILL THAT POTENTIAL, OR EVEN TO MEET THE BASIC LIFE SUPPORT REQUIREMENTS CREATED BY THE NEW CHARACTERISTICS OF ITS MEMBERS. MAJOR PROBLEMS HAVE DEVELOPED.

THE TASK FORCE

IN THIS CONTEXT, THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES WAS ESTABLISHED ON MAY 2, 1988, BY CONGRESSMAN MAJOR R. OWENS, CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION. COMPOSED OF 34 DISTINGUISHED REPRESENTATIVES OF MAJOR SEGMENTS OF THE DISABILITY COMMUNITY, THE TASK FORCE IS MANDATED TO COLLECT INFORMATION AND TO MAKE RECOMMENDATIONS WHICH WILL ASSIST CONGRESS AS IT CONSIDERS THE HISTORIC AMERICANS WITH DISABILITIES ACT, AND OTHER LEGISLATION DESIGNED TO IMPLEMENT THE RIGHTS OF AMERICA'S CITIZENS WITH DISABILITIES.

THE TASK FORCE WISHES TO ACKNOWLEDGE THE MAGNIFICENT SUPPORT IT HAS RECEIVED FROM NUMEROUS MEMBERS OF CONGRESS, PARTICULARLY TASK FORCE FOUNDER CONGRESSMAN MAJOR OWENS AND THE MEMBERS OF THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION, SENATORS TOM HARKIN AND LOWELL WEICKER AND THE MEMBERS OF THE SENATE SUBCOMMITTEE ON THE HANDICAPPED, AND ALL THE SPONSORS OF THE CIVIL RIGHTS RESTORATION ACT, THE FAIR HOUSING ACT AMENDMENTS OF 1988, THE TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES ACT AND THE AMERICANS WITH DISABILITIES ACT.

THE TASK FORCE HAS NO PUBLIC FUNDING OR PRIVATE GRANTS. PARTICULAR RECOGNITION IS DUE TASK FORCE MEMBERS, STAFF AND VOLUNTEERS, AND THE LITERALLY THOUSANDS OF PATRIOTIC CITIZENS AND ORGANIZATIONS IN EVERY STATE AND TERRITORY WHO HAVE CONTRIBUTED SERVICES, MONEY AND TIME TO MAKE THE DEMOCRATIC SYSTEM WORK.

FINDINGS

THE MEMBERS OF THE TASK FORCE, THE ORGANIZATIONS WITH WHICH THEY ARE AFFILIATED AND MORE THAN 8,000 PERSONS WITH DISABILITIES, FAMILIES, ADVOCATES AND SERVICE PROVIDERS ATTENDING 63 TASK FORCE FORUMS IN 50 STATES AND TWO CONGRESSIONAL HEARINGS HAVE PRODUCED

OVERWHELMING VERBAL AND WRITTEN EVIDENCE THAT:

- ALTHOUGH AMERICA HAS RECORDED GREAT PROGRESS IN THE AREA OF DISABILITY DURING THE PAST FEW DECADES, OUR SOCIETY IS STILL INFECTED BY THE ANCIENT, NOW ALMOST SUBCONSCIOUS ASSUMPTION THAT PEOPLE WITH DISABILITIES ARE LESS THAN FULLY HUMAN AND THEREFORE ARE NOT FULLY ELIGIBLE FOR THE OPPORTUNITIES, SERVICES AND SUPPORT SYSTEMS WHICH ARE AVAILABLE TO OTHER PEOPLE AS A MATTER OF RIGHT. THE RESULT IS MASSIVE, SOCIETY-WIDE DISCRIMINATION.

- MILLIONS OF OUR CITIZENS WITH DISABILITIES SUFFER UNCONSCIONABLE INFRINGEMENT OF THEIR HUMAN RIGHTS. THEY ARE SUBJECTED TO DE FACTO GUARDIANSHIP, DETENTION, AND CONFISCATION OF PROPERTY WITHOUT DUE PROCESS OF LAW. THEY ARE OFTEN DENIED ESSENTIAL LIFE SUPPORT SERVICES. THEY SUFFER FREQUENT HUMILIATION AND REJECTION, AS WELL AS PHYSICAL AND PSYCHOLOGICAL DEPRIVATION AND ABUSE. THEY ARE OFTEN UNREASONABLY EXCLUDED FROM SIGNIFICANT OPPORTUNITIES FOR SOCIAL PARTICIPATION, INCLUDING ACCESS TO PUBLIC AND PRIVATE FACILITIES, EDUCATION, EMPLOYMENT, HOUSING, TRANSPORTATION, COMMUNICATIONS AND RECREATION.

- PIONEER MEDICAL, EDUCATIONAL, REHABILITATION AND INDEPENDENT LIVING SERVICES DESIGNED TO ENABLE PEOPLE WITH DISABILITIES TO PARTICIPATE FULLY IN THE PRODUCTIVE MAINSTREAM OF SOCIETY HAVE PROVEN TO BE EFFECTIVE AND PROFITABLE. HOWEVER, IN SPITE OF THE VALIANT EFFORTS OF THE CONGRESS AND OF MANY DEDICATED SERVICE PROVIDERS, THESE PROMISING PROGRAMS HAVE BEEN SEVERELY LIMITED BY TRADITIONAL DISCRIMINATION. THEY HAVE BEEN UNDERFUNDED, FRAGMENTED, UNCOORDINATED, AND CONTINUALLY CONSTRAINED BY OBSOLETE ATTITUDES AND INACCESSIBLE ENVIRONMENTS. THE NEEDS OF THE MAJORITY OF PEOPLE WITH DISABILITIES ARE NOT BEING MET.

- BLOCKED BY DISCRIMINATORY PRACTICES FROM FULFILLING THEIR PRODUCTIVE POTENTIAL, 43 MILLION AMERICANS WITH DISABILITIES FORM THIS NATION'S MOST IMPOVERISHED LARGE MINORITY. THEY RECEIVE THE LEAST EDUCATION. THEY HAVE THE LOWEST INCOMES AND AMONG THE HIGHEST RATES OF UNEMPLOYMENT, SUBSTANDARD HOUSING, HOMELESSNESS, SUICIDE AND PREVENTABLE ILLNESS AND DEATH.

- A CALIFORNIA WOMAN WITH A HEAD INJURY WRITES:

"I HAD BEEN A CPA, AND WAS A PRODUCER & DIRECTOR FOR CNN AND PBS IN LONDON UP UNTIL ACCIDENT, JUNE 1987. NOW NOTHING. MY CHILDREN ARE HURT, FRUSTRATED AND CONFUSED. WHAT WILL HAPPEN TO THEIR MOTHER THAT WAS SUCCESSFUL, INTELLIGENT, HAPPY, LOVING, GIVING?

I'VE BEEN FLOUNDERING AND SEARCHING LONG ENOUGH. WE CAN GO JUST SO LONG CONSTANTLY REACHING DEAD ENDS. I'M BROKE, DEGRADED AND

ANGRY. HAVE ATTEMPTED SUICIDE THREE TIMES. I KNOW HUNDREDS. MOST OF US TRIED, BUT WHICH WAY AND WHERE DO WE GO? WHERE CAN WE LIVE? WHAT AND WHO CAN WE BE? IF I WERE UNDERSTOOD, CARED FOR, EDUCATED FOR A NEW LIFE AND CAREER, I WOULD HAVE SOMETHING TO LIVE FOR.

WHO HAS THE DEPTH, DETERMINATION, INTUITION, PLAN TO HELP US?"

- ON DECEMBER 28, 1988, IN TACOMA, WASHINGTON, TWO YEAR OLD DYLAN DAY AND HIS GRANDFATHER HOLLIS DAY WERE FOUND SHOT TO DEATH, AN APPARENT MURDER-SUICIDE. ACCORDING TO THE CHILD'S MOTHER, HER FATHER HAD BEEN "VERY, VERY CONCERNED ABOUT MY CHILD'S CONDITION." DYLAN HAD "A MILD FORM OF CEREBRAL PALSY, AND WAS CONSIDERED TO BE DEVELOPMENTALLY DISABLED." MR. DAY, A RETIRED COMPANY PRESIDENT, COULD NOT BEAR THE THOUGHT THAT HIS DAUGHTER AND GRANDSON WOULD HAVE TO FACE THE DEVASTATING LIFETIME OF DISCRIMINATION AND DEPRIVATION THAT HE FORESAW FOR THEM.

- A WOMAN IN CALIFORNIA WHO IS BLIND WROTE TO THE TASK FORCE: "I AM A TRAINED NEWS REPORTER AND HAVE BEEN APPLYING FOR JOBS AT RADIO STATIONS THROUGHOUT THE COUNTRY. I HAVE BEEN REPEATEDLY TOLD THAT I AM THE MOST QUALIFIED CANDIDATE, BUT SINCE THERE HAS NEVER BEEN A BLIND REPORTER BEFORE, THEY CANNOT HIRE ME. I WOULD LIKE THE CHANCE TO SUCCEED OR FAIL BASED ON MY ABILITY AS A REPORTER RATHER THAN MY LACK OF VISION."

- A SERVICE PROVIDER TO HEARING IMPAIRED PEOPLE IN ILLINOIS TESTIFIED: "WE HAVE CLIENTS WHO ARE ADMITTED TO HOSPITALS, UNDERGO SURGERY, AND ARE RELEASED WITHOUT THE BENEFIT OF A SIGN LANGUAGE INTERPRETER TO RECEIVE INFORMATION CRITICAL TO THEIR HEALTH. WE HAVE CLIENTS WHO HAVE BEEN ARRESTED AND HELD IN JAIL OVER NIGHT WITHOUT EVER KNOWING THEIR RIGHTS NOR WHAT THEY ARE BEING HELD FOR. WE HAVE CLIENTS WHOSE CHILDREN HAVE BEEN TAKEN AWAY FROM THEM AND TOLD TO GET PARENT INFORMATION, BUT HAVE NO PLACE TO GO BECAUSE THE SERVICES ARE NOT ACCESSIBLE. WHAT CHANCE DO THEY EVER HAVE TO GET THEIR CHILDREN BACK?"

223 YEARS AFTER OUR FOUNDING FATHERS DECLARED THAT ALL MEN "ARE ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE RIGHTS," 25 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964, AMERICANS WITH DISABILITIES STILL DO NOT ENJOY THE COMPREHENSIVE PROTECTION AGAINST DISCRIMINATION WHICH HAVE BEEN PROVIDED TO ALL OTHER MAJOR MINORITIES. EXISTING LAWS PROVIDING FOR PARTIAL RIGHTS ARE VERY POORLY IMPLEMENTED AND ENFORCED.

THE TASK FORCE CONCLUDES THAT:

DISABILITY HAS BECOME A NORMAL CHARACTERISTIC OF HUMAN EXPERIENCE. MOST PEOPLE WITH DISABILITIES HAVE THE POTENTIAL TO BECOME FULLY

PRODUCTIVE PARTICIPANTS IN THE MAINSTREAM OF SOCIETY. VIRTUALLY ALL PEOPLE WITH DISABILITIES HAVE THE POTENTIAL TO BECOME MORE SELF-RELIANT, AND TO CONTRIBUTE TO THE PRODUCTIVITY AND QUALITY OF LIFE OF THOSE AROUND THEM. HOWEVER THIS VAST HUMAN POTENTIAL IS BEING SEVERELY SUPPRESSED BY TRADITIONAL DISCRIMINATION, RESULTING IN UNCONSCIONABLE INJUSTICE TO INDIVIDUALS, AND UNAFFORDABLE ECONOMIC AND MORAL BURDENS FOR THE NATION.

AMERICANS WITH DISABILITIES WILL NEVER BE ABLE TO FULFILL THEIR POTENTIAL TO BECOME FULLY CONTRIBUTING, PRODUCTIVE CITIZENS OF THE FIRST CLASS UNTIL THIS NATION EMPOWERS THEM BY TAKING DECISIVE ACTION TO ELIMINATE DISCRIMINATORY PRACTICES AND THE FALSE ASSUMPTIONS ON WHICH THOSE PRACTICES ARE BASED. HISTORY DEMONSTRATES THAT THIS CAN ONLY BE DONE THROUGH A FIRM, ENFORCEABLE STATEMENT OF LAW THAT PEOPLE WITH DISABILITIES HAVE THE SAME INALIENABLE RIGHTS AS OTHER PEOPLE, AND THAT HENCEFORTH THEY ARE TO BE ACCORDED EQUAL OPPORTUNITY IN ALL ASPECTS OF LIFE.

THE TASK FORCE URGES:

- THAT CONGRESS TAKE PROMPT ACTION TO CONSIDER AND TO PASS THE AMERICANS WITH DISABILITIES ACT OF 1989, WITH VIGILANCE THAT THE PRINCIPLE OF EQUALITY NOT BE COMPROMISED. THE FINAL PRODUCT OF THE LEGISLATIVE PROCESS MUST ENSURE THE PROTECTION AND ENFORCEMENT OF THE CIVIL RIGHTS OF ALL PEOPLE WITH DISABILITIES TO PARTICIPATE FULLY AND EQUALLY IN THE MAINSTREAM OF SOCIETY.

- THAT THE PRESIDENT AND THE EXECUTIVE BRANCH PROVIDE VIGOROUS PUBLIC AND ADMINISTRATIVE LEADERSHIP ON BEHALF OF THE PASSAGE AND THE IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT.

- THAT ALL CITIZENS WHO LOVE JUSTICE ADVOCATE FOR THE ENACTMENT OF THE AMERICANS WITH DISABILITIES ACT, AND TAKE DECISIVE ACTION TO MAKE THE RIGHTS WHICH ADA MANDATES REAL IN THEIR HOMES AND COMMUNITIES.

SUPPORT AND CONCERNS

THE AMERICANS WITH DISABILITIES ACT HAS BEEN ENDORSED SPECIFICALLY OR IN PRINCIPLE BY THE LEADERS OF BOTH MAJOR POLITICAL PARTIES: PRESIDENT BUSH, VICE PRESIDENT QUAYLE AND GOVERNOR DUKAKIS, AND BY MORE THAN ONE HUNDRED AND FIFTY DISTINGUISHED MEMBERS OF THE LAST CONGRESS. IT HAS BEEN ENDORSED BY INDIVIDUALS AND ORGANIZATIONS REPRESENTING EVERY MAJOR SEGMENT OF THE DISABILITY COMMUNITY. OF THE LITERALLY THOUSANDS OF PEOPLE WITH DISABILITIES, THEIR FAMILIES, SERVICE PROVIDERS AND ADVOCATES PRESENTING EVIDENCE TO THE TASK FORCE, NOT ONE INDIVIDUAL EXPRESSED OPPOSITION TO ADA.

HOWEVER CONCERNS HAVE BEEN EXPRESSED BY PERSONS AND GROUPS UNFAMILIAR WITH OUR PROBLEMS AND POTENTIAL, WHO FEAR THAT PROVISIONS OF ADA MIGHT NEGATIVELY IMPACT THEIR INTERESTS.

THE TASK FORCE BELIEVES THAT THE MAJORITY OF THESE CONCERNS, ALTHOUGH SINCERELY HELD AND WELL MEANING, ARE BASED LARGELY ON TRADITIONAL ASSUMPTIONS AND LACK OF INFORMATION.

MOST OFTEN EXPRESSED IS CONCERN ABOUT THE COST OF IMPLEMENTING ADA. DOES ADA IMPOSE UNAFFORDABLE ECONOMIC BURDENS ON THE NATION?

EQUALITY UNAFFORDABLE IN AMERICA? WOULD THIS QUESTION BE ASKED ABOUT BLACK, HISPANIC OR JEWISH PEOPLE? THE VERY EXISTENCE OF THE QUESTION REVEALS THE EXTENT TO WHICH ANCIENT ASSUMPTIONS ABOUT DISABILITY HAVE BEEN INTERNALIZED. THE VERY QUESTION IS INCONSISTENT WITH THE PRINCIPLES SET OUT IN THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION AND THE PLEDGE OF ALLEGIANCE TO THE FLAG. THE VERY QUESTION DEMONSTRATES DRAMATICALLY THE ABSOLUTE NECESSITY FOR A NATIONAL MANDATE OF EQUALITY.

NOT SINCE THE ABOLITION OF SLAVERY HAVE AMERICANS BEEN DENIED EQUALITY FOR ECONOMIC REASONS. THE PRINCIPLE OF EQUALITY IS NOT NEGOTIABLE IN THE UNITED STATES OF AMERICA.

ADA IS NOT ONLY AFFORDABLE, WE CANNOT AFFORD NOT TO HAVE IT.

IT IS THE STATUS QUO THAT IS UNAFFORDABLE. IT IS THE OBSOLETE STATUS QUO PRACTICES OF DISCRIMINATION AND SEGREGATION THAT ARE PREVENTING PERSONS WITH DISABILITIES FROM BEING PRODUCTIVE, AND ARE DRIVING US INEVITABLY TOWARD THE ECONOMIC AND MORAL DISASTERS OF GIANT PATERNALISTIC WELFARE BUREAUCRACIES. WE ARE ALREADY PAYING UNAFFORDABLE BILLIONS IN PUBLIC AND PRIVATE FUNDS TO MAINTAIN MILLIONS OF POTENTIALLY PRODUCTIVE AMERICANS IN UNJUST, UNWANTED WELFARE DEPENDENCY. FEDERAL, STATE AND LOCAL GOVERNMENTS ARE ESTIMATED TO SPEND WELL OVER $100 BILLION ANNUALLY. EXPENDITURES BY PRIVATE INDIVIDUALS AND ORGANIZATIONS AND LOST TAXES AND PRODUCTIVITY, PROBABLY TOTAL AT LEAST ANOTHER 200 BILLION. THOUSANDS OF FAMILIES ARE BANKRUPTED ANNUALLY. AND THESE MASSIVE COSTS ARE ESCALATING EXPLOSIVELY WITH THE RAPIDLY INCREASING POPULATION OF CITIZENS, ESPECIALLY ELDERLY PERSONS, WITH SIGNIFICANT PHYSICAL AND MENTAL IMPAIRMENTS.

BUT WON'T ADA REQUIRE MASSIVE EXPENDITURES BY GOVERNMENT AND THE PRIVATE SECTOR? HOW CAN WE AFFORD SUCH EXPENDITURES NOW, IN A TIME OF PROPOSED BUDGET CUTS BY GOVERNMENT, AND INCREASING COSTS FOR BUSINESS AND INDIVIDUALS?

EQUALITY DOES REQUIRE A RECOGNITION OF COMPETING EQUITIES AND A BALANCING OF INTERESTS. ADA HAS BEEN WRITTEN ON PRINCIPLES OF FAIRNESS TO THE ADVANTAGED AS WELL AS TO THE DISADVANTAGED.

WHILE IT IS TRUE THAT EQUAL OPPORTUNITY FOR PEOPLE WITH DISABILITIES WILL REQUIRE CERTAIN INITIAL COSTS, INCREASED GOVERNMENT SPENDING TO IMPLEMENT ADA WILL BE MINIMAL, LIMITED PRINCIPALLY TO ENFORCEMENT ENTITIES WHICH ALREADY EXIST. THE PRIVATE SECTOR WILL NOT BE REQUIRED TO SPEND ENORMOUS SUMS ON INSTANT TOTAL RENOVATIONS OF EXISTING FACILITIES, BUT RATHER TO MAKE REASONABLE EFFORTS TO MAKE SUCH FACILITIES ACCESSIBLE, AND TO ACCOMMODATE EMPLOYEES WITH DISABILITIES. MAJOR EMPHASIS IS GIVEN TO CREATING NEW FACILITIES AND SYSTEMS THAT WILL BE COMPLETELY ACCESSIBLE. WITH APPROPRIATE PLANNING, THIS WILL, IN MOST CASES, REQUIRE ONLY MODESTLY INCREASED INVESTMENTS SPREAD OVER A REASONABLE PERIOD OF TIME.

WHAT WILL BE NECESSARY IS NOT GREAT INCREASES IN SPENDING, BUT RATHER CREATIVE, COURAGEOUS ACTION TO CHANGE TRADITIONAL PRACTICES, AND TO REALLOCATE PUBLIC AND PRIVATE RESOURCES FROM PROCESSES THAT FORCE SEGREGATION AND DEPENDENCE TO PROCESSES THAT PRODUCE PRODUCTIVE INVOLVEMENT IN THE MAINSTREAM OF SOCIETY. JUST AS THE PREVENTION OF DRUG ABUSE COSTS LESS IN THE LONG RUN THAN ITS CURE, SO WILL THE PREVENTION OF THE DEPENDENCY OF PEOPLE WITH DISABILITIES COST LESS THAN THE PUBLIC AND PRIVATE COSTS OF ITS CONSEQUENCES.

THE PAYMENTS AND REALLOCATIONS REQUIRED BY ADA WILL NOT BE OVERHEAD COSTS, BUT WILL CONSTITUTE THE TYPE OF INVESTMENTS THAT HAVE ALREADY PROVEN TO BE PROFITABLE TO EVERY CITIZEN, AND TO THE NATION AS A WHOLE.

THE APPROPRIATE QUESTION IN REGARD TO THE ECONOMIC IMPACT OF ADA IS NOT "HOW MUCH WILL IT COST?," OR EVEN "HOW MUCH WILL IT SAVE?," BUT RATHER, "HOW MUCH WILL IT PROFIT THE NATION IN THE LONG RUN?" THE PROBABLE ANSWER IS, "HUNDREDS OF BILLIONS."

DOES ADA INITIATE AN AGENDA WHEREBY PEOPLE WITH DISABILITIES WILL BE ENTITLED TO GOVERNMENT SOLUTIONS FOR ALL THEIR PROBLEMS?

CERTAINLY NOT. THAT IS NOT ONLY UNDESIRABLE, IT IS IMPOSSIBLE. PROBLEMS ARE SOLVED BY THE CITIZENS THEMSELVES, OR THEY ARE NOT SOLVED AT ALL. INDEED, RESPONSIBILITY FOR IMPLEMENTING ADA ON A DAY-TO-DAY BASIS WOULD LIE PRINCIPALLY WITH THE PRIVATE SECTOR, BUT GOVERNMENT IS INESCAPABLY RESPONSIBLE TO PROVIDE LEADERSHIP WHICH RESULTS IN CITIZEN SOLUTIONS. ADA AUTHORIZES GOVERNMENT AT SEVERAL LEVELS TO PROVIDE THAT LEADERSHIP TO END DISCRIMINATION.

WILL ADA REQUIRE EMPLOYERS TO EMPLOY UNQUALIFIED PEOPLE?

ADA SPECIFICALLY STATES THAT EMPLOYERS WILL NOT BE REQUIRED TO EMPLOY UNQUALIFIED PERSONS. HOWEVER THEY WOULD BE REQUIRED TO MAKE REASONABLE ACCOMMODATIONS FOR QUALIFIED CANDIDATES WITH DISABILITIES.

SUMMARY.

EVER INCREASING MILLIONS OF AMERICANS WITH DISABILITIES SUFFER MASSIVE DISCRIMINATION IN ALL ASPECTS OF SOCIAL PROCESS WHICH CONDEMNS THEM TO LIFETIMES OF SEGREGATION, POVERTY AND UNPRODUCTIVE DEPENDENCY ON PUBLIC AND PRIVATE WELFARE. THIS IS MORALLY INTOLERABLE AND ECONOMICALLY DISASTROUS.

ADA WILL NOT SOLVE ALL OF THE PROBLEMS OF AMERICANS WITH DISABILITIES, BUT IT IS AN ESSENTIAL FOUNDATION FOR ALL OPTIMAL SOLUTIONS. BECAUSE UNTIL WE ELIMINATE THE INSIDIOUS ASSUMPTION THAT PEOPLE WITH DISABILITIES ARE LESS THAN FULLY HUMAN, AND ESTABLISH THE CONCEPT AND PRACTICE OF THEIR EQUALITY, THERE WILL BE NO MORE THAN TOKEN ACTION TO ENABLE THEM TO PARTICIPATE FULLY IN THE PRODUCTIVE MAINSTREAM OF SOCIETY.

THE ECONOMIC AND MORAL GREATNESS OF AMERICA IS BASED ON A HISTORY OF EXTENDING EQUAL OPPORTUNITY TO WAVE AFTER WAVE OF PREVIOUSLY OPPRESSED AND DEPENDENT GROUPS. PROVIDING SUCH OPPORTUNITY TO AMERICANS WITH DISABILITIES WILL RESULT IN YET ANOTHER PERIOD OF DYNAMIC GROWTH IN THE PRODUCTIVITY, PROSPERITY AND QUALITY OF LIFE OF THE NATION. IT WILL REINFORCE AMERICA'S TRADITIONAL LEADERSHIP FOR DEMOCRACY AND HUMAN RIGHTS THROUGHOUT THE WORLD.

THE TASK FORCE URGES ALL WHO BELIEVE IN THE DREAM OF LIBERTY AND JUSTICE FOR ALL TO UNITE IN SUPPORT OF THE IMMEDIATE ENACTMENT AND THE VIGOROUS IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT.

Justin Dart
Chairperson

Dr. Elizabeth Boggs
Co-chairperson

Lex Frieden
Coordinator

Chairman **Owens**. Thank you, Mr. Dart. I have noted that without objection the documents that you have submitted will be received, reviewed and properly annotated.

We salute your travelling across all the states and gathering this tremendous detailed documentation of human misery caused by the absence of the kind of bill that we are considering here today. We definitely appreciate what you have done so far, and look forward to working with you in the future.

Our next witness is Ms. Sandra Parrino, the chairperson of the National Council on Disability. Ms. Parrino.

Ms. **Parrino**. Good morning, Mr. Chairman, and distinguished members of the Committee.

My name is Sandy Parrino. It is an honor to be invited to testify today before the House Subcommittee on Select Education on this, your first day of hearings on H.R. 2273, the "Americans with Disabilities Act of 1989."

I am, in private life, a mother of two children with significant disabilities. I am, in public life, the Chairperson of the National Council on Disability, an independent Federal agency whose board is comprised of 15 knowledgeable persons, including persons with disabilities, parents, and experts on disability service programs.

All of us are appointed by the President and confirmed by the Senate. We are an independent Federal agency with a statutory mandate to analyze issues related to public policy affecting Americans with disabilities and to make recommendations.

The major thrust of our efforts is towards eliminating barriers which prevent persons with disabilities from full participation in the mainstream of American life. The National Council on Disability has not been timid in its efforts in both originating and spearheading the Americans with Disabilities Act. We first recommended this legislation in the report entitled "Toward Independence" that was submitted to the President and Congress in 1986.

In our 1988 report to the President and Congress, "On the Threshold of Independence," we submitted draft legislation of the "Americans With Disabilities Act." As you know, this was the legislation introduced in the 100th Congress. H.R. 2273, which you have before you today, represents the second generation of the "Americans With Disabilities Act."

The National Council is heartened by the progress of the Americans With Disabilities Act in the 101st Congress. On the Senate side, the leadership of Senator Harkin, Chairman of the Subcommittee on the Handicapped, has been key in bringing the bill close to full committee consideration.

The initiative taken by President Bush, Attorney General Thornburgh, White House staff and others in the administration has been an essential component of the momentum that is building toward enactment. We are pleased that the House is beginning legislative consideration of the bill, and we look forward, Mr. Chairman and Subcommittee members, to your leadership as we move through the legislative process.

While this piece of legislation that you have before you today is not the exact piece the National Council originally drafted, the intentions are the same. Flexibility, but also persistence are most essential in accomplishing our goals.

We believe the quotation that President Reagan had on his desk says it best, "There is no limit to how far you can go and how much you can accomplish, if you don't care who gets the credit."

The goal that we all share is the removal of attitudinal, architectural and communication barriers in employment, transportation, public accommodations and telecommunications which denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of the American society.

Before proceeding to give you a sense of the Council's perspective in developing the legislation, I would like to share with you a recent experience of the Council's and a recommendation which has grown out of that experience.

As you know, Mr. Chairman, the National Council has been participating in the dialogue surrounding the legislative progress of the ADA. As many others have been doing, we too have been combing through the many detailed provisions of the current bill, analyzing specific phrases, constructing case law history and pondering the precise meaning and impact of the various statutory requirements.

As we have engaged in this process, we began to wonder what it was going to be like for businesses, government entities, and other organizations which would be held accountable under the bill to try to figure out precisely what their responsibilities were in order to comply.

If we, as the originators of the legislation and persons knowledgeable about disability policy, needed to expend such energy understanding the legislation, what sort of position would they be in?

Most employers today have no experience with accommodating a job for a person with a disability. Where are they to turn for information, for knowledge and for assistance in their efforts to ensure that that they are doing what needs to be done?

We recommend that you consider adding a technical assistance provision to the legislation so that those responsible for complying with the legislation will be able to understand and receive guidance in how they are to fulfill their responsibility.

History shows us that technical assistance can be a powerful and effective tool for educating and enabling compliance. The technical assistance available in the mid 1970's, upon enactment of our current civil rights statute for persons with disabilities, Section 504 of the Rehabilitation Act, was considered especially valuable as it often provided recipients with practical solutions to difficult problems such as developing physical accessibility in older buildings and accommodating services for persons with sensory impairments.

There are many ways to construct a technical assistance package to accompany this legislation and the Council is currently exploring a number of alternatives. There are numerous existing organizations and networks with expertise in the technical aspects of accommodation for persons with disabilities which should be utilized in such an effort.

The Council will be happy to work with this subcommittee and any other representatives who might be interested in such a provision or additional legislation. Mr. Chairman, the intention in drafting the original ADA was to offer constructive, realistic and fiscally sound policy to enhance independence and productivity of people with disabilities, and to ensure that Americans with disabilities would no longer be second class citizens.

The Americans With Disabilities Act of 1989 is not only important to over 43 million citizens with disabilities, it is also, as I will illustrate a bit later, of the highest importance to our nation.

From the person who becomes quadriplegic as the result of a football injury to the infant with spina bifida in a hospital crib, from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans the basic nugget of truth is that, due to discriminatory practices, persons with disabilities continue to suffer from the highest rates of unemployment and poverty compared to any other group of Americans.

Americans with disabilities have less access to decent schooling, housing, employment, health care and transportation than any other persons in this country, including non-citizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of the millions of persons with disabilities into a bondage of unjust, unwanted dependency on families, charity and social welfare. This dependency is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the "Americans With Disabilities Act of 1989." On behalf of the millions of citizens with disabilities, I ask you to keep in mind that for decades people with disabilities have been waiting.

For decades people with disabilities have seen laws enacted by their elected representatives that prohibit discrimination for other groups of individuals. For decades, Americans with disabilities, have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group-consciousness on the part of Americans with disabilities, their families, friends and advocates. This consciousness represents a mounting political activism. The over 43 million Americans are our nation's largest and no longer silent minority.

Martin Luther King had a dream and we have a vision. Dr. King dreamed of an America where people are judged not by the color of their skin, but by the content of their character. ADA's vision is of an America where persons are judged by their abilities, not their disabilities.

In "Toward Independence," our 1986 report to Congress, our vision was to shape responsible legislation by which Federal disincentives and barriers to employment are removed so that disabled Americans can go to work.

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every $1 spend to return a disabled person to work, $18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

The majority of persons with disabilities "not working" said they want to work. The Louis Harris poll which we sponsored in 1985, indicated that persons with disabilities in the work place are rated "good" to "excellent" by an overwhelming majority of their employers.

Disability does not mean incompetence. The perception that persons with disabilities are dependent by nature is the result of discriminatory attitudes, not the result of disability.

America cannot afford to discard citizens with disabilities. In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years of age are not working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered in the poll commissioned by the Council, people with disabilities want to become involved in their communities as taxpaying contributors. It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

People with disabilities represent America's greatest untapped resource of individuals who want to work. As we all know, in America, jobs are a major sources of status, dignity, and self-esteem. "What do you do?" is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

ADA sweeps into obsolescence those obstacles that limit opportunity, promote discrimination, prevent integration, restrict choice and frustrate self-help for Americans with disabilities.

Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us in the category of a person with a disability. We are all potential beneficiaries of the ADA.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away with troubling historical echoes, echoes that are no longer tolerable in a society committed to equal opportunity for all its citizens.

Esteemed members of Congress, in closing, I wish to relay a message from our National Council on Disability and the over 43 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our government.

For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act must be enacted now.

The vision of equality for 43 million of Americans with disabilities now rests with you.

Thank you for this opportunity to testify. The National Council on Disability looks forward to working with you on this most important piece of legislation.

[The prepared statement of Sandra Parrino follows:]

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An Independent
Federal Agency

STATEMENT

OF

SANDRA SWIFT PARRINO
CHAIRPERSON

BEFORE

THE

COMMITTEE ON EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES

CONCERING

THE AMERICANS WITH DISABILITIES ACT

ON

JULY 18, 1989

STATEMENT OF SANDRA SWIFT PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON DISABILITY, WASHINGTON, D.C.

Good Morning, Mr. Chairman and distinguished members of the Committee.

I am Sandra Swift Parrino, Chairperson of the National Council on Disability. It is an honor to be invited to testify today before the House Subcommittee on Select Education on this, your first day of hearings on H.R. 2273, the "Americans With Disabilities Act of 1989" (ADA).

I am, in private life, a mother of two children with significant disabilities. I am, in public life, the Chairperson of the National Council on Disability, an independent Federal agency whose board is comprised of 15 knowledgeable persons, many of them with disabilities, parents and experts on disability service programs. All of us are appointed by the President and confirmed by the Senate. We are an independent Federal agency with a statutory mandate to analyze issues related to public policy affecting Americans with disabilities and make recommendations. The major thrust of our efforts is towards eliminating barriers which prevent persons with disabilities from full participation in the mainstream of American life.

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BEST COPY AVAILABLE

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America cannot afford to discard citizens with disabilities. In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years age are not working. No one demographic group under 65 has such a small proportion working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered in the poll commissioned by the Council in 1985, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

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The vision of equality for 43 million of Americans with disabilities now rests with you.

Thank you for this opportunity to testify. The National Council on Disability looks forward to working with you on this most important piece of legislation.

Chairman **Owens**. Thank you. Brother Philip Nelan, the representative of the National Restaurant Association.

Brother **Nelan**. Thank you, Mr. Chairman, and distinguished members of the Committee. It is an honor to appear before your committee to state an overview of the National Restaurant Association's program for promoting the employment of people with disabilities.

I am Brother Philip Nelan, Director of Handicapped Employment Services for the National Restaurant Association's project with Industry. I have been associated with this program since its inception 11 years ago. I am a member of the Order of Brothers of the Christian Schools, and for 9 years earlier in my career, served as president of Manhattan College in New York.

During the last 11 years, the National Restaurant Association has promoted a program to encourage the industry to look to the benefit of employing persons with disabilities. The program, on the one hand, aims to provide employers with willing and qualified workers to fill plentiful jobs in this era of relatively low unemployment rates.

The program, on the other hand, gives a fair chance to people with physical and mental disabilities to fill jobs they are qualified for and to find in work a basis for greater independence and an incentive to sense their human dignity.

In this effort, our program takes us into close relationships with many organizations serving disabled persons such as the National Rehabilitation Association, the National Association of Rehabilitation Facilities, the National Association of Retarded Citizens, the newly forming coalition of organizations serving deaf people, sponsored by the National Technical Institute for the Deaf in Rochester, New York, and Goodwill Industries, Easter Seals, and so on.

State vocational rehabilitation offices are our primary contacts for disseminating information about foodservice job-openings within the state. In addition more than 400 private training agencies form a second line of resources for discovering qualified workers. We have supplied promotional and educational materials to induce these agencies to develop curricula in foodservice for their disabled trainees.

To discover job-openings, we have conducted pollings of the National Restaurant Association's memberships, the high volume independents, the chains, franchisees, and in the May issue of "Restaurants USA," with a circulation of 27,000, we supplied a tear-out reply mailer, a request form for information about rehabilitation training and placement.

These efforts have returned thousands of job opportunities for the impaired and have established firmer relationships between the training services for disabled people and the industry.

Aside from the well-known programs of the Marriott Corporation and McDonald's Corporation to recruit and train workers from pools of disabled people, other foodservice organizations have likewise adopted policies to attract this untraditional sector of the population into their labor forces.

Among them we should cite some samples of industry programs in which we have had a role in developing: Kentucky Fried Chicken. It has made formal effort to link its 7500 units to the training programs of the Association of Rehabilitation Facilities in 26 states.

Pizza Huts' unique plan to hire 2000 persons with impairments in these three current years by linking its 6600 units with local sources of employees with disabilities.

The Imperial Hotels, a franchisee of 50 various hotels in 23 states recently adopted a program through the office of the vice president for Human Resources to relate the managers and training programs in their areas.

Lettuce Leaf, a small chain, only 9 years old, in Missouri, has maintained a policy to hire developmentally disabled of whom its president writes, "All of these young persons are wonderful. They are reliable—constantly on the job."

Radisson Hotels promoted and have carried out a well-defined policy to employ persons with disabilities through the office of vice president for Human Resources.

Arby's of South Florida through its regional office has found alliance with the Florida Vocational Rehabilitation Services to recruit employees for its 26 units.

Friendly's Restaurants actively initiated a company-wide program and succeeds in engaging the managers of its 840 units along the eastern seaboard to employ persons with disabilities.

ARA Service, a huge conglomerate of hospitality services in restaurants, institutions and business offices, employing 120,000, is now compiling an instructional guide on all sources of potential employees including the disabled to inform its management.

General Mills Restaurant Corporation, finds for its Red Lobster and Olive Garden restaurants that rehabilitation training and placement services are available resources to fill their job openings.

Walt Disney World Swan at Lake Buena Vista is currently recruiting 800 persons with the assistance of the Florida Vocational Rehabilitation Services for its labor force in its new operation to open November first.

So our liaison program between the public and private sectors links foodservice operators, both large and small, including single unit owners, throughout the country to the sources of employees among organizations serving persons with disabilities.

Having access to public and private vocational training services, the employer finds potential resources of productive and loyal workers. Ideally, through training program counselors, the employer knows beforehand the potentials, skills, attitudes, backgrounds of these people.

Employers enjoy a new alliance through the professional counselor who makes job analyses and select qualified candidates who will succeed in performing the specific jobs.

The only available data on the number of people with impairments newly employed annually in the foodservice industry is compiled by the Statistical Division of the Rehabilitation Services Administration at the Department of Education.

The Division receives annual reports of the rehabilitated and job placed who are subsidized under state vocational rehabilitation services, which, in turn, are 80 percent subsidized by Federal funding.

A constant national total of rehabilitated employees placed in private industry yearly is about 220,000. Of that number placed in 1980, 5.8 percent were competitively employed by the hospitality industry.

In succeeding years to 1985, the latest year of complete record, the percentage increased by annual increments to 7.3 percent. Since then, the percentage has probably climbed to above 9 percent, representing upwards of 20,000 finding employment in the hospitality industry.

An additional number not subsidized by public funding but trained and placed each year in foodservice jobs by private agencies is unknown. Meanwhile, the demand by the hospitality industry for additional workers gradually grows acute in today's tight labor market.

At the same time, the generally accepted data says that six to eight million persons with disabilities are of working age, and at least two-thirds of them may qualify and want to work, but cannot for lack of training and the necessary assistance. Incidentally, this population is not counted in the national unemployment rate.

Today 8.5 million persons are employed in the food service industry, grossing $227 billion in 1988 and having a growth rate annually of six to seven percent. The total employed will increase to 11.4 million workers by the year 2000.

According to the Labor Department forecasts, an increase of 2.9 million new job openings will occur, owing to growth alone. Of these, about one million cooks, bakers, and other workers in food preparation will be needed.

Another 1.2 millions persons will be required to fill added service occupations, such as hosts, hostesses, waiters, waitresses, counter attendants, cashiers, bartenders, et cetera; an additional 700,000 will find positions as managers, accountants and for other administrative functions.

These predicted increases in the foodservice labor force refer only to new positions that growth will create in the next ten years. At the same time, another million and more positions will be vacated by retirees and other turnovers.

Ample job opportunities at all levels exist in the industry for people with disabilities. Marriott Hotels Corporation exemplifies the industry's ability to absorb into its labor force people with various types and severity of disabilities.

In Winchester, New York, the laundry is operated by deaf people; a chef's helper at the Marriott Marquis, New York City, is totally deaf, and the manager of the sales office is blind. Taco Bell, Hayward, California, has given a 21-year old autistic/schizophrenic his first job, now assistant to the cook, after his training at Eden Express, a private retail-training operation, where another deaf and learning disabled person trained and at 37 years of age has his first job.

This facility successfully trains and places upward of 40 retarded and mentally restored persons a year. McDonald's has such success with training and employing persons with severe disabilities that an advanced position of job coach has been created in the system.

Totally blind and legally blind people are employed in stores at various locations in Denver, Pittsburgh, Minnesota, and San Diego.

In St. Louis, a severely afflicted cerebral palsied person is employed; in De Kalb, Illinois, a half dozen deaf persons have performed jobs for years; a brain-damaged victim of an accident with use of only one arm and restricted speech is in a unit in Chicago. The key to the successes of the severely disabled is the ongoing services and follow-up by the job coach.

Other dramatic and less dramatic instances of employment in the industry are happening across the country despite the pressures, broken hours and other disincentives that the work entails, especially in entry level positions, but they do offer first entry into the world of work for many and opportunity for advances by persons with impairments in accord with their abilities and the training preparation they have received.

Mr. Chairman, I would like to offer three observations at this point: one, constraints on Federal funding over the past eight to ten years have limited the number of handicapped persons placed by government subsidized vocational rehabilitation services to a level substantially lower than required to meet the needs of this population.

Two, the number and characteristics of disabled workers assisted by privately funded agencies is unknown but should be researched so that congress has a clearer picture of the existing problems and solutions.

Three, the enactment of civil rights-type legislation such as the Americans with Disabilities Act will not be particularly helpful to millions of handicapped people if it is not accompanied by an increase in the resources necessary to train and place these individuals in suitable jobs.

On this final point, Mr. Chairman, there is justifiable concern on the part of employers that the ADA legislation now pending before this committee is so broadly written as to override certain elements of common sense. For example, to what extent is an employer expected to modify or add to his facilities to accommodate a disabled worker?

Do countertops where food is prepared have to be lowered to a level accessible to someone in a wheelchair? Additionally, there are several areas within the legislation which conflict with the requirements of existing legislation, such as the requirements of maintaining a "drug free workplace" and existing requirements under Sections 503 and 504 of the Rehabilitation Act of 1973.

Mr. Chairman, I was told that the purpose of today's testimony was to hear from an industry that is very aggressive in promoting the employment of citizens with physical and mental limitations.

However, I would be remiss if I did not note that there are significant problems with this legislation as introduced. Fortunately, the vast majority of these concerns are problems encountered when we take a public policy and attempt to place it into an operational context. Simple drafting alternations will surface for many of these problems.

My simple point here is that the restaurant industry has been providing jobs to thousands of disabled workers each year and we know the potential for offering even greater employment opportunities in the future is enormous.

Adequate availability of training and placement services is our biggest obstacle—not the need for special facilities and equipment.

I did not come today prepared to comment in any detail on the ADA legislation, Mr. Chairman, but I want to assure you that the National Restaurant Association stands prepared to offer you the benefit of its experience as an employer of thousands of disabled workers in crafting a bill that is beneficial and workable for employers and the employees you are seeking to help.

Thank you.

[The prepared statement of Brother Philip Nelan follows:]

STATEMENT OF
BROTHER PHILIP NELAN, F.S.C.
DIRECTOR, PROJECTS WITH INDUSTRY
NATIONAL RESTAURANT ASSOCIATION

BEFORE THE

HOUSE EDUCATION AND LABOR COMMITTEE'S
SUBCOMMITTEE ON SELECT EDUCATION

July 18, 1989

Good morning, Mr. Chairman and Members of the Committee, I am Brother Philip Nelan, Director of Handicapped Employment Services for the National Restaurant Association's Projects with Industry Program. I have been associated with this program since its inception, eleven (11) years ago. I am a member of the Order of Brothers of the Christian Schools and, for nine (9) years earlier in my career, served as President of Manhattan College.

During the last eleven years, The National Restaurant Association has promoted a program to encourage the industry to look to the benefit of employing persons with disabilities. The program, on the one hand, aims to provide employers with willing and qualified workers to fill plentiful jobs in this era of relatively low unemployment rates. The program, on the other hand, gives a fair chance to people with physical or mental disabilities to fill jobs they are qualified for and to find in work a basis for greater independence and an incentive to sense their human dignity.

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- Radisson Hotels promoted and have carried out a well-defined policy to employ persons with disabilities through the office of Vice President for Human Resources.
- Arby's of So. Florida through its regional office has found alliance with the Florida Vocational Rehabilitation Services to recruit employees for its 26 units.
- Friendly's Restaurants actively initiated a company-wide program and succeeds in engaging the managers of its 840 units along the eastern seaboard to employ persons with disabilities.

- ARA Service, a huge conglomerate of hospitality services in restaurants, institutions and business offices, employing 120,000, is now compiling an instructional guide on all sources of potential employees including the disabled for its management.
- General Mills Restaurant Corporation, finds for its Red Lobster and Olive Garden restaurants that rehabilitation training and placement services are available resources to fill their job openings.
- Walt Disney World Swan at Lake Buena Vista is currently recruiting 800 persons with the assistance of the Florida Vocational Rehabilitation Services for its labor force in its new operation to open November first.

So our liaison program between the public and private sectors links foodservice operators, both large and small, including single unit owners, throughout the country to the sources of employees among organizations serving persons with disabilities.

Having access to public and private vocational training services, the employer finds potential resources of productive and loyal workers. Ideally, through training program counselors, the employer knows beforehand the potentials, skills, attitudes, backgrounds of these people. Employers enjoy a new alliance through professional counselors of rehabilitative services who make job analyses and select qualified candidates who will succeed in performing specific jobs.

The only available data on the number of people with impairments newly employed annually in the foodservice industry is compiled by the Statistical Division of the Rehabilitation Services Administration at the Department of Education.

The Division receives annual reports of the rehabilitated and job placed who are subsidized under state vocational rehabilitation services, which, in turn, are 80% subsidized by the federal government. A constant national total of rehabilitated employees placed in private industry yearly is about 220,000. Of that number placed in 1980, 5.8% were competitively employed by the hospitality industry. In succeeding years to 1985, the latest year of complete record, the percentage increased by annual increments to 7.3%. Since then the percentage has probably climbed to above 9%, representing upwards of 20,000 finding employment in the hospitality industry.

An additional number not subsidized by public funding but trained and placed each year in foodservice jobs by private agencies is unknown.

Meanwhile, the demand by the hospitality industry for additional workers gradually grows acute in today's tight labor market.

At the same time, the generally accepted data says that 6-8 million persons with disabilities are of working age, and at least two-thirds of them may qualify and want to work, but cannot for lack of training and the necessary assistance. Incidentally, this population is not counted in the national unemployment rate.

Today 8.5 million persons are employed in the food service industry, grossing $227 billion in 1988 and having a growth rate annually of 6 to 7 percent. The total employed will increase to 11.4 million workers by the year 2000. According to the Labor Department forecasts, an increase of 2.9 million new job-openings will occur, owing to growth alone. Of these, about one million cooks, bakers, and other workers in food preparation will be needed; another 1.2 million more persons will be required to fill added service occupations, such as hosts, hostesses, waiters, waitresses, counter attendants, cashiers, bartenders, etc.; an additional 700,000 will find positions as managers, accountants and for other administrative functions.

These predicted increases in the foodservice labor force refer only to new positions that growth will create in the next 10 years. At the same time another million and more positions will be vacated by retirees and other turnovers.

Ample job opportunities at all levels exist in the industry for people with disabilities. Marriott Hotels Corporation exemplifies the industry's ability to asborb into its labor force people with various types and severity of disabilities:

in Westchester, N.Y., the laundry is operated by deaf people; a chef's helper at the Marriott Marquis, N.Y.C., is totally deaf, and the manager of the sales office is blind. Taco Bell, Hayward, California, has given a 21-year old autistic/schizaphrenic his first job, now assistant cook, after his training at Eden Express, a private retail-training operation, where another deaf and learning disabled person trained and at 37 years of age has his first job. This facility successfully trains and places upward of 40 retarded and mentally restored persons a year.

McDonald's has such success with training and employing persons with severe disabilities that an advanced position of job coach has been created in the system. Totally blind and legally blind people are employed in stores at various locations in Denver, Pittsburgh, Minnesota, and San Diego. In St. Louis, a severely afflicted cerebral palsied person is employed; in De Kalb, Illinois, a half dozen deaf persons have performed jobs for years; a brain-damaged victim of an accident with use of only one arm and restricted speech is in a unit in Chicago. The key to the successes of the severely disabled is the ongoing services and followup by the job coach.

Other dramatic and less dramatic instances of employment in the industry are happening across the country despite the pressures, broken hours and other disincentives that this work entails, especially in entry level positions. But they do offer first entry into the world of work for many and opportunity for advances by persons with impairments in accord with their abilities and the training preparation they receive.

Mr. Chairman, I would like to offer you three observations at this point: One, constraints on federal funding over the past eight or ten years have limited the number of handicapped workers placed by government subsidized vocational rehabilitation services to a level substantially lower than required to meet the needs of this population; two, the number and characteristics of disabled workers assisted by privately funded agencies is unknown but should be researched so that Congress has a clearer picture of the existing problems and solutions; and, three, the enactment of civil rights-type legislation such as the Americans With Disabilities Act will not be particularly helpful to millions of handicapped people if it is not accompanied by an increase in the resources necessary to train and place these individuals in suitable jobs.

On this final point, Mr. Chairman, there is justifiable concern on the part of employers that the ADA legislation now pending before this Committee is so broadly written as to override certain elements of common sense. For example, to what extent is an employer expected to modify or add to his facilities to accommodate disabled workers? Do countertops where food is prepared have to be lowered to a level accessible to someone in a wheelchair?

Additionally, there are several areas within the legislation which conflict with requirements of existing legislation, the requirements of maintaining a "drug free workplace" and existing requirements under sections 503 and 504 of the Rehabilitation Act of 1973.

Mr. Chairman, I was told that the purpose of today's testimony was to hear from an industry that is very aggressive in promoting the employment of citizens with physical and mental limitations. However, I would be remiss if I did not note that there are significant problems with this legislation as introduced. Fortunately, the vast majority of these concerns are problems encountered when we take a public policy and attempt to place it into an operational context. Simple drafting alterations will surface for many of these problems. I am not prepared to violate the wishes of the Committee and speak to these today; however, I wish to submit for the record a document prepared by a broad based business group which addresses several of the areas of concern businesses have with the legislation drafted.

My simple point here is that the restaurant industry has been providing jobs to thousands of disabled workers each year and we know the potential for offering even greater employment opportunities in the future is enormous. Adequate availability of training and placement services is our biggest obstacle--not the need for special facilities and equipment.

I did not come today prepared to comment in any detail on the ADA legislation, Mr. Chairman, but I want to assure you that the National Restaurant Association stands prepared to offer you the benefit of its experience as an employer of thousands of disabled workers in crafting a bill that is beneficial and workable both for employers and the employees you are seeking to help.

Chairman **Owens**. Thank you, Brother Nelan. Questions, Mr. Smith?

Mr. **Smith**. Thank you very much, Mr. Chairman. I have a question for Brother Nelan and it really has to do with the resources that the National Restaurant Association or the individual employers had to draw on as they embarked on this journey of including differently able people. Could you talk a little bit about what kind of information do you gave in terms of who, what drove the decision to get involved and then two, how did the industry collectively or the individual components of the industry resource the decision?

Brother **Nelan**. I am not sure I can answer the first part of your question as to how the industry got involved, but the resources that are there are, of course, the Organization of the National Restaurant Association which is national and the state associations which are affiliated with the National Restaurant Association.

It is a great membership which includes the leading chains of leading organizations of food services across the country and also, of course, so many of local owners. The objective of the association in this program is an educational program to involve, and to first of all, to instruct and open the way to understanding the possibilities of finding in the resources of the trained persons with disabilities new and permanent employees.

We go about this by a constant effort to inform by circulation of information to the industry through every means that is available through the public relations, through the various offices throughout the country and through pollings as I mentioned of chains, and franchise as we have the information to gain to them.

Mr. **Smith**. Thank you. I guess my concern as I heard actually two different people call for technical assistance and resource assistance and I am sure that that is going to be necessary and I will underscore that. I am just sure that that is going to be a necessary part of this bill.

At the same time, it strikes me that if we can write clean legislation with clear definitions that is responsive to the human situation that we are trying to rectify or improve and the reality of the world that you and others represent, if we can get our definitions right, that, in fact, an enormous amount of the, if you will, the solutions, the adaptations, the right answers are going to come from inside the different sectors of the economy as they learn from differently abled people.

I think we need to be careful about the kind of wisdom that we place with governmental agencies in terms of just what good technical or resources assistance is because I have seen a lot of cases where the difference between the ability to reach and the ability to grasp was made by whether or not the legislation was well written.

I want to make sure we get to the grasp in this one.

Brother **Nelan**. Yes, I am sure that the National Restaurant Association will cooperate to the fullest in developing such materials or insights and backgrounds that will aid in the clarification of the legislation.

Mr. **Smith**. Thank you.

Chairman **Owens**. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman. Mr. Chairman, I do have a number of specific questions. I will try to go through them fairly fast. If I run out of time and another member comes in that wants to ask some questions, if you would let me know.

First, my question of the civil rights leadership conference and I am going through the bill and listened carefully to the testimony, Ms. Feldblum, of your predecessor. On the subject of reasonable accommodation, it seems to me that what I heard the testimony to say was that reasonable accommodation should apply to new facilities and not necessarily to retrofitting existing facilities, as I understand the testimony.

My question is in the opening title of the bill on page six and seven, beginning with the paragraph at the bottom of the page. The overriding definition of the bill for all of the title seems to take a different approach and seems to define reasonable accommodation to include making existing—I am quoting from the bill—"making existing facilities used by employees readily accessible to and usable by individuals"—implying all individuals, but at least saying individuals with disabilities.

I wonder if you could tell us, is it the intent then of the Leadership Conference to make reasonable accommodation more in line with the current definition of reasonable accommodation under, for example, the Civil Rights Act of 1986 and to make reasonable accommodation a limiting factor or is it the intent of the Leadership Conference to stick with what seems to be in the opening title of the bill and that is, readily accessible, all facilities including existing facilities.

Can you clarify that for us?

Ms. **Feldblum**. I think you might be confusing two aspects of the bill. There is a requirement that new buildings be constructed in a physical, accessible way. One would not use the term "reasonable accommodation" to apply to that area. That is certainly a provision of the bill that you saw from the testimony, looking to the future, any new building you should build physically accessible.

The concept of reasonable accommodation which is in here on the page which you referred to, is a concept of reasonable accommodation that exist under Section 504 right now and it is that concept that is carried over directly into this bill.

That concept is one that comes out usually in the area of employment. Often people with disabilities want to be treated just the same as everybody else. That is the gist of the testimony that you have heard today. However, also what you heard today is that sometimes a person with a disability needs some modification, either some modification in the physical area or some modification in terms of a policy or device in order to then do the essential functions of the job.

The concept that exists under Section 504 is that an employer has a responsibility to make a reasonable accommodation to a person with a disability, be it a physical accommodation, be it a modification of a policy, so long as that accommodation does not impose an undue hardship on the employer and that is the basic concept within 504 as to what would be an undue hardship.

Mr. **Bartlett**. Ms. Feldblum, I do pretty well understand that. The title of the bill that I referred to does not mention the word "undue hardship." It says, "making existing facilities used by employees readily accessible to and usable by individual with disabilities."

Now, my question then is it—leaving aside the drafting, is it then the Leadership Conference's position that it should be an undue hardship test or another way, that it should follow the current Section 504 or the Civil Rights Act or are you seeking a more stringent test?

Ms. **Feldblum**. We are not seeking a more stringent test. The intent of the bill is that the definition of reasonable accommodation be read in conjunction with the provision of the bill that describes reasonable accommodation which is on page 13 to 14 of your bill.

The failure to make a reasonable accommodation unless a can demonstrate that the accommodation would impose an undue hardship, so in direct response to your question, you are correct that the definition of reasonable accommodation must be read, obviously, in conjunction with the requirement of providing reasonable accommodation and that should be very clear.

Mr. **Bartlett**. Well, if this Committee were to seek ways to make certain that it is more clear, I suppose then that would be acceptable to the Leadership Conference.

Ms. **Feldblum**. That is fine to make it clear that it is consistent with pages 13 and 14.

Mr. **Bartlett**. So, it is not your position that the existing facilities—that the bill should be as it seems to be on page 7, that all existing facilities should be readily accessible too, without limitation?

Ms. **Feldblum**. I think the misunderstanding here is the fact that reasonable accommodation——

Mr. **Bartlett**. I am not misunderstanding; I am reading.

Ms. **Feldblum**. No, no, but I mean the misunderstanding the reading might be that the term "reasonable accommodation" is used only in the context of employment, only in Title II.

I wouldn't want you to hear that the concept of undue hardship should be carried over in any way to Title IV which is the concept of building new facilities accessible. The term "reasonable accommodation" never appears in Title IV. It is a term that is used simply in Title——

Mr. **Bartlett**. Ms. Feldblum, I don't want to get into a drafting argument with you, but reading from the bill, it states Section III in the preliminary findings and purposes, as used in this Act, reasonable accommodations shall include all existing facilities readily accessible as used in this Act.

So, I just want to make sure that the intent then is to not go beyond the current Civil Rights Act of 1986 or the current—I am sorry, the current Civil Rights Act, the Grove City case that we passed in 1988 or Section 504, is not to go beyond that for purposes of private employers.

Ms. **Feldblum**. It does not go beyond Section 504 in the area of employment in all of the places where reasonable accommodation is used. Please do not misunderstand that statement to mean that Title IV, which deals with new construction and making existing facilities readily achievable obviously applies to anything that comes under the definition of a public accommodation.

With that statement, I don't think we have any problem in saying an employment that is consistent with Section 504 is concept of reasonable accommodation.

Mr. **Bartlett**. The other part to reasonable accommodation in the opening section of the bill seems to list a series of job restructuring items. I want to go back and compare that again to the Civil Rights Act, the Grove City bill which is also applicable. Would it be your decision—the list in paragraph b on page seven would seem to be a relatively broad in a not particularly limiting list.

Let me say what I am saying. It says it doesn't seem to have any limitation on accommodations that could be required. For example, it would seem to require part-time or modified work schedules. So far, so good, and I think a part-time, modified work schedule is often a way in which an employer makes an accommodation, but there are some employment situations, many, perhaps, in which a part-time or modified work schedule, in fact, imposes an undue hardship on the other employees or the customers or the employer.

Would it be the Leadership's intent then to have some kind of limiting language for undue hardship or other kind of limitation or would you seek a requirement for part-time or modified work schedule, for example, or reassignment without limitation?

Ms. **Feldblum**. I think this, in fact, is perhaps a drafting issue as you noted. As I said before, this is simply a definition of reasonable accommodation which must be read in conjunction with the actual requirement, the reasonable accommodation which does say, you don't have to do the accommodation, be it the job restructuring or anything else on the list if it were to impose an undue hardship and I think this sort of a classic way in which one drafts a bill, just set out the construction of the prohibition and then you have a definition section.

Obviously, it is intended to be read with the provision of the bill itself. So, the answer to that is yes, it is intended to be read with that.

Mr. **Bartlett**. So, it is your intent to make certain that it does have a modification to it?

Ms. **Feldblum**. That is the way it is in the bill.

Mr. **Bartlett**. I understand. Number two, I want to make sure I understand again the intent of the testimony and then I will go back and look at the bill again. It is your intent that the Leadership Conference's intent that only new buses would be required to be wheelchair accessible and not require a retrofitting of existing buses. Is that accurate?

Ms. **Feldblum**. It is not a retrofitting requirement in existing buses. It is new buses and buses that are completely remanufactured.

Mr. **Bartlett**. I know, but what period—how long would purchasing of new buses be to accommodate, would it be immediately upon the enactment of the bill, that any new buses would have to have a lift?

Ms. **Feldblum**. There was no time requirement as to when you have to buy new buses. It is simply if and when one buys new buses, those buses have to be accessible.

Mr. **Bartlett**. Third, the bill seems to have—in the employment section—a limitation which is disturbing to me, in Title II which seems to place a—on page 11 at the bottom of the page, section b—seems to have an exception for employees of individuals who are elected to public office, including without limitation, all the personal staff or an appointee to public policy making or immediate advisor.

I assume all of that is everyone. That is disturbing to me. Does the Leadership Conference endorse that exception that Congress would not be required to eliminate discrimination in their own employment practices?

Ms. **Feldblum**. I don't know if I can speak officially for the entire Leadership Conference at the moment, but I think I could say to you that if an amendment was offered to delete that exception, that the Leadership Conference would be in support of that.

That is an exception that is currently in Title VII, but is what it is based on, but I believe——

Mr. **Bartlett**. Maybe we will delete it from Title VII too.

Ms. **Feldblum**. I don't think the Leadership Conference would have an argument with that.

Mr. **Bartlett**. So, you would regard that as an improvement in the legislation. Mr. Dart, and Mr. Nelan, as a follow-up if you would like, tell me, if you were writing the bill with regard to drug abusers and alcohol abusers, how would you structure the ability of, just in laymen's terms, how would you structure the ability of an employer to deny employment to users of either abusers of alcohol or users of illegal drugs.

Would you give an employer the right to deny employment to someone who uses illegal drugs or abuses alcohol or would you require that it only be if it poses a threat to the health and safety of other workers in the work place? Mr. Dart?

Mr. **Dart**. Mr. Congressman, if you will pardon me, I would like to preface my answer with another statement that my colleague, Ms. Sandra Parrino, asked me to apologize to the chairman that she had to leave in order to meet a very high level person in this government about ADA and a person whose schedule did not accommodate another time, another——

Mr. **Bartlett**. Another group of high leveled persons, I suppose.

Mr. **Dart**. Yes, certainly. You got me there. I am not an attorney. I am not a bill writer and I really am not sure I can answer your question adequately, Mr. Congressman. Any answer which I would give, of course, would have to be from myself personally and not for the Task Force, which I represent, but it is my understanding that no employer under the act would be required to employ anyone who was unfairly unqualified to do the job and I could certainly envision circumstances under which substance abuse would render somebody not qualified to do almost any job.

I am not really—if I understand the bill correctly and that is what it means, and it is simply would imply that one is not allowed to discriminate against a person with disabilities, simply on the unproven allegation or suspicion that the person might be a drug abuser or an alcohol abuser that if I were drafting it, I maybe would draft it in the same way.

Mr. **Bartlett**. Let me pose—we now get when we draft a bill, you get down to very specific instances and many persons with disabilities tell me, again, without trying to make it reference the bill because we do have bill writers that can draft it the right way.

Many persons with disabilities tell me that they object to being lumped in as a category with chronic drug abusers, persons who do cocaine on their lunch hour or smoke pot in the back of the restaurant as they are cleaning up. That doesn't seem to them to be in the same category as other persons with disabilities that that the bill is designed to get to.

So, the bill is currently drafted so that it would say that an employer could only have a no-drug policy if it poses—it seems to anyway—not hiring someone who is a drug abuser if it poses a direct threat to the health and safety of the work place.

That is, in the back of a restaurant, for example, when you are cleaning up, that is relatively difficult to prove. My question is, should we draft it that way or should we make certain that what we mean is that an employer who has a policy—I will pose it differently—should an employer be allowed to have a policy that says, "I am not going to hire someone who is a user of illegal drugs?"

Mr. **Dart**. I certainly am oppose to the use of illegal drugs personally and I assume that all the members of my Task Force are, but I was not aware that the Act would force an employer to employ a person who was probably doing something against the law or who was probably an alcohol abuser to the extent that they would not be able to perform the functions of the job.

Mr. **Bartlett**. I understand.

Ms. **Feldblum**. Mr. Congressman, can I just add a clarification. From the legal prospective, I think that there is often a misunderstanding that because one qualification standard was put forward as an example, and I am just repeating that Mr. Dart's analysis is, in fact, correct, from now the legal prospective.

There is an example that someone would pose a direct threat, for example, to the health and safety property of others is an example of a qualifications standard that an employer can use. However, it is simply an example. Employers still can have all other types of qualification standards such as Mr. Dart said that an employee must be able to do his or her job effectively, must be able to comply with all the other requirements of the employer in terms of being qualified for the job.

Those qualification standards could be applied to everybody, all people with or without disabilities and all people with disabilities including people who are drug addicts or alcoholics. I mean, it is also important to clarify for the record that the bill is not inconsistent with, for example, the drug free work place which allows employers to have a rule that drugs or alcohol may not be consumed on the work place.

What is in this bill here is what has been is what has been under Section 504 for years. Under Section 504, you can have a requirement that someone not use illegal drugs at the work place and there would be no recourse under either Section 504 or this bill, so I am just lending a legal clarification to the——

Mr. **Bartlett**. Let me say—I know the chairman may want to go to the next round—let me say, what I want to avoid here and in subsequent hearings, what I want to encourage is an acknowledgement that this is the first hearing. I know many of us, including the three of you have been involved in discussions and in drafting and redrafting, but there is—as we approach the bill, there is no reason for any of us, including me, to be defensive about every semicolon in the bill.

There is no act yet. We haven't drafted it, so I am not attacking the act because there is no act. We have a hearing as to how to draft what we intend. The bill does seem to make in this case an exception if it is direct health and safety.

There does seem to be in the rest of the bill no provision to say as a qualification standard that an employer would be allowed to say, "I choose not to hire anyone who uses illegal drugs." There doesn't seem to be that permission in this bill. Perhaps we can draft it in a way that does give that permission—the chairman may be hurrying me alone, but——

Chairman OWENS. I really want to make a comment after Mr. Dart.

Mr. DART. If I could, Congressman Bartlett, just clarify my answer and make it more direct that as a former businessman and employer, I certainly would not approve of any law that I thought would force or encourage business people or anybody else to employ persons who were breaking the law and who were probably drug abusers.

It was my understanding that this bill does not do this.

Mr. BARTLETT. I yield to the chairman.

Chairman OWENS. We are going to be, as has been pointed out, discussing numerous aspects of this bill in great detail and this will come up again and again. I just must comment as it has come up several times this morning. An alcoholic or drug abuser must identify himself as being a person with a disability, it seems to me, before the law applies to him.

Persons who have gone to court and been mandated to participate in a drug treatment program need jobs; they are identified as being in a drug treatment program; they are not breaking the law now, but they certainly broke the law when they were mandated to be put into the drug treatment program.

I do not think they should be denied a job, but they are identified as persons with a disability, just as alcoholics who are not seeking treatment certainly deserve no protection under this law. They have not identified themselves as being persons with a disability.

They don't own up to it. If they are drinking at the back of a store, doing drugs in the back of the restaurant, they certainly don't fall in the category of this bill. It seems to me that they have to come forward and identify themselves and there are things that go along with that identification.

That may be the way we will have to clarify the law, one direction we can move in terms of clarifying the law. I thank the gentleman for yielding his time.

Mr. BARTLETT. I thank the gentleman. I think the chairman is correct. I think that there are some ways to draft this legislation so that we are certain that it says what we intend and there is a distinction between a current user or abuser of illegal drugs or abuser of alcohol and there is a distinction in someone who is a past user or abuser, and has, in fact, the disability of having been an addict or is a recovering addict and I think that we can draft it that way.

I want to be certain that we do and I think that we have a ways to go, but with people of goodwill we can and that does relate to the Leadership's testimony in which the Leadership's written testimony called for a quick passage of legislation.

I would add a second requirement and that is, it be a quick and thoughtful passage of the legislation. We only get one chance at this. This subcommittee under Major Owens' leadership has written some excellent pieces of legislation in the last years in consolidation with other subcommittees.

Permanent authorization is streamlining of Section 1619. We had the chance we knew to permanently authorize Section 1619 and we can do that anytime, but we only had one chance to streamline it right and this subcommittee took its time to make sure we did it right.

We had a dozen chances to do it wrong, but this subcommittee persisted until we had the right bill, early childhood intervention. This subcommittee persisted until we did it right and I think we have our work cut out for us. I think we have a good blueprint, a good beginning and a ways to go.

Mr. Chairman, I have some additional questions, but I do have one additional question that I would like to pose to all three of the panel and then I will talk to them all later or submit them for the record of the others and that is the remedy section.

Is it—I ask of all three—there are generally two types of remedies that we could impose and this bill seems to impose both types. One is the remedy through the classic civil rights EEOC kind of administrative action in which you filed a complaint with EEOC or some administrative board says, stop, we find that to be discriminatory. You can't do it; don't do it anymore and if you do it, we are going to file either an injunction or some kind of a penalty or we are going to fine you; that is one type.

The other type which is also included in this bill which is somewhat disturbing is legal action through courts, jury trials, monetary damages and specifically U.S. Code 1981. Now, I would like your judgment as to whether you believe that invoking U.S. Code 1981 in addition to administrative remedies is necessary in all cases and should be left in the mainstream of the remedies in this bill or whether it should be deleted or whether it should be limited only to more owners kinds of cases or extreme cases.

Mr. Dart, have you thought about how would you like to see the bill structured in terms of those two types of remedies, court challenges, Federal court, jury trials, monetary awards versus the administrative remedies?

Mr. DART. Well, again, I am speaking for myself personally and again, I am not an attorney, but I would like to say that in my public forums throughout the nation, the issue of enforcement of present disability rights, legislation and disability services, legislation and regulation was probably the largest issue that came up and there was a reflection that enforcement was not in any way adequate and that the remedies were not adequate.

Now, I am not an attorney. I could not sit here and say that I think that the way the law is written is the only way that it could be written in order to have remedies, but I do know and that we have overwhelming evidence that a right without a remedy is not a right and I think that there has to be ways that people with disability, most of whom are poor, can afford to have a lawyer and that that attorney will have some incentive to represent that person to implement their rights, not only under the present Act, but for all disability rights.

Mr. **Bartlett**. Ms. Feldblum?

Ms. **Feldblum**. Yes, actually, to follow-up. As you of course know, the EEOC which is the administrative agency enforcing Title VII, there was also a private right of action under Title VII that one can go into court and also enforce one's right in courts and that is, of course, is basic in all the civil rights laws even where there is an administrative mechanism, there was always also a private right of action to enforce one's rights in courts, as Mr. Dart said, so that there was a remedy as well as a right.

Once you get into court, of course, it is important that you have the panoply of remedies in order to achieve the vindication of that right which includes not only the remedies of injunction, back pay, front pay, remedies that you would be getting under Title VII, but if, for example, you were a Black person who has been discriminated against or a Jew or an Arab, you can also get damages for the harm that has been done.

Mr. **Bartlett**. That raises then two specific questions. Should you be required to go to EEOC first before you go to court or should you be allowed to go straight to Federal courts?

Ms. **Feldblum**. Well, under Title VII, one goes to EEOC if one is suing under Title VII. Of course, if one chooses, if one has been discriminated against on the basis of race or ethnicity, one does not have to go to EEOC; one can file a claim in court under Section 1981.

However, if you were filing under Title VII, one does have to go to EEOC first through the administrative process.

Mr. **Bartlett**. When we pass this legislation, should we require that someone use their administrative remedies first before they go to court or should we allow them to go straight to court without making use of the administrative remedies?

Ms. **Feldblum**. At this point, the bill parallels what would be available to people who have been discriminated on the basis of race, or ethnicity which would allow them to go into court if they chose to do that.

Mr. **Bartlett**. Should we also allow that for unintentional discrimination in addition to intentional discrimination, in your opinion?

Ms. **Feldblum**. Unintentional, I know, had been raised before. That is a basic concept within Section 504, has been throughout the time, and, therefore, it is incorporated within the ADA as well. There should be a difference in terms of one's ability to go into court and vindicate one's rights, whether it is intentional discrimination or some set of neutral room that has had an adverse effect.

Under Section 1981, one would not get damages for something that had a desperate impact and I think that was the intent of this legislation.

Mr. **Bartlett**. It is eliminate the damages, but not the injunctive relief for unintentional discrimination. Is that what you are saying?

Ms. **Feldblum**. Correct, yes.

Mr. **Bartlett**. Brother Nelan, do you have a response then to the——

Brother **Nelan**. I feel that I have no confidence in this field of making these distinctions, but it would seem to me from common sense, that it would be better to have administrative remedies before going to the full panoply of jury and all of the rest.

Mr. **Bartlett**. Brother Nelan, you said in your testimony that in your opinion, there were some specific problems with the ADA that you and others in the business community you have worked with have identified, not in the concept of '88 but in the drafting.

I know that you had shared earlier, but it was not part of your testimony, a draft of a document entitled "Concerns with the Americans with Disabilities Act, the Disability Rights Working Group." Would that be a draft that this subcommittee could use to sort of walk through some of the issues that you have found?

Brother **Nelan**. Yes, I would like to submit that draft.

Mr. **Bartlett**. I would ask unanimous consent that that draft be submitted as part of this record, Mr. Chairman.

Chairman **Owens**. Without objection, it will be accepted. I would like to ask the Leadership Conference to take a look at it and submit any comments on it also.

[The material follows:]

DISABILITY RIGHTS WORKING GROUP

Working Paper #1

Concerns with the Americans With Disabilities Act

INTRODUCTION

The Americans with Disabilities Act, introduced on May 9, 1989, is comprehensive legislation whose expressed objective is to extend the same protections against discrimination enjoyed by other protected groups to those with disabilities.

Though supportive of many of the concepts embodied in the ADA, the Disability Rights Working Group -- a coalition of businesses and trade associations -- is opposed to the ADA in its present form. Discussions have been held with representatives of the disability community, Congress and the Administration in an effort to fashion legislation we can all embrace. However, unless changes are made, particularly in the area of remedies, the Group will seek to defeat S. 933/H.R. 2273.

CONCERNS WITH LEGISLATION

Listed below are summaries highlighting some of the Group's concerns with the ADA, all of which have been communicated to the parties. There are two levels of concern with the legislation: first, the issues relating to enforcement and remedies; and second, all others. We have made it clear that resolution of the former is absolutely essential to further negotiation, without which the Group will seek defeat of the bills. That should not, however, be interpreted to mean that resolving the threshold concerns alone would be acceptable.

THRESHOLD ISSUES

Enforcement/Remedies. In addition to the remedies, administrative procedures and defenses available under Title VII of the Civil Rights Act of 1964 -- for which there is an extensive body of law and successful experience regarding cases alleging discrimination based on race, sex, religion and national origin -- the ADA, in §205, provides a second, separate track of enforcement that would permit a jury trial, and punitive and compensatory damages, *i.e.*, pain and suffering. The second track must eliminated.

Anticipatory Discrimination. Section 205 of the ADA would also provide relief to individuals who believe they ''are about to be'' discriminated against. Such speculative complaints and attendant litigation are not permitted in any other civil rights in employment legislation and should be eliminated from the ADA.

GENERIC ISSUES

Enforcement Duplication/Consistency with Rehabilitation Act. A significant number of employers are currently subject to Sections 503 and/or 504 of the Rehabilitation Act of 1973, as amended, that prohibit discrimination against persons with disabilities. The ADA would impose additional, in some cases, conflicting obligations on these employers. The ADA is silent as to situations where employers are faced with inconsistent standards and duplicative enforcement by various federal agencies. Compliance with Section 503 or 504 standards should be deemed to be in compliance with the ADA.

Failure versus Refusal to Act. The lack of distinction between intentional and unintentional discrimination will penalize employers for inadvertent errors in their attempts to abide by new, affirmative obligations imposed by the ADA. Discrimination should be defined as ''refusal'' or ''willful failure'' to act.

Reasonable Accommodation and Undue Burden. As defined in §1, there is no limitation on the lengths to which one must go to provide reasonable accommodation, though it is limited in §101 (b) (Defenses) as not requiring an ''undue burden,'' which itself is undefined. In the absence of the definition, does this connote that ''undue burden'' means anything that threatens a firm's existence? Further, under §202(b)(2), it would be discriminatory not to hire an individual on the basis of the need for reasonable accommodation, not limited in this context by a defense of ''undue burden.'' Thus, an employer could not offer the defense of undue burden in response to an allegation of refusal of hire because on the need for reasonable accommodation. In order

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that employers and others understand the bounds of their obligations, reasonable accommodation should be defined not to require fundamental alterations or result in undue financial or administrative burdens and include a definition of "undue burden." Codification of relevant Section 504 regulations and additional information regarding obligations would provide needed guidance.

Incentives. While it is argued that, as a civil rights law, the costs attendant to compliance with the ADA are irrelevant, no other civil rights statute requires a private employer, who is not a federal contractor or grantee, to expend substantial resources on affirmatively accommodating a protected class. In some instances, the costs will be significant and burdensome, particularly on smaller businesses. As introduced, the ADA contains no incentive to encourage and assist employers to make expenditures to increase opportunities for individuals with disabilities. The tax deduction of $35,000/year permitted under §190 of the Internal Revenue Code for removal of achitectural barriers should be increased and expanded to defray the costs incurred in providing reasonable accommodation or auxiliary aids and services that would be required by the ADA.

TITLE I – GENERAL PROHIBITIONS

Drug/Alcohol Abuse. The bill, in §101(b)(2)(A), appears to limit an employer's ability to adopt and implement a drug-free workplace policy by protecting current abusers of alcohol/illegal substances except where it can be demonstrated that such use constitutes a direct threat to property and/or safety. In view of federal and Congressional policy on drug-free workplaces, this provision should be revised to eliminate current contradictions, to clarify that nothing in the ADA is intended to protect current abusers, and to protect the right of employers to implement "zero-tolerance" policies concerning substance abuse.

Overlap Between Titles I and II. It is unclear what additional burdens are imposed on employers in Title I which are not included in Title II which governs the employment relationship. As currently constructed, drafters of the ADA have lifted regulations implementing Section 504 (which are targeted to federal grant recipients) and simply added the term "job" so that they now would apply to employment. In doing so, new, broad and ambiguous terms are used that have no historical interpretation. When, for example, is one job considered "as effective as" another? The term "job" should be deleted wherever it appears in Title I and it should be made clear that employment discrimination is controlled exclusively by Title II.

Discrimination by Assistance. The ADA would hold an employer or other entity liable if the recipient of its charity or assistance discriminates on the basis of disability, whether or not there is knowledge of such discrimination. Section 101(a)(1)(E) should be amended to reflect that such act is illegal only where the provider knows of the discrimination.

Discrimination Based on Association. The ADA would make it illegal to discriminate against an individual because of the "relationship to, or association of, that individual or entity with another individual with a disability." This is unparalled in civil rights law and will invite frivolous lawsuits requiring employers to prove a negative, *i.e.*, that they weren't aware of the association. Section 101(a)(5) should be deleted.

Discrimination in Benefits. As drafted, Title I creates incredible new liabilities for employers if they provide disabled persons with a benefit which is "less effective than" or "is different or separate" from that provided to others (*e.g.*, §101(a)(1)(C) & (D)). Group health insurance benefits, which are offered under the same terms and conditions to all employees, may still be "less effective" or "separate or different" for a person with disabilities. Employers should only be obligated to offer the same benefits package to all employees, whether or not they are disabled. To require otherwise, *e.g.*, provide specific medical coverage or purchase medical insurance with pre-existing condition waivers, would be prohibitively expensive and result in insurance companies being unable to provide and/or underwrite group health policies.

Good Faith Efforts. Despite their good faith efforts, employers will be placed in a "Catch 22" position by the conflicting requirements of §101(a)(1)(d) -- provide "different or separate" programs/activities that are "as effective as [those] provided to others" -- and §101(a)(3) -- a disabled person "shall not be denied the opportunity to participate in such programs or activities that are not separate or different." There should be recognition in the ADA of employer good faith efforts to make accommodations to those with disabilities. It is a well recognized concept under current civil rights law and should be incorporated in the ADA.

Consistency with Existing Law. Section 101(a)(4) seems to adopt the adverse impact theory for proving discrimination against persons with disabilities. It is not clear whether the authors intend to follow or overturn *Alexander v. Choate* as it relates to application of the adverse impact theory of discrimination. The Committee Report should indicate the intent of authors to follow *Choate*, in which Supreme Court Justice Marshall discussed the appropriate application of adverse impact theory.

Defenses. The inclusion in Title I of defenses would seem to limit the defenses that would otherwise be available under the Act. There is a adequate body of law under the Civil Rights and Rehabilitation Acts concerning the defenses available to an employer in cases of discrimination and §101(b)(1) should be deleted. Title II should be amended to provide that the defenses, as well as the procedures and remedies, of the Civil Rights Act of 1964 apply in actions brought under the ADA.

TITLE II – EMPLOYMENT

Coverage. The ADA imposes substantial new burdens on employers, particularly for smaller employers. Coverage under Title II should be phased-in, as it was with the Civil Rights Act of 1964, over a five-year period with the threshold starting at 100 employees the first year and dropping each year. This same approach should be employed with regard to Title IV to provide a reasonable time to make changes to physical and procedural barriers.

Discrimination. The definition of discrimination in §202(a) is inconsistent with that in Section 504. To conform the ADA, an employment action is not discriminatory against an ''otherwise'' qualified individual unless it is ''solely'' based on an individual's disability. The term ''solely'' appears in Section 504 itself. Its absence in the ADA will be interpreted by the courts as a deliberate change in the law.

Job Applications. Section 202(a) uses a new term, ''job application procedures,'' which differs from the language found in regulations issued under Section 504 concerning the application process, ''processing applications for employment.'' Absent some specific reason for changing the language of Section 504 regulations, this raises questions about whether it will require something other than the Rehabilitation Act. This is particularly important because under Section 503, employers are required to follow certain procedures that permit an applicant with a disability to identify themself to the employer and to discuss the possible need for an accommodation. The new wording suggests that the ADA might prohibit or limit these same procedures.

Selection Criteria. Section 202(b) goes beyond Section 504 regulations by limiting an employer's use of qualification standards, tests, etc., that ''identify'' individuals with disabilities, such as physicals, even if the identification doesn't lead to an adverse employment decision. The word ''identify'' must be deleted. Use existing Section 504 language to permit use of selection criteria but insure that the criteria don't discriminate against individuals solely on the basis of their disability unless the criteria are job-related.

Notice. Section 203 requires notices to be ''posted.'' This is somewhat problematic, for example, for a vision impaired person. The requirement that notice be provided in accessible formats would allow flexibility to use the best means available.

TITLE IV – PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTERPRISES

Public Accommodations. As defined in §401(1)(A)(II), a public accommodation includes ''potential places of employment.'' Since there is no limitation based on employment size in Title IV, the definition would extend almost universal coverage to the requirement of accessibility. As with Title II, the scope should be phased-in consistent with the scope of the Civil Rights Act and the ADA as introduced in the 100th Congress.

Readily Achievable. Section 402(b)(4)(A) & (B) introduces a new and undefined term not found in existing law, ''readily achievable.'' A definition of readily achievable should be added to §401.

Retrofitting Existing Structures. Under §402(b)(5), there is no threshold as to when an existing structure must be retrofitted, a process -- limited only by structural impracticability -- that is prohibitively expensive and for which existing tax code provisions (§190) only allow a deduction of $35,000 per year. Further, there is no indication to whom the liability for retrofitting accrues, *i.e.*, the lessee or lessor, and the time-frame of one year for changes is unrealistic. It is unreasonable to require the retrofit of structures that were originally built to code unless the requirement is limited to instances where renovations of a certain magnitude, *e.g.*, 50% of building value, are contemplated. Section 190 of the Internal Revenue Code should be revised, not only in terms of the dollar maximum but also expanded to include all expenditures associated with accommodating those with disabilities.. Finally, a realistic phase-in period must be established together with placing responsibility for retrofitting on the building owner.

Transportation. The requirement that all new vehicles with capacity in excess of 12 passengers be fully accessible ignores reality and fails to provide for paratransit. In most instances, the situations addressed are services such as hotel to airport limos which can readily accommodate the needs of the disabled through on-demand paratransit. Section 402(b)(7)(B) should be eliminated.

Public Transportation. The requirements of §403 to make all intercity transportation fully accessible are not based on any demonstrated need and are unwarranted. Rather than preordain the demise of this sector of the transportation industry, the Department of Transportation or some other agency of the executive or legislative branch of government should be directed to first determine if there is a need that is not currently being met.

Standards. Section 404(c) requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for accessibility standards. In the spirit of building on experience under Section 504, the standards should not impose greater obligations than those contained in standards issued by the American National Standards Institute (ANSI A117.1) and be consistent with Section 504 requirements at 45 CFR 84.23.

Enforcement. As with the enforcement mechanism under Title II, the remedies available under Title IV, §405, should be limited to those available to other protected classes, *i.e.*, Civil Rights Act of 1964 and Rehabilitation Act of 1973.

TITLE VI – MISCELLANEOUS PROVISIONS

Effective Date. As set forth in §606 of the ADA, the Act would become effective on date of enactment and provide no time for employers and other entities to familiarize themselves with its provisions. The Act should have a delay in the effective date of one year and provide for education and technical assistance programs.

Insurance Underwriting. In its present form, the ADA does not directly address insurance and questions or ambiguity may arise regarding its application to the insurance industry, particularly as it concerns employee benefit plans. Section 601 should be amended to make clear that the intent of Congress is not to disrupt the current nature of insurance underwriting. Specifically, the new subsection would (1) clarify that insurers could continue to sell to and underwrite individuals applying for life/health insurance on an individual basis, and (2) reflect, as does the Age Discrimination in Employment Act, the need for employers to establish and observe the terms of employee benefit plans so long as the plans are not a subterfuge to evade the terms of the ADA.

July 1989

DISABILITY RIGHTS WORKING GROUP

Issue Paper #2

THE ADA ENFORCEMENT PROCESS

The enforcement provision in the proposed ADA has been the subject of much criticism because of the manner in which claims of discrimination would be resolved. The focus of the criticism has been the fact that the ADA would incorporate, by reference, the "procedures and remedies" of Section 1981, a post-civil war act aimed at prohibiting and punishing race discrimination.

Unlike the equal employment opportunity laws passed during the past 25 years, Section 1981 was not specifically designed to deal with issues of employment discrimination. Incorporating the procedures and remedies of that statute into the enforcement section of the ADA would create a law which differs in three significant ways from modern EEO laws.

First, Section 1981 provides for litigation as the initial step in resolving a dispute. This is different from modern EEO laws which generally require a litigant to first proceed through an administrative process in an effort to promote voluntary resolution of the matter, with lawsuit being the avenue of last resort.

Second, Section 1981 provides for an award of damages which goes well beyond the back pay damages common to employment discrimination cases under modern laws such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, sex, national origin, and religion. This potential for *windfall damages* tends to discourage litigants from accepting reasonable settlement offers, and it encourages lawyers and their clients to take their chance at trial in the hope of winning a million dollar verdict.

Finally, once in court, Section 1981 provides the option for a *jury trial*, unlike Title VII, which provides for trial before a judge in cases alleging employment discrimination.

THE COURT HOUSE IS THE FIRST STOP

By including section 1981 procedures in the ADA, the drafters provide individuals with a means of circumventing the administrative process which has been critical to the success of Title VII of the Civil Rights Act of 1964, believed by many to be the most effective employment discrimination law on the books. The "procedures" under Section 1981 are simple: A person needs only to walk into the court house and file a lawsuit. This approach is in sharp contrast to Title VII which requires litigants to at least give the administrative process a chance to resolve the dispute before it becomes a lawsuit. The Title VII procedures are built upon the practical notion that the primary intent of an EEO law is the creation of employment opportunities. Thus, under Title VII it is considered preferable to resolve disputes through a prompt, fair conciliation which leads to a job opportunity than to resolve matters through a lawsuit which, years after the incident, provides a windfall monetary verdict as a way of punishing the employer.

THE TRIAL AS A LOTTERY

Recent news reports have highlighted the fact that in certain states plaintiffs are now selling shares to those who wish to "invest" in the lawsuit in the hope of sharing in the plaintiff's verdict or settlement award. The ADA, by including Section 1981 procedures and remedies, would promote a similar "lottery" or "windfall" attitude with respect to litigation of disability discrimination claims.

The Section 1981 remedies would allow a litigant to win a full range of compensatory damages -- such as an award of money for pain and suffering -- as well as punitive damages, designed solely for the purpose of punishing the employer.

Typically, in awarding such damages, the attorney seeking a large damage award asks the jury to envision the injury the plaintiff has had to endure and to then try to calculate a sum that will adequately compensate

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the individual for that injury. The jury may then be asked to award punitive damages, based upon the defendant's overall net worth. The results can be staggering. In a well-publicized case several years ago in Colorado, a jury returned a $17 million verdict against a large retailer in an age discrimination case. That decision was subsequently overturned on appeal. But, nonetheless, it demonstrates the "sky is the limit" attitude which compensatory and punitive damages can bring to employment discrimination lawsuits.

The simple availablility of such damages, and the mere possibility of such a windfall award, is a significant factor long before the case reaches the trial stage. The potential for a windfall encourages the litigant and his or her attorney to reject reasonable settlement offers in favor of "taking a shot" at the brass ring and winning millions of dollars. This is in contrast to the Title VII approach which focuses on creating employment opportunities and providing back pay for an individual who was the victim of illegal discrimination.

SYMPATHY/PREJUDICE IN THE COURTROOM

Under Section 1981 procedures, the case may be decided, and the damages may be awarded by a jury, rather than a judge. While our society recognizes the value which a jury can bring to the process of deciding lawsuits, it is also recognized that in certain situations the facts before a jury can have an emotional impact so strong that it is likely to interfere with the jury's deliberations and prejudice one of the litigants. Clearly, in the area of disability cases, the potential for such prejudice is high. In this area of the law, plaintiffs obviously will be individuals with disabilities. Is it realistic to think that jurors will be able to decide the case without being affected one way of the other by the fact? The only sensible approach is the approach followed by Title VII. In those cases where the parties are unable to work out their differences through the administrative process and end up in court, such decisions are best left to judges who can better view the facts without any cloud of sympathy for or prejudice against the litigants.

July 1989

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September 11, 1989

The Honorable Major R. Owens
Chairperson
Subcommittee on Select Education
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Owens:

Thank you for giving the Leadership Conference on Civil Rights the opportunity to testify on behalf of H.R. 2273, the Americans with Disabilities Act (ADA). As you requested, we are attaching a response to the Working Paper prepared by the Disability Rights Working Group on the ADA, entered into the record during the hearing.

In its Working Paper, the Disability Rights Working Group (DRWG) presented two threshold concerns, the resolution of which it identified as essential to any further consideration of the bill, four generic concerns to the ADA overall, and twenty-two concerns specific to different titles within the ADA. Each of those concerns are addressed below. In cases in which the compromise ADA bill, endorsed by President Bush and passed by the Senate last week, directly addressed the concern raised, that fact has been noted in the response. We believe you will find that all concerns have been adequately met.

THRESHOLD ISSUES

1. DRWG concern: The ADA includes not only those remedies available under Title VII, but also includes provisions for jury trials and compensatory and punitive damages. These latter provisions must be eliminated.

Response: The ADA, as introduced in the House of Representatives, included remedies similar to those available to people who have been discriminated against on the basis of race or ethnicity. Those remedies, as incorporated in

"Equality In a Free, Plural, Democratic Society"

Title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866, included both injunctive relief and jury trials and monetary damages. The ADA simply incorporated similar relief for people with disabilities.

Because of the concerns raised in this area, however, the compromise bill passed by the Senate and endorsed by President Bush (henceforth "the compromise bill") directly addressed this issue. In the compromise bill, the ADA incorporates the remedies of Title VII for purposes of the employment section of the bill. This change meets the concern raised by the business groups.

2. DRWG concern: The ADA provides relief to individuals who believe they are "about to be" discriminated against. These types of "speculative complaints" are not allowed in other civil rights employment laws and should be eliminated from the ADA.

Response: This concern reflects a misunderstanding of the "about to be discriminated against" provision within the ADA. This provision never allowed plaintiffs to present completely "speculative complaints" for which there was no basis. To the contrary, this provision was derived from case law under Title VII, which incorporates the basic concept of anticipatory discrimination and which establishes specific, strict standards that plaintiffs must meet to prove such discrimination.

In any event, in order to address this clear misunderstanding, the compromise bill deleted the term "about to be discriminated against" in the employment section. The accompanying Senate Committee Report explained that, because the case law under Title VII already provided protection against the type of discrimination with which the ADA was concerned (without including any specific statutory provision to that effect), there was no need to include such a specific provision in the employment section. This change meets the concern of the business community.

GENERIC ISSUES

1. DRWG concern: A significant number of employers are already subject to section 503 and 504 of the Rehabilitation Act of 1973. The ADA would impose additional, conflicting obligations on such employers.

Response: This is a misplaced concern. In the employment area, the ADA imposes similar requirements to those imposed under section 504, not conflicting requirements. It is section 503, which governs federal contractors, which imposes an additional requirement--that of affirmative action, which is not a component of the ADA. Such employers can easily comply with the basic ADA requirements, and then continue to comply with the additional affirmative action requirements of section 503, when those apply.

2. *DRWG concern*: The "lack of distinction between intentional and unintentional discrimination" in the ADA will penalize employers for "inadvertent errors" when they try to abide by the new obligations of the ADA. The ADA should cover only "wilful failure" to act.

Response: This concern reflects a misunderstanding of the ADA, and of Section 504 on which it is modeled. Section 504 does not make any distinction between "intentional and unintentional discrimination." Indeed, one of the Supreme Court.cases dealing with Section 504 (*Alexander v. Choate*, 469 U.S. 287 (1985)) expressly noted that discrimination against people with disabilities often did not derive from a "wilful" or "malicious" desire to discriminate, but rather was derived from "thoughtlessness" and "benign neglect." The Court noted that, in order to ensure that the protections of Section 504 did not "ring hollow," Congress intended to cover more than just intentional discrimination. Limiting the ADA to cases in which there is a "wilful failure" to act would remove basic substantive protections that have long been in place under Section 504.

3. *DRWG concern*: There is not sufficient guidance in the ADA regarding the scope and limits of "reasonable accommodation" and "undue burden." The relevant Section 504 regulations should be codified in the law.

Response: The ADA draws directly on the language and standards of Section 504, which offer guidance on the scope and limits of "reasonable accommodation" and "undue hardship" or "undue burden." For example, contrary to the DRWG's assertion in its Working Paper, the provision of reasonable accommodation in the ADA *is* expressly limited to those accommodations that would not impose an undue hardship.

In light of concerns raised by the business community, however, the compromise bill expressly codifies Section 504 regulations defining "undue hardship," in order to give yet further guidance to covered entities.

4. *DRWG concern*: There are not sufficient incentives in the ADA to help entities comply with the law. The tax deduction of $35,000/year permitted under the Internal Revenue Code for removal of architectural barriers should be expanded.

Response: The issue of providing financial assistance to businesses who make changes for physical access is, and should be, separate from establishing in the law the basic civil rights for people with disabilities. For example, Section 504 of the Rehabilitation Act did not provide *extra* financial assistance when it established its requirements. The $35,000/year deduction currently in the tax code is an excellent start for addressing the separate issue of providing assistance to business owners. The Leadership Conference would be happy to work with the business community in exploring other incentives that could be incorporated in future legislation.

The Disability Rights Working Group also listed a number of specific concerns within each title of the ADA. Almost all of these issues were addressed in the compromise bill.

TITLE I--GENERAL PROHIBITIONS

1. Drug/Alcohol Abuse: The compromise bill provides that individuals who are currently using illegal drugs are excluded from the definition of an individual with a "disability" under the ADA. Thus, the ADA presents no impediment to the efforts of employers to establish "zero-tolerance" workplaces. The bill also provides that employers may prohibit the use of alcohol in the workplace, may require that employees not be under the influence of alcohol at the workplace, and may hold individuals who abuse alcohol to the same performance standards as other employees.

2. Overlap Between Titles I and II: The compromise bill deletes Title I and incorporates the relevant provisions of Title I into the remaining titles. This removes any alleged concerns regarding "new, broad and ambiguous" terms that have "no historical interpretation," and creates self-contained titles that are clear and consistent.

3. Discrimination by Assistance: The compromise bill deletes the provision creating liability for assistance to entities that discriminate. The bill adopts the clearer provision of the Section 504 regulations which prohibit methods of administration that "perpetuate the discrimination of others who are subject to common administrative control."

4. Discrimination Based on Association: The compromise bill clarifies that the prohibition of discrimination against those who associate with people with disabilities is limited to situations where the covered entity knows about both the disability and the association. This is identical to the provision that was included last year in the Fair Housing Amendments Act of 1988.

5. Discrimination in Benefits: The compromise bill includes a specific provision stating that nothing in the ADA prohibits or

restricts insurers and employers from offering health plans that are based on traditional underwriting risks and classifying risks. Thus, insurance companies and employers can continue to offer plans that include pre-existing condition clauses and specified medical coverage.

6. Good Faith Efforts: The two allegedly "conflicting" requirements of Title I described by the DRWG have been deleted in the employment section of the compromise bill.

7. Consistency with Existing Law: As requested by the DRWG, the Senate Committee Report explicitly notes that the ADA adopts the disparate impact standard of Section 504, as enunciated by the Supreme Court in Alexander v. Choate, 469 U.S. 287 (1985). See Senate Committee Report, p. 30.

8. Defenses: Under the compromise bill, the defenses section has been deleted from Title I (together with the rest of the title). The defense provision in the employment section has been modified to clarify that the defense listed does not preclude other traditional, legitimate defenses (for example, the defense that a particular job does not exist).

TITLE II--EMPLOYMENT

1. Coverage: The compromise bill adopts a phase-in period as requested by the Administration and the business community. The employment section of the bill does not become effective until 2 years after enactment. Employers with 25 or more employers are covered at that time; there is an additional phase-in period of two more years before employers with 15 or more employees are covered.

2. Discrimination: The Senate Committee Report clarifies that the ADA is simply following the experience of Section 504 regulations and case law in removing the word "solely" from the legislation. See Senate Committee Report, p. 44.

3. Job Applications: The term "job application procedures" covers the same procedures that are currently covered under Section 504. This term, as well as others in this provision, are derived directly from Title VII.

4. Selection Criteria: The compromise bill deletes use of the word "identify" and directly incorporates provisions from existing Section 504 regulations.

5. Notice: The compromise bill provides that notice be posted

"in an accessible format" to applicants and employees, thus giving employers flexibility with regard to individuals who have vision impairments.

TITLE IV--PUBLIC ACCOMMODATIONS

1. Public Accommodations: The term "potential place of employment" has been deleted from the definition of a "public accommodation" in the compromise bill. The term appears only with regard to new construction, to cover, for example, commercial buildings that do not yet have identified tenants at the time of construction.

2. Readily Achievable: At the request of the Administration and the business community a definition of "readily achievable" is included in the compromise bill. Under this definition, removal of architectural or communication barriers is "readily achievable" if it is "easily accomplishable and able to be carried out without much difficulty or expense."

3. Retrofitting Existing Structures: The only retrofitting of existing structures required under the ADA is that which is "readily achievable"--which, as noted above, is now defined in the bill. The compromise bill also further defines the requirements of accessibility when facilities undergo major alterations and renovations.

4. Transportation: The provision regarding purchase, by public accommodations, of new vehicles that can carry in excess of 12 passengers has been modified in the compromise bill to take into account the concerns of the business community. The new provision covers vehicles that can carry in excess of 16 passengers and incorporates a program access element.

5. Public Transportation: The need for accessible public transportation has been demonstrated throughout the process of this bill, through countless letters and testimony. The Bush Administration has stated its strong support for this particular provision of the bill.

6. Standards: It is expected that the Architectural and Transportation Barriers Compliance Board will use and build upon existing federal standards, to the extent they are consistent with the ADA.

7. Enforcement: For the public accommodation section of the ADA, as requested by the Administration and the business community, the compromise bill incorporates the enforcement section of Title II of the Civil Rights Act of 1964, together with pattern or practice suits brought by the Attorney General. Private plaintiffs are not permitted to seek monetary damages.

TITLE VI--MISCELLANEOUS PROVISIONS

1. Effective Date: The compromise bill changes the effective date of the ADA. The employment section becomes effective 24 months after enactment; the public services and the public accommodations sections become effective 18 months after enactment.

2. Insurance Underwriting: The compromise bill includes a specific provision clarifying that the ADA is not intended to disrupt the current nature of insurance underwriting.

We hope these responses will be useful to the Committee as it proceeds to consider H.R. 2273, the Americans with Disabilities Act. As you can see, all of the concerns raised by the Disability Rights Working Group can be dealt with through clarifying language. None of the concerns address the core protections of the bill, which remain in the compromise bill adopted by the Senate.

We look forward to working with you as you move forward with this historic piece of legislation extending protection for people with disabilities.

Sincerely,

Chai R. Feldblum, Esq.
on behalf of the
Leadership Conference
on Civil Rights

Mr. Bartlett. Mr. Chairman, I would also say that it would be of great help to me if the Leadership Conference would submit both to the subcommittee and submit to me either verbally or in writing or just some set of commentary on how you would see those objections or those concerns planning out.

Mr. Chairman, it has been a very helpful hearing and I very much appreciate the chairman's additional time that he offered me.

Chairman Owens. You do have copies?

Ms. Feldblum. Yes, I do.

Chairman Owens. Thank you. Mr. Jontz.

Mr. Bartlett. Mr. Chairman, I also would ask unanimous consent to enter my opening statement which I didn't give into the record.

Chairman Owens. Without objection, so ordered.

Mr. Jontz. Thank you, Mr. Chairman. I want to thank each of you for your helpful statements this morning. Mr. Dart, you noted in your testimony that there has been some opposition expressed to ADA. Perhaps some of the opposition which has been expressed or may be expressed as the result, would be the result of misunderstandings about the bill.

Can you identify for the subcommittee any misunderstandings that you see or hear that would be helpful for us to be aware of, some points that may be raised that you feel are the result of misunderstandings that we should be alert to?

Mr. Dart. One that I have heard is the fear that many existing businesses and especially small businesses maybe owned by families would be forced to do very expensive total renovations of their establishment which would, in effect, put them out of business and, of course, the bill does not require anything of that nature.

It requires new facilities to be accessible and very reasonable and modest changes to be made in present current facilities, present existing facilities, but I find that the major—what I view as the major misunderstanding of the effect of the bill is that which I addressed in my testimony, the fear of massive cost which I think is the fear of the unknown and I would like to state in that regard, that I have now on three occasions sat down with distinguished Task Forces of conservatives and independents, and liberals, Republicans, Democrats for the first time in Texas and now twice on the national level, in situations where some very conservative businessman and economist sat down and studied this issue over a period of months or years and I cannot think of a single individual among that group, including in Texas, the budget director under the Clement's administration.

As you know, Governor Clements was not widely thought to be a spendthrift liberal and his budget director was the vice chair of a task force which I chair and it took him—he was a Ph.D. in economics and he was very conservative and he was sort of the David Stockman of the Clements Administration—it took him about two weeks to become a fan and a total supporter of disability rights because he saw the economists of it and I really believe that the cost factor is the largest area of misunderstanding based on principally unfair, the unknown, because as a businessman, I have made many, many of the accommodations required by ADA and I know other businessmen who have made the public entities and it is simply just good business.

It doesn't cost a lot of money. It results in profit and goodwill and other factors that are not only totally affordable, but totally affordable.

Mr. JONTZ. Thank you. I wonder if I might ask Ms. Feldblum if she would identify any other misconceptions about the legislation that we ought to be alert to.

Ms. FELDBLUM. I think the one that I would identify is really almost a follow up, one that has just been said. I think you will often hear—you have heard it today—that there are things that seem to be new and different and undefined in the bill that it is going to be hard to be understand, hard to implement.

I think one of the basic approaches of this bill is that it does follow from the basic concepts, regulations and caselaw of Section 504 which has been in practice for fifteen years and is very well understood.

It is not an undefined quality drafted bill. It is a very well defined, clearly drafted bill based on the experience of Section 504, so I think that anytime that you hear from someone, this is not defined and I don't understand it, it is worth asking the follow-up questions, "what words don't you understand?" and I think often you will find that those are the words that have been used for fifteen years in Section 504 with very clear guidelines and without a problem for employers such as those who have been under Section 504, those who have done it on their own. I think that is the main thing.

Mr. JONTZ. Thank you very much. Thank you, Mr. Chairman.

Chairman OWENS. Thank you. I would like to ask Mr. Dart if he would take a few minutes to describe the types of materials that are contained in these boxes. I asked that they be placed up here so that the members of the committee and the audience could see the tremendous results of your work on the task force.

I would like for you to take a few minutes to describe the kinds of things that are contained in these boxes?

Mr. DART. These are letters from people with disabilities describing in answer to the call of the Task Force. They are describing discrimination that they have experienced generally and usually expressing their advocacy for solutions specifically to Americans with Disabilities Act.

These are some petitions, a good number of several hundred probably petitions and not several hundred signatures, several hundred petitions of individuals supporting the Americans with Disabilities Act. There are discrimination dairies where people have kept a dairy over a period of time, listing specific discrimination that they have experienced and there are tapes, videotapes, audio tapes with similar evidence.

Chairman OWENS. Again, I would think that in the process of answering some of the detailed questions as we move forward to perfect this bill, much of this material will be useful.

I will direct my staff to certainly make it available to all of the members of the committee. We do intend to index it in a way that would make it fairly easy to use.

Again, I want to thank Mr. Dart for that effort. Finally, I would like to ask any member of the panel if there is any final comment they would like to make as we go forward; not just comments about the bill, but also the process, and about the fact that we have deliberately—in response to the leadership and the disabilities rights community—placed a great deal of emphasis today on the parallel between this effort to pass this bill and the efforts that were launched in the '60s with the civil rights movement.

As we move forward in that process, I welcome any insights, comments, recommendations you have on process as well as on the substance of the bill.

Mr. **DART**. Mr. Chairman, I think that I have pretty well covered what I would like to recommend in my statement. I would like to repeat my congratulations to you and my deepest respect for you on your support for the rights and the empowerment of people with disabilities.

It has been a real privilege to work with you and your magnificent staff, Bob Tate, Maria Cuprill, Pat Laird and others over the past fifteen months.

Chairman **OWENS**. Ms. Feldblum?

Ms. **FELDBLUM**. I would just like to actually repeat what has been said often here this morning already, that people with disabilities do not have the right to be free of discrimination in all areas of society today and the way that people have the right to be free of discrimination because of current laws on the base of race, religion, national origin and et cetera.

It would be critical that this Congress very quickly pass this bill that would finally give that right to people with disabilities.

Chairman **OWENS**. Brother Nelan?

Brother **NELAN**. We feel that the expansion of the civil rights bill to the disability community is really morally correct and we must do all to support it, but truly, though, we find that there are ambiguities in the bill, certain areas that are not clear and certain impositions upon employers as it is drafted, but we feel too that certainly it is going to all be ironed out by the Congress before the bill is enacted.

Mr. **OWENS**. I want to thank all of you for being excellent witnesses. You heard from the chairman of the Democratic caucus, a commitment of the leadership in the House of Representatives to move this bill rapidly.

Come and go with us. We have begun this morning and we look forward to the passage of this legislation. Again, thank you very much.

The joint hearing is now ended.

[Whereupon, the subcommittee hearing ended at 12:30 p.m.]

[Additional material submitted for the record follows.]

REMARKS OF THE HONORABLE STEVE BARTLETT
BEFORE
THE JOINT HEARING OF THE SUBCOMMITTEES ON
SELECT EDUCATION
AND
EMPLOYMENT OPPORTUNITIES
ON CIVIL RIGHTS FOR
INDIVIDUALS WITH DISABILITIES
JULY 18, 1989

Mr. Chairman, I believe there is universal support for extending the civil rights of individuals with disabilities. The current debate centers around **how** -- primarily how fast and in what terms. My statement includes three areas of comment:

> *a review of the record to date on the Americans with Disabilities Act of 1989 (ADA);*
>
> *second, an outline of some concerns that have surfaced;*
>
> *and third, observations on the implications of our failure tc attend to these concerns.*

The Record

The National Council on Disability

The record for extending the civil rights of persons with disabilities has been building rapidly in the last two years. Mrs. Parrino, Chair of the National Council on Disability and Council Members deserve credit, recognition, and thanks for drafting the first Americans with Disabilities Act introduced by Mr. Coelho and Senator Weicker in April of last year, and for beginning the educational process that must accompany such legislation.

The Task Force on the Rights and Empowerment of People with Disabilities

Chairman Owens, in May of last year, asked Justin Dart to Chair the Task Force on the Rights and Empowerment of People with Disabilities. Mr. Dart held public forums in every State, Guam, and Puerto Rico, and heard about the need for the legislation from over 8,000 people with disabilities. Mr. Dart's efforts have clearly established the social, moral, and economic imperative for extending the civil rights of those with disabilities. This imperative was dramatically reinforced and captured on video tape by the joint House-Senate Hearing on the ADA last September.

This Congress

In this Congress progress continues. Early in May of this year, Republican Leader Michel, my colleague Bill Goodling, and I wrote to Mr. Coelho expressing our willingness to work with him toward developing a bipartisan ADA bill. An ADA bill was introduced by Mr. Coelho and Senator Harkin on May 9, 1989, and although the bill did not reflect specific input from a large number of House Republicans, Mr. Coelho did agree to work with us to take a bipartisan bill to the House Floor. The first meeting toward this end was scheduled for May 31, 1989, but was indefinitely postponed with Mr. Coehlo's decision to resign. It is my understanding that Mr. Hoyer, Mr. Bonier, and Mr. Mineta have assumed Mr. Coelho's role in facilitating passage of an ADA on which there would be broad consensus. I look forward to working with our Democrat colleagues to make this happen. I know the business community has the same interest.

The Evolution of Civil Rights for Those with Disabilities

Attention to comprehensive civil rights as a matter of National policy began with the enactment of the Civil Rights Act of 1964. This Act, although it did not protect those with disabilities, laid the ground work, gave us the principles and experiences, that led to the enactment of title V of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by Federal Agencies, recipients of Federal grant funds, and Federal contractors. And thus, just as the Civil Rights Act of 1964 influenced the shaping of title V of the Rehabilitation Act, so should our experience with title V influence our crafting of the ADA to extend civil rights in the private sector for those with disabilities.

Thirty-five States have legislation which prohibits discrimination against and promotes accessibility by those with disabilities, that to varying degrees impact on the private sector. It is important that new Federal policy that would set the acceptable standard for providing civil rights to those with disabilities, take into account such State variation, and provide reasonable and effective ways of achieving nationwide consistency given the scope of the ADA -- private sector employment, services, transportation, public accommodations, and telecommunications, as well as areas of the public sector not now covered by Federal statutes.

President Bush strongly supports the extention of civil rights of individuals with disabilities, and Attorney General Thornburgh, in a recent Senate hearing, reiterated the President's commitment to achieve bipartisan consensus on the ADA.

Concerns

I understand that we are here today to begin the House record on the need to extend the civil rights of individuals with disabilities through legislation, and to establish such legislation as a moral imperative of equal importance to the Civil Rights Act of 1964. May I respectfully suggest that such a parallel between the ADA and the 1964 Act has been drawn and broadly endorsed already. *At issues is not the intent, but the method.*

The issues that have emerged as problematic can be resolved in and with good faith, especially if we keep the central purpose of the legislation in focus -- **ensuring civil rights of the *individual* with disabilities**.

Such an end can be achieved if we accept that establishing such rights:

> includes statutory language which is clear as to its application and its relationship to other laws; and
>
> reflects the recognition that civil rights laws for those with disabilities, by their very nature, impose requirements and burdens that are unique, and therefore should be accompanied by incentives, accommodations, and penalties that are economically viable and effective for ***those who must comply as well as for those who may benefit.***

The ADA as currently drafted does not meet these criteria. I hope the witnesses today will help us explore and establish some practical guidance for ensuring that the final version of the ADA meets such criteria.

Implications

The ADA, as introduced, includes novel legal concepts and ambiguous terms that will cause confusion and promote litigation.

It does not allow for different levels of penalties for intentional and unintentional discrimination.

In employment discrimination cases it allows access to jury trials which could result in substantial monetary awards.

The ADA fails to address the impact of its provisions on other State and Federal laws that prohibit discrimination on the basis of disability.

The ADA mandates a substantial degree of immediate compliance without time for education or preparation.

It fails to provide a flexible waiver system or alternative service system option to accommodate entities that are small in size and the sole source of certain types of service, especially in the area of transportation.

It has been widely viewed to be inconsistent with the drug-free workplace requirements that were enacted last year.

Will the ADA in its present form encourage employers to hire people with disabilities and provide them with reasonable accommodation, or will this version of the ADA cause employers to avoid hiring those with disabilities?

If the ADA is enacted, without amendment, will it take many years to clarify and thus undermine the expectations of those it is intended to benefit? The impact of the current version of the ADA on the individual with disabilities who --

> wants a job,
>
> seeks access to the full range of leisure time activities,
>
> expects to be able to visit any doctor of his or her choice,
>
> wants fully accessible public transportation, and
>
> wants to be able to use the telephone any time and any where --

will not be established by the law, but by the courts in which the principal beneficiaries will be attorneys.

We have it within our power to ensure that the ADA will not cause employers to avoid hiring people with disabilities. We have it within our power to ensure that such individuals will not have to wait for courts to define the extent and conditions of their civil rights. Reasonable methods of correcting the problems with the ADA are available and warranted -- clarifications of terms and conditions, and inclusion of reasonable penalties, phase-ins and waivers.

Conclusion

Since joining Congress in 1983, I have had a sustained interest in promoting increased opportunities of and independence for persons with disabilities. My legislative record is a concrete reflection of that interest. I intend to work for the expansion of civil rights for individuals with disabilities. However, given the unique requirements that must accompany such rights, consideration must be given to their impact on society as a whole. I am fully committed to educating that society and holding it accountable for the civil rights due to individuals with disabilities, but I am equally committed to working for laws that do not turn society away from those with disabilities through the use of excessively punitive penalties, unclear standards and conditions, or requirements that offer no flexibility, incentives, or relief in certain circumstances.

Thank you, Mr. Chairman.

Nick Rahall

REMARKS
HONORABLE NICK J RAHALL, II (D-WV)

JOINT HEARING, SUBCOMMITTEES ON SELECT EDUCATION
AND EMPLOYMENT OPPORTUNTIES

RE: H.R. 2273, AMERICANS WITH DISABILITIES ACT
TUESDAY, JULY 18TH, 1989

Thank you Mr Chairman for this opportunity to say a few words on behalf of the Americans With Disabilities Act.

I was a cosponsor of the ADA bill last year, and am pleased to cosponsor the modified ADA during this Congress.

This bill has come to be known a the "BILL OF RIGHTS" for the Disabled, and when enacted will finally permit 43 million disenfranchised Amerians to participate in everything this great nation has to offer.

Imagine! A bill to allow the hearing and speech impaired to use telephones in such a way that they, in times of danger, can actually dial 911 like the rest of us!

What a pity that it takes special legislation to make this into a reality.

Imagine a bill that will, if enacted, put millions of the disabled to work, and make them proud, contribuiting, taxpaying citizens -- instead of living off the dole because some folks would rather they were out of sight and out of mind.

What a pity that such legislation is necessary in this day and time, more than 20 years after the so-called Civil Rights Statutes were enacted.

Imagine a bill that will require restaurants to serve people in wheelchairs and with other disabilities, equally as they serve others.

Imagine a bill to require business and public transportation to accommodate

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the disabled among us, in the work place and on buses, planes and trains.

What a pity that it takes special legislation, in this year of 1989, to make sure that this is so.

Just imagine, if this bill is enacted, all new buildings to be constructed in the future, including theaters, supermarkets, churches, medical offices and shops, would have to be accessible to the disabled.

What a pity that it requires Congressional action to open the doors that you and I take so for granted, for 43 million Americans who thought just being American was all that was necessary - until they were disabled.

It is time -- not just to unlock the doors of discrimination, but to take them off their hinges and toss them aside.

Are there provisions in this bill that many disagree with -- including the President and the Attorney General of the United States -- the answer is "yes," but they still uphold and support its intent.

Are there those that say it is too costly? Yes, but since when has equality for all Americans been a question of Cost?

And speaking of costs, how much a year have America's taxpayers been paying to keep the disabled out of our workforce, and out of our restaurants and other public places, and off transportation, and without the ability to communicate even in life-threatening situations?

They have been paying billions a year in lost profits that might have been generated by having 43 million more Americans clamoring for a spot in the work place, paying taxes and yes, turning into the very consumers that business spends so much time and money wooing.

They have been paying billions of dollars for food, clothing, shelter, medical and other basic services so that disabled persons would be kept on welfare and out of everybody's way; anything goes and nothing is too expensive to stop their clamoring for jobs and other human rights.

What a pity.

Disabled Americans, Mr. Chairman, do not want to be on the dole. They don't want our charity. They want equal rights to jobs, to transportation, to public places and services, and to be able to communicate with others.

From what I have read recently, in newsletters and other publications, it appears that a great wave of opposition is gathering like a storm on the horizon - and businesses great and small are making dire predictions as to the unconscionable costs, and how it will drive them out of business and into the bankruptcy courts if they have to defend themselves against this legislation should it pass and the disabled of America begin to demand their equal rights.

I firmly believe, Mr. Chairman, that we can surely reach agreement on this legislation in a spirit of compromise and comity, so that it poses no threat to anyone, but that it does pose an opportunity for all of us to reach out and embrace disabled Americans, and welcome them to the mainstream of American life.

[illegible]

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

[illegible]

July 20, 1989

Brother Philip Nelan
Director of Handicapped Services
Projects for Industry Program
National Restaurant Association
1200 Seventeenth Street, N.W.
Washington, DC 20036

Dear Brother Philip:

Thank you for appearing before the Subcommittee to testify with regard to the employment of the disabled in the restaurant industry and the Americans with Disabilities Act.

Your comments and prepared statement will become an important part of the hearing record. Unfortunately, the questioning of your panel was somewhat abbreviated. I would, therefore, appreciate your responding, in writing, to the following two questions by August 2, 1989, the date the hearing record is due to close:

(1) Your industry obviously has had a great deal of experience--and success--in employment of the disabled. What kinds of problems, if any, has the industry encountered and dealt with in bringing the disabled into the workforce?

(2) You noted in the closing pages of your testimony that "civil rights-type legislation such as the Americans with Disabilities Act will not be particularly helpful to millions of handicapped people if it is not accompanied by an increase in the resources necessary to train and place these individuals in suitable jobs." Please expand on this point. Who would you suggest should provide this increase? What level of resources are you talking about, and what exact purpose would they be put?

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Brother Philip Nelan
Page 2
July 20, 1989

Should you have any questions, feel free to call either Pat Morrissey (225-7101) or Randy Johnson (225-3725).

Thank you, again, for appearing before the Subcommittee.

Sincerely,

STEVE BARTLETT
Ranking Republican
Select Education Subcommittee

SB:rkj

Leading the Foodservice/Hospitality Industry
1200 SEVENTEENTH STREET NW WASHINGTON DC 20036-3097 202/331-5900 FAX 202/331-2429
NATIONAL
RESTAURANT
ASSOCIATION

Supplement
to

National Restaurant Association's Testimony
July 18, 1989

Before the House Sub-Committee on Labor and Education

Answers to Questions

1. What problems to you encounter in promoting the program?

The vastness of the hospitality industries precludes bringing the program for employing workers with disabilities to all but segments of the industry, significant as they are, except for continuous vigorous promotion of the program. The ideal aim is to have established firm relationships between the industry and all its parts and public and private training agencies.

The size and complications of corporate organizations in many instances prevent eliciting response for inaugurating programs from the important echelons of administration. Where corporate policy from the top down has embraced the program, still the appropriate personnel, managers, etc. in lower echelons must be ready to implement it.

Problems of these kinds multiply as efforts reach to involving franchisees, identifying them and making contact with the franchisee. Though the membership of the Association forms the care of the industry and is "informed" by publications, seminars, and through organizational channels, a large segment of the 650,000 food and beverage units remain to be converted.

On the side of rehabilitation services, whether public or private, training programs for job-placement counselors need constant renenforcement. In response to inquiries about approaching industry, we have published a "how-to" pamphlet, Marketing Placements and distributed 20,000; they are still in demand.

Great organizations in the training sector stand for the most part independently: -- state vocational rehabilitation services, Association of Rehabilitation Facilities, National Association of Retarded Citizens, and hundreds of local training agencies. Stronger coalitions in local areas among them with the state divisional offices to coordinate training and placement would give industry better means of contact with sources of workers and probably create bonds of relations.

For purposes of evaluation, a means of discovering the actual numbers of disabled persons placed annually in various industries nationally through both the public and private training/placement programs needs to be created.

RSA's efforts at setting up evaluation "standards" and "indicators" need to look closely into industry's participation in PWI. The same overall "standards" and "indicators" for direct training and placement are not compatible with industry's liaison role.

2. What would you suggest this program do to increase training and placement in competitive employment of persons with disabilities?

The 6 to 8 million persons with impairments of working age, not trained and a large percentage not working, indicates that better and expanded programs already existing should be tremendously enhanced.

Projects With Industry directly targarts employment of persons with disabilities. In its twenty year history the program has minimal federal funding, totalling about $4 million in 1968 to about $17 million FY 1990. Yet it has been a most cost-effective program that statistics show for every dollar spent $18 is earned and taxable. This item of the budget, if increased by increments annually to $100 million would make considerable impact upon unemployed disabled people and would enhance state vocational rehabilitation services.

In an increase of the annual budget to $100 million incrementally would allow a set-aside of a percentage to invite industry initiatives and leadership in undertaking the PWI program in replication of the National Restaurant Association's demonstration these last eleven years. Among such industry associations, the following might be in perspective:

Food Marketing Association
Retailer Owner Cooperatives
American Hotel-Motel Association
Single Unit Supermarket Operations
Travelers Institute of America Association
Supermarket Grocery and Convenience Stores
Drug Stores and Chains

General Merchandising/Variety Chains &
Specialty Stores
Specialty Stores (Women's, Men's Children's
Wear)
Department Stores
Home Furnishings

To be more effective such replicated entities might form a collaborating organization, such as the National Association of Industries for the Employment of Persons with Disabilities, and would have as starters other currently conducted industry PWI programs by Electronic Industry Foundation, The International Association of Machinists Airspace Workers, AFL-CIO's Human Resources Development Institute, American Horticultural Training Association, IBM Corporation.

Development of multiple industries' roles in the PWI program appears to be a very promising resource from which to tackle the problem of untrained/unemployed millions of people with disabilities.

Other federal programs which are effective in the employment of mentally and physically disabled persons are: Section 190 of the Internal Revenue Code; it should be expanded to include not only the costs of removing physical barriers, but also include expenses to provide essential equipment for persons to perform the job.

Also, the Target Job Tax Credit (TJTC) Act should be enacted for longer periods than a single year, if not permanently, to give employers a consistent incentive to hire people with disabilities.

Too, the Job Training Partnership Act in its current revisions should make more inclusive provisions for training persons with disabilities.

Out of existing state vocational rehabilitation services, provisions for training job-coach counselors, might be introduced. This body of professionals would be very helpful to small businesses in overseeing the disabled person successfully qualifying for the job.

3. Could you expand a little on your concerns about elements in the ADA as it now stands.

Our concerns are summarized in the submitted copy of Working Paper #1 of the Disability Rights Working Group.

McDonald's Corporation demonstrates through its well-developed hiring practices that the scope of 504 affords thorough protection to persons with disabilities in the workplace. Existing requirements under 504 raise no concerns to the employer and need no further prescriptions of law to secure persons with disabilities against discrimination by an employer. In light of McDonald's non-concerns experiences for years in successfully hiring persons with all sorts of disabilities, may we supplement the National Restaurant

Association's testimony by presenting a copy of McJobs: Opening New Doors for Disabled People. The book is a comprehensive guide to McDonald's management. It presents McDonald's philosophy in hiring and the substance for a thorough orientation and methodology for training McJobs candidates under a job-coach.

Also submitted herewith are copies of the National Restaurant Association's pamphlet, Marketing Placements, addressed to job-placement counselors of disabled job-seekers.

LCCR

Leadership Conference on Civil Rights

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*Deceased

September 19, 1989

The Honorable Major R. Owens
Chairperson
Subcommittee on Select Education
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Owens:

In our September 11th letter, we responded to the concerns raised by the Disability Rights Working Group in its Working Paper regarding H.R. 2273, the Americans with Disabilities Act (ADA). As you requested, we are also responding to two additional questions addressed to Brother Philip Nelan of the National Restaurant Association by Representative Steve Bartlett.

Representative Bartlett's first question concerned the type of experience and success the restaurant industry had had in bringing disabled people into the workforce. Brother Nelan responded by discussing, among other things, the need for ensuring that personnel and managers at different echelons implement corporate policy, and the need for stronger coalitions in local areas among different programs and agencies to coordinate training and placement.

We agree that effective implementation of policies regarding hiring of individuals with disabilities, and coalition building, are important elements of an effective employment program. Indeed, we believe that passage of the ADA will be helpful in ensuring that forward-looking corporate policies regarding hiring of people with disabilities will be effectively implemented by personnel at all levels. In addition, we believe passage of the ADA can be helpful in supporting coalition building among different agencies and programs, as they all work together to enforce and implement the new law.

39th ANNUAL MEETING • MAY 9, 1989 • WASHINGTON, D.C.
"Equality In a Free, Plural, Democratic Society"

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Representative Bartlett's second question focused on what type and level of resources would be useful in training and placing people with disabilities in various jobs. Brother Nelan responded that the Projects with Industry (PWI) program should receive annual federal funding of $100 million, that industries should be encouraged to contribute to and replicate the PWI project, that Section 190 of the Internal Revenue Code should be expanded to include expenses for providing reasonable accommodation, that the Target Job Tax Credit should be enacted for longer periods than one year, and that the Job Training Partnership Act should incorporate more inclusive provisions for training people with disabilities.

The Leadership Conference on Civil Rights does not currently have an official position on each of these particular suggestions. We do believe that efforts should be made to enable people of all minorities, including people with disabilities, to achieve their full employment potential. The suggestions offered by Brother Nelan appear to follow this basic principle, although we have not analyzed each one in depth.

We hope these responses are useful to you and the Committee as you continue your important work on this major piece of legislation.

Sincerely,

Chai R. Feldblum

Chai R. Feldblum, Esq.
for the Leadership Conference
on Civil Rights

ADO
Advocates for Disabled Ohioans

June 27, 1989

Representative Major Owens, Chairman
Subcommittee on Select Education
House Office Building
Washington, DC 20515

Dear Mr. Owens:

Thank you for co-sponsoring the Americans with Disabilities Act, HR 2273. Passage of this Act will help ensure the civil rights of people with disabilities.

Attached is testimony to the Subcommittee on Select Education.

Sincerely,

Alice Sporar

Alice Sporar
Advocacy Correspondent
ADO

1767 Longwood Cleveland, OH 44124

ADO
Advocates for Disabled Ohioans

TESTIMONY ON THE AMERICANS WITH DISABILITIES ACT - HR 2273

The Americans with Disabilities Act, HR 2273, would prohibit discrimination toward people with disabilities in both the public and private sectors in the areas of employment, housing, public accomodations, transportation, and communications. The Act would strengthen existing laws, outline compliance guidelines, and provide enforcement procedures.

Presently, people with disabilities have no legal recourse when they are discriminated against in the private sector. A movie theater can refuse to sell a ticket on the basis of disability. An employer can refuse a job to a qualified person, or pay that person less, on the basis of disability. Buildings continue to be built without access to disabled people even though there is no additional cost to design buildings for all people.

Personally, I know of a developmentally disabled man who has worked for a religious institution for over twenty years at a wage barely above the minimum wage. Others in the same position make more money. The man is afraid of retaliation if he complains.

I have been told that I could not enter a certain movie theater if I didn't transfer from my wheelchair to a regular seat. In an emergency, without my wheelchair, I wouldn't be able to exit the theater.

When traveling across the country last year, it took two hours to find an accessible lavatory.

A hotel where I planned to stay had no ramp to the eight inch curb. There I sat, unable to enter the hotel.

1767 Longwood Cleveland, OH 44124

When I was interested in purchasing a mobile home, I told the mobile home park manager that I needed to install a porch lift or a ramp. I was told there were no homes for sale at that time. A few minutes later, I called anonymously and asked if there were any homes for sale and was told that there were.

When I was ready to start high school, I wanted to attend a private school, only to be told that the halls weren't wide enough to accomodate a wheelchair!

Ohio has a civil rights law which prohibits some types of discrimination, but many states do not, and discriminatory practices continue to keep people with disabilities out of the mainstream of society.

Passage of the Americans with Disabilities Act without compromising amendments is vitally important in order to ensure the basic civil rights of people with disabilities.

Submitted by,

Alice Sporar

Alice Sporar
Advocacy Correspondent
ADO

June 27, 1989

FIELD HEARING ON AMERICANS WITH DISABILITIES ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

HEARING HELD IN HOUSTON, TX, AUGUST 28, 1989

Serial No. 101-56

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FIELD HEARING ON AMERICANS WITH DISABILITIES ACT

MONDAY, AUGUST 28, 1989

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Houston, TX.

The subcommittee met, pursuant to notice, at 9:00 a.m., in the Gymnasium, Metropolitan Multiservice Center, Houston, Texas, Hon. Major Owens [Chairman] presiding.

Members present: Representatives Owens, Bartlett, and Payne.

Staff present: Maria Cuprill, Bob Tate and Randy Johnson.

Mr. Owens. Please be seated.

The hearing of the Subcommittee on Select Education of the Education and Labor Committee is now in session.

I yield to Mr. Bartlett for an opening statement.

Mr. Bartlett. Thank you, Mr. Chairman. I appreciate the courtesy of letting me open, and I want to welcome everyone here. I do have an opening statement and some observations about both the legislation and the likely prohibition of discrimination against persons with disabilities in this legislative session before Congress. That prohibition is long overdue, and I want to begin with a statement that I do support the passage of legislation that prohibits discrimination against person with disabilities.

[Applause.]

It should have been done some time ago. It can be done during this session of the Congress, and can be done in some very specific legislation. And it is long overdue that we extend civil right protections to persons with disabilities.

There have been known enforceable actions in a couple of sessions of Congress, and I would like to list them. There have been laws examined that have been congressional in nature and have not been a result of anyone in particular advocating legislation. That, frankly, has not been a part of the problem.

But there has been problems in Congress and there have been problems in Washington, and that is why I think it is especially significant that we are having a field hearing. We ought to have more of them, and particularly we are having a field hearing in Houston to learn some details of the need for that legislation and the specifics of that legislation and what should be in the legislation.

There has been legislation introduced in this session of Congress in the House of Representatives, as well as in 1988. Some of the specifics of that legislation in the House version that has been introduced. I have read the information and looked at the impact, I have had some real problems with it. But I have to tell you that as of today that legislation has come a long way.

I believe that the goal of the legislation should be to prohibit discrimination, should be to provide remedies for people and should not be to invite lawsuits or class actions or other kinds of damages, but simply to allow people to be independent to get jobs, to go to a restaurant, to go to movies, to have transportation, and to have housing.

There are a lot of people who are responsible for us being here today and for being able to say that in fact there will be civil rights legislation for persons with disabilities this session.

They include my colleague who has come to Texas for this the first field hearing on the ADA, and the first hearing since the Senate passed its legislation in the subcommittee shortly before we adjourned, Major Owens of New York. He has been a real champion in this legislation, a real hero, and will be so as we proceed.

Likewise, I have to say that one of the other heros, as yet somewhat unsung, has been the President of the United States, a fellow Texan and a Houstonian. President Bush committed to this legislation during the campaign, and more significantly, the day before he was sworn in as President of the United States, in January of this year. He has instructed his White House staff to directly negotiate the terms of the legislation to the point that it is now negotiated to a point that he had endorsed, and the legislation has moved through the subcommittee of the Senate.

I particularly want, just on a personal note, I know so many people here and I have worked with so many here, but I do want to single out the individual who has been instrumental in organizing this hearing and making certain that this committee of Congress hears from the diversity of the disability groups and the diversity of the employment, the accommodations and transportation and the telecommunication industries here today, and that is Lex Frieden.

[Applause.]

Lex is the premier organizer for this event, and for disability actions over the course of the last several years in this country. I would like on a personal level acknowledge that in many ways Lex was the originator and author of legislation which I had introduced a few years ago and which did get passed to streamline and authorize Section 1619 of the Social Security Act. Lex, through the National Council on the Handicapped, helped to draft the original legislation for that, and subsequently has helped to draft and provide the impetus to the legislation that I also believe will pass this session, and that is to extend 1619 privileges to SSDI recipients, and that also will pass this session of Congress, largely thanks to many of you as well as to Lex Frieden to this particular subcommittee.

The witnesses that are going to testify here today have been very much of a part of a process. And thus, their testimony is quite significant. What they have to say, Mr. Chairman, is important for two reasons.

First, the witness list are witnesses who speak from experience, from real world experience in dealing with these issues. And second, these witnesses will speak on the issue of potential impact of the ADA on local governments and communities and employers.

The debate over the ADA has, until this month, given little attention to this issue except for public transit. Beginning with this hearing, now that the legislation is in a form that will likely move through Congress, we will focus on the substance and the specifics of precisely what the legislation says, what it should say, because we are going to write it in the law. And so we will focus on substance thoughtfully and specifically so that the intent of the ADA will be converted into reality.

And one more acknowledgement, Mr. Chairman, some are represented here, but I would also like to acknowledge that the original ADA civil rights protection legislation was drafted some years ago by the National Council on Disabilities. Mrs. Sandra Parrino, who has testified before our subcommittee in Washington, as well as Kent Wadren, who is here, were quite instrumental in drafting that legislation several years ago and obtaining the original authorship by Mr. Coehlo from California, and Senator Weicker of Connecticut.

Mr. Chairman, during the course of the hearing, I will be asking a number of questions of the witnesses—how they believe the legislation should work, in an ideal world what should be the remedies, what should be the provisions and what should be the level of specificity.

I do want to say to the witnesses that if I ask a question of which you are not knowledgeable, just say so, and we are accustomed to that in Congress. We members of Congress are knowledgeable on a whole lot of things. That is why we ask so many questions.

But I do want to emphasize that the legislation that I think we will end up considering will be similar to the legislation that was passed by the Senate subcommittee, a legislation that was negotiated in large part between the White House and Congress over the course of the last several months.

And one last, I would suggest, at least in my mind, that there should be three basic principles for whatever legislation that we end up with.

In addition, the first principle is that we should pass it in this session of Congress. It is long overdue and it is a good way to begin the 1990s; the three principles.

The first principle should be, it should be a principle of promoting independent living. This is not legislation, nor should it be, designed to increase public benefits. Independent living such as increasing the opportunities for private employment, for transportation, the right of people to be able to enjoy life, the right to buy a meal in a restaurant, to use the bus, the train or plane, and to use the various facilities that are available to the rest of the world.

Second, the legislation should track existing laws that already work. We have a whole body of disability legislation on the book and civil rights legislation such as the 1964 Civil Rights Act of 1964. The Title VII of the 1964 Civil Rights Act works well with regard to employment. It is a well established body of law, and as much as possible we should track those remedies in that law because everyone knows what it means and what it does.

We should also, as much as possible, track Section 504 and Section 503 that apply to recipients of Federal money.

And third, the remedies for legislation should be simple, should be easy to understand, and should be non-litigious. They should convert discrimination into opportunity. The goal should be to end discrimination rather than to provide large amounts of lawsuits or punishment for wrongdoings.

The goal is to eliminate discrimination and to provide people opportunities to move into mainstream life, particularly in employment and accommodations, and that should be the be goal also of the remedies.

Mr. Chairman, I do appreciate the extra time for some degree of elaboration. I am looking forward to a very productive hearing. And as a Texan, I want to welcome you from New York, and Mr. Payne from New Jersey, here today. We do like our Texas hospitality. I understand that you also very much enjoyed the Houston Astros, and I will be sure not to tell the Mets or the Yankees of your enjoyment of that game.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Steve Bartlett follows.]

OPENING STATEMENT
OF THE HONORABLE STEVE BARTLETT
BEFORE
THE SUBCOMMITTEE ON SELECT EDUCATION
FIELD HEARING ON
THE AMERICANS WITH DISABILITIES ACT OF 1989
HOUSTON, TEXAS

AUGUST 28, 1989

Mr. Chairman, I welcome this opportunity to participate in a hearing on the Americans with Disabilities Act, especially here in Houston among old friends and fellow Texans who share my commitment to civil rights for individuals with disabilities.

These Texans know first hand the personal and societial consequences of such rights -- both when extended and when denied. This building is an excellent example of the consequences of rights extended. Recent action of the Houson transit authorities to purchase new buses that are fully accessible is another example. My good friend Lex Frieden and many others have been pushing Houston, and the rest of Texas to become a model for the rest of the country.

In this process they have learned and taught others that civil rights take concrete actions -- actions that not only change the environment, but open the mind.

The witnesses who will testify today have been part of the process. What they have to say is important for two reasons. First, they will speak from experience. Second, these witnesses will speak on the issue of the potential impact of the ADA on local goverments and communities. The debate over the ADA thus far has given little attention to this issue, except for public transit. We need to focus on substance -- clearly, thoughtful, and specifically so that intent underlying the ADA can become law this year.

I believe there is universal support for extending the civil rights of individuals with disabilities. The current debate centers around **how** -- primarily how fast and in what terms. My statement includes three areas of comment:

a review of the record to date on the Americans with Disabilities Act of 1989 (ADA);

second, an outline of some concerns that have surfaced;
and third, observations on the implications of our failure to attend to these concerns.

The Record

The National Council on Disability

The record for extending the civil rights of persons with disabilities has been building rapidly in the last two years. Mrs. Parrino, Chair of the National Council on Disability and Council Members deserve credit, recognition, and thanks for drafting the first Americans with Disabilities Act introduced by Mr. Coelho and Senator Weicker in April of last year, and for beginning the educational process that must accompany such legislation.

The Task Force on the Rights and Empowerment of People with Disabilities

Chairman Owens, in May of last year, asked Justin Dart to Chair the Task Force on the Rights and Empowerment of People with Disabilities. Mr. Dart held public forums in every State, Guam, and Puerto Rico, and heard about the need for the legislation from over 8,000 people with disabilities. Mr. Dart's efforts have clearly established the social, moral, and economic imperative for extending the civil rights of those with disabilities. This imperative was dramatically reinforced and captured on video tape by the joint House-Senate Hearing on the ADA last September.

This Congress

In this Congress progress continues. Early in May of this year, the Republican Leader, Mr. Michel and I wrote to Mr. Coelho expressing our willingness to work with him toward developing a bipartisan ADA bill. An ADA bill was introduced by Mr. Coelho and Senator Harkin on May 9, 1989.

House action on the ADA has been slow; first because four committees have joint jurisdiction over the legislation, and second, because of Mr. Coelho's resignation. We have had two hearings in the House before today, but neither concentrated on the specific substance of the ADA, but rather its general intent.

The Senate had four hearings on the bill, and began working closely with the President in July on a bipartisan version of the ADA. The President and Senators achieved consensus, and in late July, an amended ADA bill was unanimously reported out of the Senate Human Resources Committee.

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The Evolution of Civil Rights for Those with Disabilities

Attention to comprehensive civil rights as a matter of National policy began with the enactment of the Civil Rights Act of 1964. This Act, although it did not protect those with disabilities, laid the ground work and gave us the principles and experiences, that led to the enactment of title V of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by Federal Agencies, recipients of Federal grant funds, and Federal contractors. And thus, just as the Civil Rights Act of 1964 influenced the shaping of title V of the Rehabilitation Act, so should our experience with title V influence our crafting of the ADA to extend civil rights in the private sector for those with disabilities.

Thirty-five States, including Texas, have legislation which prohibits discrimination against and promotes accessibility by those with disabilities. These State laws to varying degrees impact on the private sector. It is important that new Federal policy that would set the acceptable standard for providing civil rights to those with disabilities, take into account such State variation, and provide reasonable and effective ways of achieving nationwide consistency given the scope of the ADA -- private sector employment, services, transportation, public accommodations, and telecommunications, as well as areas of the public sector which to a large extent is already covered by other Federal statutes.

Thus, as we set about drafting the final version of the ADA, we should strive to develop standards that are as much as possible uniform or at least consistent, so that none of us needs to spend time in court in order to clarify what such standards mean in the real world away from Washington, D.C.

I will work for such standards and I will work to ensure that they apply to the Congress og the United States!

Concerns

Many concerns have been raised about the meaning of specific concepts in the ADA. Fortunately a great number have been resolved in thw bill marked up by the Senate. To expedite consideration of the ADA in the House, I believe strongly that the House should address the remaining issues that were not resolved by negotiations between the Senate and the President.

These remaining issues can be resolved in and with good faith, especially if we keep the central purpose of the legislation in focus -- **ensuring civil rights of the *individual* with disabilities**.

Such an end can be achieved if we accept that establishing such rights:

> includes statutory language which is clear as to its meaning and its effect on other laws; and
>
> reflects the recognition that civil rights laws for those with disabilities, by their very nature, impose requirements and burdens that are unique, and therefore should be accompanied by incentives, accommodations, and penalties that are economically viable and effective for ***those who must comply as well as for those who may benefit***.

The ADA as currently drafted, as well as amended by the Senate, does not meet these criteria. I hope the witnesses today will help us explore and establish some practical guidance for ensuring that the final version of the ADA does meet such criteria.

Implications

The ADA as amended by the Senate, still includes legal concepts and ambiguous terms that will cause confusion and promote litigation, such as "readily achievable" and the use of the phrase "potential places of employment" in the part of the bill dealing with public accommodation. Quite simply, what do these terms mean to an individual with a disability or to those in business? Unless further clarified, they do not ensure rights, but such terms do increase legal liabilities.

The ADA, as amended, still does not allow for different consideration and treatment for intentional and unintentional discrimination, especially in employment. I believe that employers that knowly discriminate on the basis of disability should face graver consequences than those that do not.

The ADA, as amended, fails to address the impact of its provisions on other State and Federal laws that prohibit discrimination on the basis of disability. Thus, the ADA, as amended, would allow the possibility of multiple law suits, based on differing standards, using the same set of facts.

The ADA fails to provide a flexible waiver system or alternative service system option to accommodate entities that are small in-size and the sole source of certain types of service, especially in the area of transportation.

At this point we need to ask ourselves some bottom line questions.

Will the ADA in its present form encourage employers to hire people with disabilities and provide them with reasonable accommodation, or will the ADA cause employers to avoid hiring those with disabilities?

If the ADA is enacted, without further amendment, will it take many years to clarify and thus undermine the expectations of those it is intended to benefit? The impact of the current version of the ADA on the individual with disabilities who --

> wants a job,
>
> seeks access to the full range of leisure time activities,
>
> expects to be able to visit any doctor of his or her choice,
>
> wants fully accessible public transportation, and
>
> wants to be able to use the telephone any time and any where --

will not be established by the law, but by the courts in which the principal beneficiaries will be attorneys.

We have it within our power to ensure that the ADA will not cause employers to avoid hiring people with disabilities. We have it within our power to ensure that such individuals will not have to wait for courts to define the extent and conditions of their civil rights. Reasonable methods of correcting the problems with the ADA are available and warranted -- clarifications of terms and conditions, and inclusion of reasonable penalties, phase-ins and waivers. And on these latter points -- phase-ins and waivers -these can be constructed in such a way that they are time -limited and conditional, and not limitless and automatic.

Conclusion

Since joining Congress in 1983, I have had a sustained interest in promoting increased opportunities of and independence for persons with disabilities. My legislative record is a concrete reflection of that interest. I intend to work for the expansion of civil rights for individuals with disabilities. However, given the unique requirements that must accompany such rights, consideration must be given to their impact on society as a whole. I am fully committed to educating that society and holding it accountable for the civil rights due to individuals with disabilities, but I am equally committed to working for laws that do not turn society away from those with disabilities through the use of unclear standards and conditions, or requirements that offer no flexibility, incentives, or relief in certain circumstances.

Thank you, Mr. Chairman.

Mr. **Owens**. Thank you, Mr. Bartlett.

Before commencing the opening statement, I would like to point out to the audience that hearings of this committee seldom begin as the one began today, and we certainly appreciate the very special acknowledgment expressed in that opening. We understand that the the trumpet fanfare was written for this special occasion. We do appreciate that, as we appreciate the tremendous amount of hospitality that has been shown to members of the subcommittee.

We also understand that this hearing is a part of a larger event which is called a celebration. That is also very unusual and we appreciate that.

I am pleased to respond to the invitation of the Houston community to hold this Subcommittee on Select Education hearing here today on H.R. 2273, The Americans with Disabilities Act of 1989. This is the second time we have held a field hearing on this bill outside of Washington.

During the first field hearing in Boston, Massachusetts, we heard testimony from over 90 witnesses. And although it is not part of the plan to hear from as many witnesses today, it is important that we continue to extend the geographical participation base of this bill in order that the subcommittee can respond to the national dimensions of the proposed legislation.

All over the world—from the townships of South Africa and the shipyards of Poland to the students in Tianeman Square in China—people who aspire to a better life look to the image of American democracy as their guiding star. As Americans, it is our duty to work harder to guarantee that this image more and more becomes reality. At the same time, we must work harder to maintain our leadership role, to continually extend the parameters of our democracy, to expand the scope of civil and human rights enjoyed by all of our citizens.

The American civil rights movement is not an historical curiosity but a living, active force in our democracy that has allowed the Americans With Disabilities Act to come to full fruition. Whenever we resolve to fully use the Federal Government's authority and resources to better protect and expand the rights of any group, we stimulate the processes of empowerment within that group.

The release and recognition of new skills and new talents and new leadership will greatly enrich the fabric of our entire society. The nation's wealth of human resources will be greatly increased by this empowerment of people with disabilities.

The parallels with the civil rights movement constitute similarities that do not frighten, but instead inspire the 43 million strong community of people with disabilities residing in every state and spread through every congressional district in the nation. Forty-three million citizens in democratic America do not need to beg for anything.

The Americans with Disabilities Act is a product of a new movement within the disability community. The spirit of revolution of deaf students at Gallaudet University is embodied in this act. This is a noble document which does not beg. Strong demands are made here. A noble trumpet is sounded in this act.

I want to congratulate the President and the Democratic leadership for their wisdom in forging a bipartisan bill. Our task now is to enrich and supplement what has been done. Today, we will be hearing about the progressive efforts of the Houston community in promoting greater access for all citizens and the relationship between these activities and the proposals set forth in the Americans for Disabilities Act.

We had hoped to have Congressman Mickey Leland in attendance at this morning's hearing when it was first planned. He was a true champion of human rights who fought for opportunity, hope, dignity and freedom for all people everywhere in the world. We mourn his loss as well as the loss of the other dedicated people who died in the ill-fated humanitarian mission to Ethiopia.

I would like to conclude by thanking the citizens of Houston again for their kind hospitality. I would especially like to recognize the contribution of—and associate my remark with the remarks of Congressman Bartlett—about Dr. Lex Frieden, former Executive Director of the National Council on the Handicapped, under whose direction the council issued the report, "Toward Independence," which led to the comprehensive legislation embodied in the Americans with Disabilities Act. I also want to recognize the tremendous efforts of the disability community, and all others, who helped to organize this hearing.

I would like to further acknowledge the presence of another great Texan, who is associated with the effort to promote this bill. He is probably the champion or the super volunteer in all of America, Justin Dart.

[Applause.]

Justin Dart is the chairman of the Task Force on the Rights and the Problem of the American Disabilities. Justin Dart, using his own resources, conducted hearings in all of the states on this piece of legislation. We want to congratulate Mr. Dart on his recent appointment by the President to chair the President's Committee on Employment of People with Disabilities.

[The prepared statement of Hon. Major R. Owens follows:]

OPENING STATEMENT
OF
MAJOR R. OWENS, CHAIRMAN
SUBCOMMITTEE ON SELECT EDUCATION
AUGUST 28, 1989

I AM PLEASED TO RESPOND TO THE INVITATION OF THE HOUSTON COMMUNITY TO HOLD THIS SUBCOMMITTEE ON SELECT EDUCATION HEARING HERE TODAY ON H.R. 2273, "THE AMERICANS WITH DISABILITIES ACT OF 1989." THIS IS THE SECOND TIME WE HAVE HELD A HEARING ON THIS BILL OUTSIDE OF WASHINGTON. DURING THE FIRST FIELD HEARING IN BOSTON, MASSACHUSETTS, WE HEARD TESTIMONY FROM OVER 90 WITNESSES, AND ALTHOUGH IT IS NOT PART OF THE PLAN TO HEAR FROM AS MANY WITNESSES TODAY, IT IS IMPORTANT THAT WE CONTINUE TO EXTEND THE GEOGRAPHICAL PARTICIPATION BASE OF THIS BILL IN ORDER THAT THE SUBCOMITTEE CAN RESPOND TO THE NATIONAL DIMENSIONS OF THE PROPOSED LEGISLATION.

ALL OVER THE WORLD -- FROM THE TOWNSHIPS OF SOUTH AFRICA AND THE SHIPYARDS OF POLAND TO THE STUDENTS OF TIANEMEN SQUARE IN CHINA -- PEOPLE WHO ASPIRE TO A BETTER LIFE LOOK TO THE IMAGE OF AMERICAN DEMOCRACY AS THEIR GUIDING STAR. AS AMERICANS, IT IS OUR DUTY TO WORK HARDER TO GUARANTEE THAT THIS IMAGE MORE AND MORE BECOMES REALITY. AT THE SAME TIME, WE MUST WORK HARDER TO MAINTAIN OUR LEADERSHIP ROLE, TO EXTEND THE PARAMETERS OF OUR DEMOCRACY, TO EXPAND THE SCOPE OF CIVIL AND HUMAN RIGHTS ENJOYED BY ALL OF OUR CITIZENS.

THE AMERICAN CIVIL RIGHTS MOVEMENT IS NOT AN HISTORICAL CURIOSITY BUT A LIVING, ACTIVE FORCE IN OUR DEMOCRACY THAT HAS ALLOWED THE AMERICANS WITH DISABILITIES ACT TO COME TO FRUITION. WHENEVER WE RESOLVE TO FULLY USE THE FEDERAL GOVERNMENT'S AUTHORITY AND RESOURCES TO BETTER PROTECT AND EXPAND THE RIGHTS OF ANY GROUP, WE STIMULATE THE PROCESSES OF EMPOWERMENT WITHIN THAT GROUP. THE RELEASE AND RECOGNITION OF NEW SKILLS AND TALENTS AND NEW LEADERSHIP WILL GREATLY ENRICH THE FABRIC OF OUR SOCIETY. THE NATION'S WEALTH OF HUMAN RESOURCES WILL BE GREATLY INCREASED BY THIS EMPOWERMENT OF PEOPLE WITH DISABILITIES.

THE PARALLELS WITH THE CIVIL RIGHTS MOVEMENT CONSTITUTE SIMILARITIES THAT DO NOT FRIGHTEN, BUT INSTEAD INSPIRE THE FORTY-THREE MILLION STRONG COMMUNITY OF PEOPLE WITH DISABILITIES RESIDING IN EVERY STATE AND SPREAD THROUGH EVERY CONGRESSIONAL DISTRICT IN THE NATION. FORTY-THREE MILLION CITIZENS IN DEMOCRATIC AMERICA DO NOT NEED TO BEG FOR ANYTHING.

THE AMERICANS WITH DISABILITIES ACT IS A PRODUCT OF A NEW MOVEMENT WITHIN THE DISABILITY COMMUNITY. THE SPIRIT OF REVOLUTION OF DEAF STUDENTS AT GALLAUDET UNIVERSITY IS EMBODIED IN THE ACT. THIS IS A NOBLE DOCUMENT WHICH DOES NOT BEG. STRONG DEMANDS ARE MADE HERE. A NOBLE TRUMPET IS SOUNDED HERE.

I WANT TO CONGRATULATE THE PRESIDENT AND DEMOCRATIC LEADERSHIP FOR THEIR WISDOM IN FORGING A BIPARTISAN BILL. OUR TASK NOW IS TO ENRICH AND SUPPLEMENT WHAT HAS BEEN DONE. TODAY, WE WILL BE HEARING ABOUT THE PROGRESSIVE EFFORTS OF THE HOUSTON COMMUNITY IN PROMOTING GREATER ACCESS FOR ALL CITIZENS AND THE RELATIONSHIP BETWEEN THESE ACTIVITIES AND THE PROPOSALS SET FORTH IN THE AMERICANS WITH DISABILITIES ACT.

WE HAD HOPED TO HAVE CONGRESSMAN MICKEY LELAND IN ATTENDANCE AT THIS MORNING'S HEARING. HE WAS A TRUE CHAMPION OF HUMAN RIGHTS WHO FOUGHT FOR OPPORTUNITY, HOPE, DIGNITY AND FREEDOM FOR ALL PEOPLES. WE MOURN HIS LOSS AS WELL AS THE LOSS OF THE OTHER DEDICATED PEOPLE WHO DIED IN THE ILL-FATED HUMANITARIAN MISSION TO ETHIOPIA.

I WOULD LIKE TO CONCLUDE BY THANKING THE CITIZENS OF HOUSTON FOR THEIR KIND HOSPITALITY. I WOULD ESPECIALLY LIKE TO RECOGNIZE THE CONTRIBUTION OF DR. LEX FRIEDEN, FORMER EXECUTIVE DIRECTOR OF THE NATIONAL COUNCIL ON THE HANDICAPPED, UNDER WHOSE DIRECTION THE COUNCIL ISSUED THE REPORT, "TOWARD INDEPENDENCE," WHICH LED TO THE COMPREHENSIVE LEGISLATION EMBODIED IN THE AMERICANS WITH DISABILITIES ACT. I ALSO WANT TO RECOGNIZE THE TREMENDOUS EFFORTS OF THE DISABILITY COMMUNITY, AND ALL OTHERS, WHO HELPED ORGANIZE THIS HEARING.

Mr. **Owens**. I yield to Mr. Payne for an opening statement.

Mr. **Payne**. Thank you very much, Mr. Chairman. I am pleased to be here with you and Mr. Bartlett today to hear testimony from persons here who we consider to be experts in the area of civil rights of American with disabilities.

As a member of the Select Committee on Education, I would also like to thank our witnesses for coming, and I would like to congratulate the people of Houston and this region for taking time and effort to be here this morning to show your strong support for this very important legislation.

Twenty-five years ago Congress gave America a vehicle to change the course of history. With the passage of the Civil Rights Act of 1964, America could for the first time honestly acclaim an affirmative move toward justice and truth and democracy. Today, we take another step toward that foundation.

As we are charged with the task of making a critical decision that determine the quality of life for the majority, it is also our duty to protect the rights of the minority, those who society has defined by disabilities, yet whose abilities we know have no bounds. We must not hurtles to further imperil their future by our failure to enact this legislation, but a firm or unanimous and unconditional support this civil rights bill for disabled citizens.

The enactment of the 1964 Civil Rights Act gave a great opportunity for many minorities in this nation. Victory is often won by a coalition that begins with one person with a commitment, with a vision. During the history of our nation, we have seen ordinary people rise to become a catalyst for extraordinary movements. And illiterate slave named Frederick Douglas learned to read and write and became a world acclaimed poet, or to a statements. A poor Alabama seamstress named Rosa Parks fueled the civil rights movement by her desire for simple justice. And in a like manner, the small group of warriors captured the hearts and minds of this nation by bringing disability acts and rights in the Gallaudet University to the front page of the world press. Their courage inspired us, and their strong wills now challenge the 101st Congress.

As members of Congress, our role is to create a mutually supportive partnership of government, the private sector, labor and in courts to empower with full rights and privileges the nation's disability and disabled. And our pledge is to deliver to those citizens a nation that can truly claim liberty and justice for all.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Donald M. Payne follows:]

Americans with Disabilities Act (Houston, TX)
Donald M. Payne (Page 14,15)
August 28, 1989

Mr. Chairman. I am pleased to be here with you and Mr. Bartlett today to hear testimony from persons whom we all consider to be experts in the area of civil rights for disabled persons. As a member of the Subcommittee on Select Education, I would like to thank our witnesses for attending, and add a congratulatory note to the city of Houston for coming out in support for this legislation.

Twenty-five years ago, Congress gave America a vehicle that changed the course of history. With the passage of the Civil Rights Act of 1964, America could, for the first time, honestly proclaim justice and morality as the cornerstones of its democracy. Today we take another step towards securing the foundation of liberty.

As we are charged with the task of making the critical decisions that determine the quality of life for the majority, it is also our duty to protect the rights of the minority -- those who society has defined by their disabilities; yet whose abilities we know have no bounds. As representatives of all the people, we must not build hurdles that further imperil their future by failing to enact this legislation. But, we must affirm unanimous and unconditional support for this civil rights bill for disabled citizens. We stand at the threshold of infinite opportunities, and must, therefore, become proactive, not reactive.

As a beneficiary of the 1964 Civil Rights Act, I understand the legacy that comes with an appreciation for the human condition and the sharing of a common destiny. As an African-American, I have learned never to be intimidated because one is in the minority on an issue which you know to be correct. Though the will of the majority may seem to prevail, circumstances occur that forge a special alliance among those who have suffered an injustice. It is a lesson that I repeat to you here today, it is a lesson that I shall never forget.

Victory is often won by a coalition bound by a commitment to a vision. Even in the most painful instances, we have seen ordinary people rise to become a catalyst for extraordinary movements. An illiterate slave named Frederick Douglas learned to read and write and became a world acclaimed poet, orator and statesman. A poor Alabama seamstress named Rosa Parks fueled the civil rights movement by her desire for simple justice. And, a small group of unrelenting warriors captured the hearts and minds of the nation by bringing disability rights and Gallaudet University to the front pages of the world's press. Their courage inspired us, and their strong wills now challenge the 101st Congress.

As members of this Congress, our collective mission, then, is to serve their interest; our covenant is to fight for their access to equality. Our goal is to create a mutually supportive partnership with government, the private sector, labor and the courts to empower -- with full rights and privileges-- the nation's disabled community. And our pledge is to deliver to those citizens a nation that can truly proclaim " liberty and justice for all." Thank you.

Mr. OWENS. Thank you, Mr. Payne.

Our first panel consists of the Honorable Kathryn J. Whitmire, the Mayor of the City of Houston; Dr. Nikki R. Van Hightower, the treasurer of Harris County; Dr. Melody Ellis, the President of the Board of Education of the Houston Independent School District.

Please be seated.

Your Honor, we understand that you have a time problem so we will take your testimony and maybe ask you a few questions, and allow you to leave at that point. I did try to come over to shake your hand because I wanted to shake the hands of one of the legendary mayors of America, but your constituency had called you out just as I arrived to shake your hand. You had to go away. But I do want to acknowledge the fact that we are pleased that you have taken time out to come to this hearing and you may proceed.

STATEMENT OF KATHRYN J. WHITMIRE, MAYOR, CITY OF HOUSTON

Ms. WHITMIRE. Thank you, Mr. Chairman. I want to give you a very warm welcome to our city on behalf of the citizens, and also to welcome Mr. Payne and Mr. Bartlett, who is a very good friend of ours from our neighboring city to the north. We are all very pleased that you have chosen to hold this hearing in our community, and I am especially proud that the deliberations of the Americans with Disabilities Act of 1989 are taking place in the City of Houston in a city facility whose primary purpose is to serve the disabled community of Houston.

I want to tell you just a little bit about this facility. We call it the Metropolitan Multiservice Center, and it was opened just about a year ago to serve the disabled community in our city. And it currently houses 18 organizations serving the disabled. Included amongst them are the Texas Head Injury Foundation, the Houston Chapter; the Southwest Wheelchair Athletic Association; Greater Houston Athletic Association for the Physically Disabled; Texas Rehabilitation Commission; Houston Council for the Blind; and numerous other organizations that serve the disabled community in this city.

We felt that this would be a step forward to provide this city facility as a focal point for serving the needs of the disabled in this city. I believe that the City of Houston has recognized the significant value of the disabled community in this city and has taken some steps to see that disabled people in Houston have equal opportunities.

Within city government, when we passed the Affirmative Action Program for Equal Employment and Equal Opportunity, we included, of course, the disabled community in the provision of that ordinance, and we feel that that affirmative action program has served to benefit the City of Houston, because it has encouraged our various city departments and organizations to employ the very capable disabled individuals within our community.

As a result of that ordinance, we have provided special telephone receivers for hearing-impaired employees, and special equipment for visually-impaired employees, and have in some cases made schedule changes to meet the needs of the disabled employees. We believe that not only are we taking some steps to provide employment opportunities, but even more importantly, we are availing ourselves of some very hard working employees who serve the community very well and we are very proud of that fact.

We have given some attention to the needs for independent living, the needs for a barrier-free environment, which I must has not been an easy assignment. However, in 1986, our city council did vote to amend our building codes so that newly constructed buildings in this city would be accessible to the disabled.

We feel that much work is obviously left to be done in this regard, but I believe that this community is committed to the creation of a barrier-free environment for our disabled community. We think this is going to be one of the more difficult parts of achieving our commitment to the disabled community.

I should mention also the important role that our police department and fire department have played in this city in trying to provide better services to the disabled community; specifically, programs developed within our police department to better serve the hearing-impaired community. The telephone systems that have been installed in our dispatching units to also serve the hearing impaired community, we believe, have improved the emergency services provided to those citizens and the two teletype machines installed at our fire alarm building to assist the hearing impaired have furthered that cause as well.

A little bit later you will be hearing from Bob Lanier, the chairman of the Metropolitan Transit Authority, about the significant steps that Metro is taking to deal with the very important transportation needs of the disabled community.

I would sum up our believe that we need to provide opportunities for the disabled community in this city, and we hope that the legislation that we are sure you will adopt this year will have as its focus the need for opportunity and the recognition of the tremendous value to society that is provided by the disabled community.

In spite of the work that our city has done and that a number of other cities have done, I know you are familiar with the Census Bureau report showing that full-time employment amongst the disabled community is declining. And we are extremely concerned about that fact, and look forward to the steps that you are going to take to recommend to us and to other cities across the nation further efforts that we might make to see that more members of the disabled community do have the opportunity for full-time gainful employment, because I think that that is the bottom line when it comes to having a high quality life in a barrier-free environment is that opportunity for employment.

Again, I appreciate your coming to Houston to hold hearings on this very important legislation. As you can see, there is tremendous interest in this community in the work that you have undertaken, and we thank you for your commitment, and welcome you to our city.

Mr. Owens. Thank you Mayor Whitmire. And I wonder if you could take just one brief question from each one of us.

Ms. Whitmire. Certainly.

Mr. Owens. I would like to thank you for your very positive statement on behalf of yourself. But I wonder, can you, as a leader among the mayors of America, make any statement about their position as a group? I have heard grumblings that certain municipalities are very opposed to some of the things that we have in this bill. I would like a statement from you, if that is possible, concerning how the majority of your colleagues see this.

Ms. WHITMIRE. Well, in my role as President of the United States Conference of Mayors, I can report to you that our conference has adopted resolutions in support of civil rights legislation that would provide for opportunities for the disabled. And I think that you will find that my colleagues across America are generally very sensitive to the needs for these opportunities to be provided and supportive of your steps to adopt legislation.

Mr. OWENS. Thank you very much.

Mr. Bartlett?

Mr. BARTLETT. Thank you, Mr. Chairman.

As a fellow Texan and also as a Dallasite, I want to welcome personally the mayor that I consider to be one of the two best mayors in the State of Texas.

Mayor, I want to ask you just one question and also make at least one comment which I plan to ask Bob Lanier later.

The question is, could you elaborate for me on the City of Houston's ordinance against discrimination of persons with disabilities?

Does it only apply to city government or do you also extend that to contractors with the city, or does it also extend to the private sector?

Ms. WHITMIRE. The ordinance that we have adopted is a part of our city affirmative action ordinance, and it is aimed at municipal employment. It does not regulate the private sector.

Mr. BARTLETT. So it only provides for municipal employment.

Ms. WHITMIRE. That is correct.

Mr. BARTLETT. Has it worked pretty well?

Ms. WHITMIRE. We felt that it has worked. We have a number of disabled employees who are currently working for the City of Houston and doing a very good job. And we feel that having that ordinance on the books has helped us increase that effort.

Mr. BARTLETT. What remedy generally does a person have if they feel they have been discriminated against for employment purposes in the City of Houston? Other than calling you at home, what other steps?

Ms. WHITMIRE. Of course.

Well, actually, as a part of my office, I have an Affirmative Action Division of the Mayor's Office which hears complaints or grievances from any employee who has felt that they have been discriminated against under the affirmative action ordinance, and that does include disabled employees.

We do try to resolve those grievances internally since they are reported to my office and all of the various departments have their accountability to my office as well.

Mr. BARTLETT. So it's a resolution of matters that attempts to resolve the issues——

Ms. WHITMIRE. That is correct.

Mr. BARTLETT. Also, I am going to ask this of Bob Lanier when he comes later. One of the issues in both the Senate and the House bill will be whether to expand the requirements of Section 504 for purposes of voting transit. One of the provisions in the Senate bill would be to require both an area transit system as well as lifts or mainsteaming, mainlining. I do not know that that is necessarily bad, but it does change the terms of Section 504 as it is now with some additional requirements. And I do want you to be aware of that, and you may want to have somebody on your staff take a look at it and decide whether you think that is exactly the right way it ought to be or some other mechanism.

Ms. WHITMIRE. Mr. Lanier has paid quite a bit of attention to these issues recently, and I think I will defer to him to answer your question. He may be prepared to answer it today.

Mr. BARTLETT. Thank you.

Mr. OWENS. Thank you.

Mr. Payne?

Mr. PAYNE. Yes, Ms. Mayor, I was just marveling at this beautiful facility and having recently come from a municipality, I am aware that municipal governments generally have a high priority for education and other issues that affect the community. I am curious to know, however, where did the funding come for this facility, and is it matched by the municipal government?

Ms. WHITMIRE. Yes, you are very correct in talking about the financial limitations on city governments that we are all very aware of today and Dr. Ellis is going to speak about the financial limitations on the educational system. Fortunately, those do not come from our city tax dollars.

But the capital construction funds for this facility were provided by the Federal Government. All of you can take some pride in the fact that it was the Community Development Block Grant Program, which is a very good program, that did allow us to make the decision to use those dollars for the construction funds for this building.

It is operated, however, with our general fund, property tax-supported budget.

Mr. PAYNE. Well, I would certainly like to compliment you for using the funds as you did. Many times we find local officials using the money where it will have the greatest impact on reducing the city expenditures, and therefore, holding down the tax rates. Again, I would certainly like to compliment you on getting a Community Development Block Grant for this purpose.

Ms. WHITMIRE. Thank you very much.

Again, welcome you all to Houston and thank you for choosing this city for the hearings.

Mr. OWENS. Thank you again.

Our next witness is Dr. Nikki Van Hightower, Treasurer of Harris County.

STATEMENT OF NIKKI VAN HIGHTOWER, TREASURER, HARRIS COUNTY

Ms. VAN HIGHTOWER. Thank you, Chairperson Owens and Congressperson Bartlett and Payne. I appreciate the opportunity to be invited to testify this morning. It is a great pleasure. And also to voice my support for passage of the House bill versions of the Americans with Disabilities Act.

I believe that this bill takes us closer to an ideal inherent n our democratic values that our institutions and organizations should allow all people to participate on an equal footing. Regretfully, our ideals are not always practiced without some impetus from our institutions of government.

The National Council on the Handicapped estimates that there are between 20 and 50 million persons with disabilities in this country. The figure of 35 million is the most commonly used estimate. Whatever the exact number, we know that it is sizable. I contend, however, that these statistics do not begin to reflect the number of us who would benefit from this legislation. In fact, it is hard to imagine the circumstances of anyone who would not benefit from it.

I say this for several reasons. First, there is not a person living today who could not potentially become disabled. Each time we encounter a person who has sight, hearing or other types of impaired functioning, we should know that that impairment could just as easily be ours, or it might be ours at a later date.

We live in a fast-paced world over which we, as individuals, have relatively little control. Survival in this society demands that we sometimes take risks with our safety. Those risks are in our homes, our work places, our transportation systems, our medical treatments, and even now in the most intimate aspect of our lives—our choice of a sexual partner.

Furthermore, most of us will experience temporary disability and will be assisted by the requirements of this bill. For example, when I was 15 years old living in my home in Montana, I sprained my ankle in a skiing accident. I had to miss over one week of schooling because I could not manage the stairs at the school and no elevators were available. Examples such as this and worse occur millions of times a year in America. Passage of this bill would help to lessen the burden of temporary as well as permanent disabilities.

When considering the merits of this bill, we need to ask, is it not in the best interest of society and the self-interest of every individual, to provide for our own self-reliance as much as is humanly possible?

The issue involved here, however, is even greater than the fact that passage of this bill will benefit all Americans through increased assessibility and barrier-free accommodations. It says something about who we are in our society.

Policies that allow for discrimination endorse some highly repugnant ideas. They endorse the idea that we will not tolerate human differences, that we will abandon those who do not measure up to some arbitrary level of physical perfection. They endorse the idea that we will prey on others' misfortune in order to gain personal advantage or make ourselves feel superior.

Most families would gladly make whatever sacrifices and adjustments are necessary to allow their loved ones to participate as active members of the community. Should we expect less from our institutions and organizations that are made up of simply different configurations of family members?

On the other hand, policies that eliminate the barriers to gaining the most from our diversity, add to our richness as individuals and as a community. I speak from experience on this issue. The hiring of disabled workers has always had a positive effect on fellow workers and on the overall work environment.

I presently have an employee in the Harris County Treasurer's Office who is wheelchair-bound—a victim of polio. The presence of Debbie, and I would like to point her out because she is here this morning—Debbie, there you are. The presence of Debbie, who is an outstanding worker, is a lesson to us all that disabilities need not be disabling. It is the legal, physical and cultural barriers that disable all of us.

Debbie's disability happens to be physical, so it is easy to witness how effectively she overcomes it. We are privileged to see her courage, her creativity and her indomitable spirit. The entire staff benefits from working with Debbie. And I, for one, feel most fortunate for the opportunity.

It is disturbing to think that if our Harris County Administration Building had been inaccessible, or if Debbie had encountered prejudice against her disability when she first interviewed for a job, our county would have been deprived of her skills and she might not have been able to be the productive worker that she is today. What a tragedy that would have been.

What a tragedy it presently is for many of our disabled citizens. According to a recent Census Bureau study, disabled people have been losing ground in finding employment during the last decade. Earnings fell for this population. As usual, the impact of prejudice is greater on women who already suffer from gender discrimination. The average earnings of disabled women is almost half that of disabled men.

The Americans with Disabilities Act makes a great deal of sense and is long overdue. It is reasonable in its requirements and its timetables for implementation. Employers with fewer than 15 employees are exempted, and that is the same standard used for other Federal laws covering employers.

In terms of costs, studies have shown that the majority of accommodations for employees with disabilities are less than $50. The cost of making new or renovated structures accessible is less than 1 percent of the total cost of construction.

As the former director of a not-for-profit social service center, I personally have been through such a renovation, adding accommodations for the disabled. The additional costs were not more than 1 percent of the total construction, and probably less. If a small organization such as the Houston Area Women's Center can make these modifications, certainly large profit-making entities can do so as well.

This bill will not impose great hardships on our county governments. Title II of HB2273 prohibits discrimination against a qualified individual with a disability. However, county governments are already prohibited from such discrimination under state law. State law also imposes a duty on county governments to make reasonable accommodations for employees with disabilities.

The provisions of Title III requiring that public services be made accessible to persons with disabilities is already effectively covered by Section 504 of the Rehabilitation Act of 1973. Persons with disabilities are entitled to the full use and enjoyment of all public facilities in the State of Texas.

Passage and compliance with the Americans with Disabilities Act involves, as much as anything, a change in perspectives. It involves moving from a perspective wherein exclusion is tolerable to one where it is intolerable.

Imposed artificial barriers create artificial disabilities. As we eliminate the barriers, we eliminate the disabilities. We may be surprised at how minor the limitations are of those we classify as disabled when the artificial barriers are removed. In many cases they are probably little more than the invisible disabilities each one of us carriers around from day to day, but which we refuse to recognize.

For all of these reasons, I strongly support passage of the Americans with Disabilities Act.

Thank you very much.

[The prepared statement of Dr. Nikki R. Van Hightower follows:]

Nikki R. Van Hightower
Harris County Treasurer

TESTIMONY ON THE AMERICANS WITH DISABILITIES ACT
HR2273, S933

By
NIKKI R. VAN HIGHTOWER
HARRIS COUNTY TREASURER

TO BE PRESENTED ON AUGUST 28, 1989
TO THE SUBCOMMITTEE ON SELECT EDUCATION
OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

1001 Preston • Suite 652 • Houston, Texas 77002 • (713) 221-5120

Nikki R. Van Hightower
Harris County Treasurer

SUBCOMMITTEE CHAIRPERSON MAJOR OWENS AND COMMITTEE MEMBERS:

THANK YOU FOR THE HONOR OF BEING INVITED TO TESTIFY AT THIS HEARING AND FOR THE OPPORTUNITY TO VOICE MY SUPPORT FOR PASSAGE OF THE HOUSE BILL VERSION OF THE AMERICANS WITH DISABILITIES ACT.

THIS BILL TAKES US CLOSER TO AN IDEAL INHERENT IN OUR DEMOCRATIC VALUES THAT OUR INSTITUTIONS AND ORGANIZATIONS SHOULD ALLOW ALL PEOPLE TO PARTICIPATE ON AN EQUAL FOOTING. REGRETFULLY, OUR IDEALS ARE NOT ALWAYS PRACTICED WITHOUT SOME IMPETUS BY OUR INSTITUTIONS OF GOVERNMENT.

THE NATIONAL COUNCIL ON THE HANDICAPPED ESTIMATES THAT THERE ARE BETWEEN 20 AND 50 MILLION PERSONS WITH DISABILITIES IN THIS COUNTRY., THE FIGURE OF 35 MILLION IS THE MOST COMMONLY USED ESTIMATE. WHATEVER THE EXACT NUMBER, WE KNOW THAT IT IS SIZABLE. I CONTEND, HOWEVER, THAT THESE STATISTICS DO NOT BEGIN TO REFLECT THE NUMBERS OF US WHO WOULD BENEFIT FROM THIS LEGISLATION. IN FACT, IT IS HARD TO IMAGINE THE CIRCUMSTANCES OF ANYONE WHO WOULD NOT.

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I SAY THIS FOR SEVERAL REASONS: FIRST, THERE IS NOT A PERSON LIVING TODAY WHO COULD NOT POTENTIALLY BECOME DISABLED. EACH TIME WE ENCOUNTER A PERSON WHO HAS SIGHT, HEARING OR OTHER TYPES OF IMPAIRED FUNCTIONING, WE SHOULD KNOW THAT THAT IMPAIRMENT COULD JUST AS EASILY BE OURS.

WE LIVE IN A FAST-PACED WORLD OVER WHICH WE, AS INDIVIDUALS, HAVE RELATIVELY LITTLE CONTROL. SURVIVAL IN THIS SOCIETY DEMANDS THAT WE SOMETIMES TAKE RISKS WITH OUR SAFETY. THOSE RISKS ARE IN OUR HOMES, WORKPLACES, TRANSPORTATION SYSTEMS, MEDICAL TREATMENTS, EVEN NOW IN THE MOST INTIMATE ASPECTS OF OUR LIVES, -- OUR CHOICE OF A SEXUAL PARTNER.

FURTHERMORE, MOST OF US WILL EXPERIENCE TEMPORARY DISABILITIES AND WILL BE ASSISTED BY THE REQUIREMENTS OF THIS BILL. FOR EXAMPLE, I REMEMBER WHEN I WAS FIFTEEN YEARS OLD LIVING IN MY HOME IN MONTANA AND I SPRAINED MY ANKLE IN A SKIING ACCIDENT. I HAD TO MISS OVER ONE WEEK OF SCHOOLING BECAUSE I COULD NOT MANAGE THE STAIRS AT THE SCHOOL AND NO ELEVATORS WERE AVAILABLE. EXAMPLES SUCH AS THIS AND WORSE OCCUR MILLIONS OF TIMES A YEAR IN AMERICA. PASSAGE OF THIS BILL WOULD HELP TO LESSEN THE BURDEN OF TEMPORARY AS WELL AS PERMANENT DISABILITIES.

WHEN CONSIDERING THE MERITS OF THIS BILL, WE NEED TO ASK, IS IT NOT IN THE BEST INTEREST OF SOCIETY AND THE SELF-INTEREST OF EVERY INDIVIDUAL, TO PROVIDE FOR OUR SELF-RELIANCE AS MUCH AS IS HUMANLY POSSIBLE?

THE ISSUE INVOLVED HERE, HOWEVER, IS EVEN GREATER THAN THE FACT THAT PASSAGE OF THIS BILL WILL BENEFIT ALL AMERICANS THROUGH INCREASED ACCESSIBILITY AND BARRIER-FREE ACCOMMODATIONS. IT SAYS SOMETHING ABOUT WHO WE ARE AS A SOCIETY.

POLICIES THAT ALLOW FOR DISCRIMINATION ENDORSE SOME HIGHLY REPUGNANT IDEAS. THEY ENDORSE THE IDEA THAT WE WILL NOT TOLERATE HUMAN DIFFERENCES, THAT WE WILL ABANDON THOSE WHO DO NOT MEASURE UP TO SOME ARBITRARY LEVEL OF PHYSICAL PERFECTION. THEY ENDORSE THE IDEA THAT WE WILL PREY ON OTHERS' MISFORTUNES IN ORDER TO GAIN PERSONAL ADVANTAGE AND TO MAKE OURSELVES FEEL SUPERIOR.

MOST FAMILIES WOULD GLADLY MAKE WHATEVER SACRIFICES AND ADJUSTMENTS THAT ARE NECESSARY TO ALLOW THEIR LOVED ONES TO PARTICIPATE AS ACTIVE MEMBERS OF THE COMMUNITY. SHOULD WE EXPECT LESS FROM OUR INSTITUTIONS AND ORGANIZATIONS THAT ARE MADE UP OF DIFFERENT CONFIGURATIONS OF FAMILY MEMBERS?

ON THE OTHER HAND, POLICIES THAT ELIMINATE THE BARRIERS TO GAINING THE MOST FROM OUR DIVERSITY, ADD TO OUR RICHNESS AS INDIVIDUALS AND AS A COMMUNITY. I SPEAK FROM EXPERIENCE ON THIS ISSUE. THE HIRING OF DISABLED WORKERS HAS ALWAYS HAD A POSITIVE EFFECT ON FELLOW WORKERS AND THE OVERALL WORK ENVIRONMENT.

I PRESENTLY HAVE AN EMPLOYEE IN THE HARRIS COUNTY TREASURER'S OFFICE WHO IS WHEELCHAIR-BOUND -- A VICTIM OF POLIO. THE PRESENCE OF DEBBIE, WHO IS AN OUTSTANDING WORKER, IS A LESSON TO US ALL THAT DISABILITIES NEED NOT BE DISABLING. IT IS THE LEGAL, PHYSICAL AND CULTURAL BARRIERS THAT DISABLE ALL OF US.

DEBBIE'S DISABILITY HAPPENS TO BE PHYSICAL, SO IT IS EASY TO WITNESS HOW EFFECTIVELY SHE OVERCOMES IT. WE ARE PRIVILEGED TO SEE HER COURAGE, HER CREATIVITY AND HER INDOMITABLE SPIRIT. THE ENTIRE STAFF BENEFITS FROM WORKING WITH DEBBIE. I, FOR ONE, FEEL MOST FORTUNATE FOR THE OPPORTUNITY.

IT IS DISTURBING TO THINK THAT IF OUR HARRIS COUNTY ADMINISTRATION BUILDING WAS INACCESSIBLE OR IF DEBBIE HAD ENCOUNTERED PREJUDICE AGAINST HER DISABILITY WHEN SHE FIRST INTERVIEWED FOR A JOB, OUR COUNTY WOULD HAVE BEEN DEPRIVED OF HER SKILLS AND SHE MIGHT HAVE NOT BEEN ABLE TO BE THE PRODUCTIVE WORKER THAT SHE IS TODAY. WHAT A TRAGEDY THAT WOULD HAVE BEEN.

WHAT A TRAGEDY IT PRESENTLY IS FOR MANY OF OUR DISABLED CITIZENS. ACCORDING TO A RECENT CENSUS BUREAU STUDY, DISABLED PEOPLE HAVE BEEN LOSING GROUND IN FINDING EMPLOYMENT DURING THE LAST DECADE. EARNINGS FELL FOR THIS POPULATION. AS USUAL THE IMPACT OF PREJUDICE IS GREATER ON WOMEN WHO ALREADY SUFFER FROM GENDER DISCRIMINATION. THE AVERAGE EARNINGS OF DISABLED WOMEN IS ALMOST HALF THAT OF DISABLED MEN.

THE AMERICANS WITH DISABILITIES ACT MAKES A GREAT DEAL OF SENSE AND IS LONG OVERDUE. IT IS REASONABLE IN ITS REQUIREMENTS AND ITS TIMETABLES FOR IMPLEMENTATION. EMPLOYERS WITH LESS THAN 15 EMPLOYEES ARE EXEMPTED WHICH IS THE SAME STANDARD USED FOR OTHER FEDERAL LAWS COVERING EMPLOYERS.

IN TERMS OF COSTS, STUDIES HAVE SHOWN THAT THE MAJORITY OF ACCOMMODATIONS FOR EMPLOYEES WITH DISABILITIES ARE LESS THAN $50. THE COST OF MAKING NEW OR RENOVATED STRUCTURES ACCESSIBLE IS LESS THAN 1% OF THE TOTAL COST OF CONSTRUCTION. AS THE FORMER DIRECTOR OF A NOT-FOR-PROFIT SOCIAL SERVICE CENTER, I PERSONALLY HAVE BEEN THROUGH SUCH A RENOVATION, ADDING ACCOMMODATIONS FOR THE DISABLED. THE ADDITIONAL COSTS WERE NOT MORE THAN 1% OF THE TOTAL CONSTRUCTION AND PROBABLY LESS. IF A SMALL ORGANIZATION SUCH AS THE HOUSTON AREA WOMEN'S CENTER CAN MAKE THESE MODIFICATIONS, CERTAINLY LARGE PROFIT-MAKING ENTITIES CAN DO SO AS WELL.

THIS BILL WILL NOT IMPOSE GREAT HARDSHIPS ON OUR COUNTY GOVERNMENTS. TITLE II OF HB2273 PROHIBITS DESCRIMINATION AGAINST A QUALIFIED INDIVIDUAL WITH A DISABILITY. HOWEVER, COUNTY GOVERNMENTS ARE ALREADY PROHIBITED FROM SUCH DISCRIMINATION UNDER STATE LAW. (TEX. REV. CIV. STAT. ANN. ART 5221K, VERNON 1987). STATE LAW ALSO IMPOSES A DUTY ON COUNTY GOVERNMENTS TO MAKE REASONABLE ACCOMMODATIONS FOR EMPLOYEES WITH DISABILITIES.

THE PROVISIONS OF TITLE III REQUIRING THAT PUBLIC SERVICES BE MADE ACCESSIBLE TO PERSONS WITH DISABILITIES IS ALREADY EFFECTIVELY COVERED BY SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. 794). FURTHERMORE, UNDER STATE LAW, (TEX. HUM. RES. CODE 121.001 ET SEQ. VERNON 1980), PERSONS WITH DISABILITIES ARE ENTITLED TO THE FULL USE AND ENJOYMENT OF ALL PUBLIC FACILITIES IN THE STATE OF TEXAS.

PASSAGE AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT INVOLVES, AS MUCH AS ANYTHING, A CHANGE IN PERSPECTIVE. IT INVOLVES MOVING FROM A PERSPECTIVE WHEREIN EXCLUSION IS TOLERABLE TO ONE WHERE IT IS INTOLERABLE.

IMPOSED, ARTIFICIAL BARRIERS CREATE ARTIFICIAL DISABILITIES. AS WE ELIMINATE THE BARRIERS, WE ELIMINATE THE DISABILITIES. WE MAY BE SURPRISED AT HOW MINOR THE LIMITATIONS ARE OF THOSE WE CLASSIFY AS DISABLED WHEN THE ARTIFICIAL BARRIERS ARE REMOVED. IN MANY CASES THEY ARE PROBABLY LITTLE MORE THAN THE INVISIBLE DISABILITIES EACH ONE OF US CARRIES AROUND FROM DAY TO DAY BUT WHICH WE REFUSE TO RECOGNIZE.

FOR ALL OF THESE REASONS, I STRONGLY SUPPORT PASSAGE OF THE AMERICANS WITH DISABILITIES ACT.

Mr. OWENS. Thank you.

[Applause.]

We will now take the testimony of Melody Ellis, the President of the Board of Education, Houston Independent School District.

STATEMENT OF MELODY ELLIS, PRESIDENT, BOARD OF EDUCATION, HOUSTON INDEPENDENT SCHOOL DISTRICT

Ms. ELLIS. I would like to thank you for the opportunity to appear before you today. I am here in support of H.R. 2273, the Americans with Disabilities Bill of 1989.

The Houston Independent School District provides services for over 23,000 students who have been identified as qualifying for one or more of the 12 disability conditions defined by the Federal and state regulations.

Our district provides services through funds from local revenues, as well as those funds from state and Federal sources. Our district provides services to students with disabilities through resource programs on every campus, and we have 233 campuses currently.

Our district provides specialized programs for students who need more intensive instruction throughout our city to ensure that students are served at their home schools, or on campuses relatively near to their homes.

Our district provides teachers and related service personnel through 16 community agencies, and 16 hospitals. Our district provides services for students who require special services in their homes through our home-bound programs.

In addition, we have arranged our class sizes to give virtually individualized attention to the disabled student. In addition, we have a part-time employment situations at one of our high school.

This overview merely covers the effort through 1st through 12th grades. It represents the district's effort to keep faith with a disabled community in Houston.

However, this is just a beginning. The graduate of our program faces enormous barriers to gaining full access to employment, housing, transportation, extrication, and opportunities that able-bodied persons take for granted.

H.R. 2273 establishes a clear and comprehensive prohibition of discrimination on the basis of disability. For too long our society has not taken cognizance of our disabled citizens. This bill seeks to remedy that by prohibiting discrimination in employment, public housing, extrication, transportation, communications, recreation, institutionalization, health services, voting and access to public services.

It gives legal recourse to persons with disabilities. It is legislation whose time has come.

On another note, I want you to know that in March of this year our school district passed a $197 million bond issue to improve our facilities. And as a part of that facility improvement program, we are going to make sure that all of our schools are accessible to every student.

[Applause.]

[The prepared statement of Melody G. Ellis follows:]

Testimony of Melody G. Ellis, Ed.D., President
Board of Education
Houston Independent School District
before the Committee on Education and Labor
Houston, Texas, Monday, August 28, 1989
Houston Metropolitan Multi-Service Center for the Handicapped
1475 West Gray, Houston, Texas 77019 .

I am here in support of HR2273, the Americans With Disabilities Bill of 1989.

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Our district provides services through funds from local revenues, as well as through funds from state and federal sources.

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Our district provides specialized programs for students who need more intensive instruction throughout our city to ensure that students are served at their home schools, or on a campus relatively near to their homes.

Our district provides teachers and related service personnel through sixteen community agencies, and sixteen hospitals.

Our district provides services for students who require special services in their homes through our home-bound programs.

In addition, we have arranged our class sizes to giv. virtually individualized attention to the disabled student.

In addition, we have a part-time employment situation at one of our high schools which has been dubbed the "Sheltered Workshop."

This overview merely covers the effort from the 1st through 12th grade. It represents the district's effort to keep faith with a disabled community in Houston.

However, this is just a beginning. The graduate of our program faces enormous barriers to gaining full access to employment, housing, transportation, extrication, and opportunities that able-bodied persons take for granted.

HR22173 establishes a clear and comprehensive prohibition of discrimination on the basis of disability. For too long, our society has not taken cognizance of our disabled citizens. This bill seeks to remedy that by prohibiting discrimination in employment, housing, public accommodations, extrication, transportation, communications, recreation, institutionalization, health services, voting, and access to public services.

It gives legal recourse to persons with disabilities. It is legislation for whose time has come.

Thank you!

Mr. **Owens**. Thank you.

I just have one question, and that is: Do you find that your students in high school, for example, are aware of the tremendous barriers that they face and are therefore discouraged, give up hope, and do not make that transition after they leave school?

Ms. **Ellis**. I know of one instance where a child was working in our part-time situation at the school. And when that child left school, it was not as easy to find employment as they thought it would be.

Mr. **Owens**. Thank you.

Mr. Bartlett?

Mr. **Bartlett**. Thank you, Mr. Chairman.

I very much appreciate your excellent testimony. It really is helpful. From time to time, as legislation progresses, I may want to get back to one of you regarding some of the specifics of the legislation.

I have a question, first of all, for Dr. Hightower as well as Dr. Ellis, with regard to creation of other laws.

Both of you are head of agencies that are already covered by Federal law as recipients of Federal funds. And so therefore you are covered essentially by Section 504 for these purposes. Now my question is twofold.

In the bill, no doubt there will be other agencies like yours who would be covered by Section 504 as well as covered by the new ADA of prohibition against employment.

Now, should there be a conflict between those two, do you think we should have a preemption so that you would have to deal with only one and not with both, or do you think we should require that there are different versions of the legislation, some that provide for preemption and some that don't?

So my question is, as head of an agency, would it be useful in the logical progression of this for us to give you one agency or one set of laws which you have to deal with, or could you see a potential problem to having to conform to both 504 as well as the new ADA?

Ms. **Ellis**. I think it would be helpful if the two agencies could get together. We will do whatever it is that is required, but sometimes it is difficult to deal with more than one agency.

Mr. **Bartlett**. Dr. Hightower?

Ms. **Van Hightower**. Well, I think that is true. I would hope that we would go with the strongest legislation as possible.

Mr. **Bartlett**. So preemption, but erring on the side of whichever one was stronger?

Ms. **Van Hightower**. That is correct.

Mr. **Bartlett**. Second question. As the head of, again, a public agency, do you see a problem with definitions in the legislation?

That is, would you have us write out very specifically in the statute a definite for what reasonable accommodation is that's readily achievable, and undue hardship and the various other definitions that we have to have?

Or would you rather leave that up to the administrative agencies for regulations, or for the courts to interpret?

Ms. **Ellis**. Whichever you see fit. The school district does have a history of going above and beyond whatever mandates are placed on us. So we are ready, willing and able to make our buildings, our employment situation, whatever, as accessible as we can to ensure that the persons receive the benefit of their best from us.

So you can be as specific, and if you like, you can make it as hard as you want. We are going to go an inch above whatever you say anyway.

Mr. **Bartlett**. Dr. Van Hightower.

Ms. **Van Hightower**. It's my feeling that having dealt with state statutes that are sometimes very vague and difficult to deal with, I prefer them to be specific.

Mr. **Bartlett**. So the clearer we can make it.

Ms. **Van Hightower**. I think the easier it is. I know that it unemploys lawyers, but nevertheless, it's better to go with definitions so that we know what is expected of us.

Mr. **Bartlett**. In our increasingly lotto society, I suspect there will be underworked lawyers nevertheless. If Congress actually succeeds in making something clear or even if, you know—never mind, I was about to make a baseball analogy.

One other question. Dr. Ellis, this is primarily for you, and Dr. Van Hightower, you may choose to answer also.

This legislation goes differently from what you are doing already as you are required, and your testimony was appropriately so on the needs of students, and that's appropriate. You have been required to conform to the Education Handicapped Act for over a decade now, and accommodations for students.

I want to address for a second the other half of this legislation which seems to me to be substantially different, and that is, on employment.

Can you describe for me the school district's policy on employment policies of employees with disabilities—reasonable accommodations for teachers with disabilities, and what kinds of accommodations does that include?

Ms. **Ellis**. Yes, we do. As a matter of fact, in the Office of Board Services, which is where board members have a little cubby hole, we have two disabled persons in there, and we do have accommodations for them. As a matter of fact——

Mr. **Bartlett**. I'm sorry, what department is that?

Ms. **Ellis**. Board Services.

Mr. **Bartlett**. Board Services.

Ms. **Ellis**. Where the board members are. We have two disabled persons in our office.

Mr. **Bartlett**. Kind of move that over into the classroom. I am glad that you have it in the schools.

Ms. **Ellis**. I only know of two persons in the 27 schools that I represent that are there with disabilities, and we do make accommodations for them. I will be more than happy to pull that and submit it to you.

Mr. **Bartlett**. I think that would be helpful.

Let me ask you a tough question. Because the committee has to grapple with some specificity, should, for example, the reasonable accommodation for teachers, include a provision of additional personnel to provide that reasonable accommodation?

Let me be specific. If a teacher was applying who was blind or deaf as a teacher, should the school district then be required to—if it were needed in the classroom—should the school district then be required to add any additional person, an interpreter or a reader in the classroom?

Would you judge that to be a reasonable accommodation?

Ms. **Ellis**. Yes, I would. I think it would be very reasonable.

Mr. **Bartlett**. So you think it would be a reasonable accommodation for the school district to be required by law to hire and pay for a second person in the classroom to accommodate a disabled teacher?

Ms. **Ellis**. Yes. You may recall that we do have mandates now for the number of children that we have in classrooms to have aids for able-bodied persons. So I see no reason why we should not have aids for persons with disabilities.

[Applause.]

Mr. **Bartlett**. You said make it as tough as we will and you will accommodate us, so that was a tough question and a tough answer.

Ms. **Ellis**. Absolutely. That's my answer.

Mr. **Bartlett**. I am a Presbyterian by faith, and we Presbyterians have a saying, be careful what you pray for. You may get it.

[Laughter.]

Ms. **Ellis**. Well, I am one of those down-home Baptists.

Mr. **Bartlett**. Thank you, Mr. Chairman. I have no further questions.

Mr. **Owens**. The Chair would like to note that the size of the room and the audience has doubled. If you have any problem hearing in the back, just raise your hand and we will make certain that you can hear.

Mr. Payne?

Mr. **Payne**. Thank you very much.

I would just like to ask Ms. Van Hightower, knowing of her position in the Treasurer's Office, if, to her knowledge, Harris County is doing any specific projects here relating directly to the handicapped so far as the Job Training Partnership Act is concerned?

Ms. **Van Hightower**. None to my knowledge.

Mr. **Payne**. Then that might be an expansion thatwe could suggest. Around the country we find various types of jobs, but if there could be some type of general program created to upgrade the general skills of the handicapped, I think that it would be helpful once this legislation is passed.

Dr. Ellis, you mentioned there are 23,000 students in Texas who have been identified as having one or more disabilities. What then is the approximate population of students with disabilities in the school districts of Houston?

Ms. **Ellis**. One hundred and ninety thousand and growing.

Mr. **Payne**. One hundred and ninety thousand.

In your estimation, with this new legislation coming similar to the question I just asked Dr. Van Hightower, is there a need for additional counseling for individuals with disabilities?

As you know, in many instances, when laws are passed, people remain unaware of their rights. And in light of this, would you see counseling as being an additional requirement for Houston's School District?

Ms. **Ellis**. Most definitely.

Mr. **Payne**. Thank you, Mr. Chairman. I have no further questions.

Mr. OWENS. Thank you both for your testimony.

Our next panel is Ms. Judy Comfort, Mr. Robert C. Lanier, Mr. Mosbacher, Jr., and Mr. Howard Wolf.

Please be seated.

We will begin with Ms. Judy Comfort, the Division Manager of External Affairs, Southwestern Bell Telephone Company.

Ms. Comfort.

STATEMENT OF JUDITH COMFORT, DIVISION MANAGER, EXTERNAL AFFAIRS, SOUTHWESTERN BELL TELEPHONE COMPANY

Ms. COMFORT. Good morning, Chairman Owens, Mr. Bartlett, Mr. Payne.

I am here today representing the Southwestern Bell Telephone, and also the parent companies, Southwestern Bell Corporation. And I would like to first commend this subcommittee for looking at some very, very important issues addressed in H.R. 2273.

Southwestern Bell is committed to the availability of telecommunication services to persons with disabilities. We do have a long tradition of working with disabled customers. It began going way back in history with Alexander Graham Bell who wanted to use his invention to help people with hearing impairments communicate. We continue to follow his lead of helping people with disabilities.

Our External Affairs Department, of which I am a part, works with various disabled organizations in the cities we serve. The Telephone Pioneers of America are also involved with disabled organizations, and they provide telecommunications devices for the deaf, administer the Talking Books Program for the blind, and many other projects.

In fact, our Telephone Pioneers in West Texas recently received an award from the Texas Association of the Deaf for donating 300 TDDs to individuals and organizations in need.

We recognize that telecommunications services play a significant role in achieving a high quality of life. They also provide increased business opportunities, employability and independence for this important customer group. Therefore, we work diligently with individuals and groups representing disabled persons' interests, regulatory bodies and other government agencies in identifying service applications and establishing accessible rates for all services.

A focus on disabled services is appropriate since disabled customers have specialized needs. Disabled Americans are increasingly gaining recognition of their needs, and state and Federal regulatory bodies are responding such as you are today.

As an American business, Southwestern Bell supports this effort to provide independence to disabled persons—and at the same time improve our business.

As I see it, improved communications systems offer businesses at least three potential benefits. A recognized labor pool of qualified employees, potential new customers and enhanced economic development in our cities since many disabled persons will be self-supporting and taxpaying citizens.

Business is concerned about the shrinking labor pool. Where will our work force come from in the future? And one answer is qualified disabled Americans.

In 1976, Southwestern Bell Telephone adopted an Affirmative Action Program for the Handicapped. Our company is committed to hire and advance qualified disabled individuals who can perform particular jobs with reasonable accommodation. Our Affirmative Action Program outlines the company's policy of equal employment for the disabled in compliance with requirements of Section 503 of the Rehabilitation Act of 1973, as amended.

Southwestern Bell does have numerous disabled employees, and we discuss with them their jobs. We listen to their recommendations and we do adapt their work environments. Some of the modifications we have made include: flexible hours, adaptive devices for personal computers, Braille writers, adjustable furniture, wider doors, ramps, volume control headsets, TDDs, and speaker phones.

We have even produced a supervisors manual that sensitizes supervisors to employees with disabilities.

Related to telecommunications, Southwestern Bell Telephone recognizes the accessibility needs of disabled persons and has several exemptions in place that make communication over the network easier. We offer an exemption from directory assistance and operator assistance charges to the disabled.

Southwestern Bell Telephone also offers disabled customer discounts on long-distance calls within their service area and makes available a special operator to respond to questions about telephone bills or network problems. The operator is equipped with a TDD.

Although Southwestern Bell no longer provides telephone equipment, we do support a program that gives information about equipment for the disabled. Southwestern Bell Telephone currently provides technical assistance and serves on the advisory board of the Tele-Consumer Hotline's Special Needs Program. The hotline staff provides information to customers on the cost and availability of equipment necessary to ensure that those with impairments have continued access to the basic telephone system.

Message relay service, which is addressed in your bill, is vital to hearing and speech impaired persons. Southwestern Bell has coordinated with state and national organizations interested in improving message relay service.

In Texas, the company funded a message relay research project through the Texas Commission for the Deaf. Their findings led to an assessment of message relay service and improvement in the current system. The Texas legislature recently passed HB174 under which will be established statewide message relay service. Such service has also been mandated in Oklahoma.

To communicate over the telephone, a deaf person must use a TDD. However, for a deaf person to communicate with a hearing person who does not have such a device, a relay services is required. This interface is currently handled by live operators who translate text to speech and speech to text to allow communication between hearing and deaf individuals.

However, this arrangement has several inherent disadvantages, including high labor costs, limited availability of the service to the deaf community and a lack of privacy for its users.

We believe that part of the answer to the cost and privacy issues is technology. Southwestern Bell Telephone is currently involved in Bellcore's Telecommunications Network for the Deaf Trial, which will automate many of the relay operator's functions. As you may know, Bellcore is the nation's largest research and engineering consortium and provides technical support for the regional Bell operating companies.

This partially automated message relay system has been tested in the laboratory in order to determine if its features meet the deaf consumer's needs, and in turn to refine the service's capabilities. Plans have been made to test the service with Telephone Exchange for the Deaf, Incorporated, a nonprofit organization providing operator relay services in Washington, D.C. and northern Virginia. Southwestern Bell Telephone has agreed to support this trial to further develop this technology for use in our territory.

Given the current level and anticipated growth of TDD penetration among the hearing-impaired community, the Telecommunications Network for the Deaf service could potentially ave as much as $173 million per year nationally in relay operator cost. It would also improve the disabled customer's ability to use the telephone because it is convenient, private, and in the future may allow access to businesses and services without an operator. And I think that is the ultimate goal.

Other telecommunication services are also breaking down even more barriers to disabled persons and increase their ability to live independently. The door to many of these new services is simply the push button telephone.

Two simple examples are three-way calling, a service that allows you to hold a meeting through teleconferencing, or speed dialing, a service that allows you to program phone numbers and call them quickly by pushing just two buttons.

Perhaps you are already familiar with home shopping and banking or even tapped into a computer data base. The fact is that all these services involve new ways to manage information. They also offer security for those living alone, added independence, and overall convenience and efficiency to those who rely on the phone each and every day. But, best of all, the features are very easy to use.

We are also excited abut the voice and data gateway trials, the largest consumer trials in the nation now underway here in Houston. Using the voice gateway, a customer can dial and receive a variety of options and simple instructions to select a wide range of information. While u sing the data gateway, a customer sees listings for information and entertainment options on a simple video terminal or personal computer screen.

The gate's possibilities are nearly unlimited, and encompass hundreds of information resources. For disabled persons, the gateway can offer information on shopping from the home, travel, special community events, health care, photography, sports, dining, and the list goes o and on. All these services are at a person's fingertips. The bottom line is that these gateways can improve the quality of life for disabled persons.

Southwestern Bell is committed to bringing these services to disabled persona and to customers of all ages and abilities. We are limited in what we are allowed to do for consumers. We are restricted from offering certain products and services, and what we need to remedy the situation is a change in government policy and rules that govern how we are regulated.

Specifically, we need relief from restrictions imposed by the modification of final judgment. Americans are deprived of telecommunications benefits currently enjoyed and widely available in other countries. Freedom of the regional Bell holding companies to manufacture telephone service equipment and to provide full information services can facilitate disabled customers' enjoyment of expanded world-class telecommunications products and services.

The MFJ is the result of the breakup of the Bell System, and bars Southwestern Bell and other Bell companies from bringing many of the kinds of services I have described to our customers.

The modification of final judgement bars Southwestern Bell from three areas critical to the development of telecommunications.

First, originating information to be transmitted over the telephone network; second, designing, or manufacturing telecommunications equipment; and third, providing most long-distance service.

If allowed to use our capabilities, Southwestern Bell Telephone could strengthen the economy and make it more competitive. Our inability to complete due to the MFJ restrictions has negatively affected jobs, innovation and our country's balance of trade.

Disabled persons would have the opportunity to use services and products that have been inaccessible in the past.

Because of the MFJ restrictions, Southwestern Bell and other Bell companies may not even be allowed to offer message relay services. Bell Atlantic has asked the Department of Justice for a declaratory ruling to determine if the regional Bell operating companies are permitted to offer message relay services without a waiver.

The response dated August 17 indicates that message relay is classified as an information service and an inter-exchange service, both prohibited under the MFJ. The Department of Justice's response, however, says the United States does not object to a waiver to permit all the Bell operating companies to provide TDD relay services for hearing-impaired and other disabled customers in accordance with legislative directives or authorizations, but such a waiver would have to be granted by Judge Greene.

We believe that message relay services are in the public interest. Provisions must be added to the current legislation to provide safe harbor exemptions from the MFJ so that the necessary research development and network operations may be performed by the Bell operating companies.

In addition, we recommend that some Federal dollars be allocated toward research and development of automated message relay. It is possible that such a system could be accelerated, minimizing the need for live operators. It would be beneficial to "leap-frog" technology, making accessibility to the network as convenient to the deaf as it is for other telephone users.

In closing, Southwestern Bell Telephone applauds the concepts of the Americans with Disabilities Act. We already support employment of disabled persons and have made necessary modifications for them to do their jobs with our company.

Business must help provide disabled persons the same equal opportunity that have been provided to minorities and women. We must work together to end discrimination against persons with disabilities, and to recognize their abilities. This concludes my remarks and I appreciate the opportunity to share my views on these very important issues.

[The prepared statement of Judith Comfort follows:]

UNITED STATES HOUSTON OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON SELECT EDUCATION

STATEMENT OF
JUDITH L. COMFORT, DIVISION MANAGER-EXTERNAL AFFAIRS
SOUTHWESTERN BELL TELEPHONE COMPANY
REGARDING HR 2273
THE AMERICANS WITH DISABILITIES ACT
AUGUST 28, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, MY NAME IS JUDITH L. COMFORT. I AM A DIVISION MANAGER WITH SOUTHWESTERN BELL TELEPHONE COMPANY AND AM APPEARING BEFORE THIS COMMITTEE ON ITS BEHALF AND ON BEHALF OF ITS PARENT COMPANY, SOUTHWESTERN BELL CORPORATION, CONCERNING H. R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989. I COMMEND THIS SUBCOMMITTEE FOR LOOKING AT THESE IMPORTANT ISSUES.

SOUTHWESTERN BELL TELEPHONE IS COMMITTED TO THE AVAILABILITY OF TELECOMMUNICATIONS SERVICES TO PERSONS WITH DISABILITIES. WE HAVE A LONG TRADITION OF WORKING WITH DISABLED CUSTOMERS. IT BEGAN WITH ALEXANDER GRAHAM BELL WHO WANTED TO USE HIS INVENTION TO HELP DEAF PERSONS COMMUNICATE. WE CONTINUE TO FOLLOW HIS LEAD OF HELPING PEOPLE WITH DISABILITIES OUR EXTERNAL AFFAIRS DEPARTMENT WORKS WITH VARIOUS DISABLED ORGANIZATIONS IN THE CITIES WE SERVE. THE TELEPHONE PIONEERS OF AMERICA ARE ALSO INVOLVED WITH DISABLED ORGANIZATIONS. THEY PROVIDE TELECOMMUNICATIONS DEVICES FOR THE DEAF, ADMINISTER THE TALKING BOOKS PROGRAM FOR THE BLIND, AND MANY OTHER PROJECTS.

WE RECOGNIZE THAT TELECOMMUNICATIONS SERVICES PLAY A SIGNIFICANT ROLE IN ACHIEVING A HIGH QUALITY OF LIFE. THEY PROVIDE INCREASED BUSINESS OPPORTUNITIES, EMPLOYABILITY AND INDEPENDENCE FOR THIS IMPORTANT CUSTOMER GROUP ALSO. THEREFORE, WE WORK DILIGENTLY WITH INDIVIDUALS AND GROUPS REPRESENTING DISABLED PERSONS' INTERESTS, REGULATORY BODIES AND OTHER GOVERNMENT AGENCIES IN IDENTIFYING SERVICE APPLICATIONS AND ESTABLISHING ACCESSIBLE RATES FOR ALL SERVICES.

A FOCUS ON DISABLED SERVICES IS APPROPRIATE SINCE DISABLED CUSTOMERS HAVE SPECIALIZED NEEDS. DISABLED AMERICANS ARE INCREASINGLY GAINING RECOGNITION OF THEIR NEEDS, AND STATE AND FEDERAL REGULATORY BODIES ARE RESPONDING.

AS AN AMERICAN BUSINESS, SOUTHWESTERN BELL SUPPORTS THIS EFFORT TO PROVIDE INDEPENDENCE TO DISABLED PERSONS...AND AT THE SAME TIME IMPROVE OUR BUSINESS.

AS I SEE IT, IMPROVED COMMUNICATIONS SYSTEMS OFFER BUSINESSES AT LEAST THREE POTENTIAL BENEFITS. A RECOGNIZED LABOR POOL OF QUALIFIED EMPLOYEES, POTENTIAL NEW CUSTOMERS AND ENHANCED ECONOMIC DEVELOPMENT IN OUR CITIES SINCE MANY DISABLED PERSONS WILL BE SELF-SUPPORTING AND TAXPAYING CITIZENS.

BUSINESS IS CONCERNED ABOUT THE SHRINKING LABOR POOL. WHERE WILL OUR WORK FORCE COME FROM? ONE ANSWER IS QUALIFIED DISABLED AMERICANS.

In 1976, Southwestern Bell Telephone adopted an Affirmative Action Program for the Handicapped. Our company is committed to hire and advance qualified disabled individuals who can perform particular jobs with reasonable accommodation. Our Affirmative Action Program outlines the company's policy of equal employment for the disabled in compliance with requirements of Section 503 of the Rehabilitation Act of 1973, as amended.

At Southwestern Bell Telephone we have numerous disabled employees. We have discussed their jobs, listened to their recommendations, and adapted work environments. Some of the modifications we have made include: flexible hours, adaptive devices for personal computers such as touch screens, braille writers, adjustable furniture, wider doors, ramps, volume control headsets, Telecommunication Devices for the Deaf, and speaker phones.

We've even produced a supervisors manual that sensitizes supervisors to employees with disabilities.

Related to telecommunications, Southwestern Bell Telephone recognizes the accessibility needs of disabled persons and has several exemptions in place that make communication over our network easier. We offer an exemption from Directory Assistance and operator assistance charges to the disabled. Southwestern Bell Telephone also offers disabled customer discounts on long-distance calls within their service area and makes available a special operator to respond to questions about telephone bills or network

PROBLEMS. THIS OPERATOR IS EQUIPPED WITH A TELECOMMUNICATIONS DEVICE FOR THE DEAF FOR CUSTOMERS WHO COMMUNICATE WITH A TDD.

SOUTHWESTERN BELL TELEPHONE SUPPORTS PROVIDING OUR CUSTOMERS ACCESS TO INFORMATION ABOUT EQUIPMENT FOR THE DISABLED. SOUTHWESTERN BELL TELEPHONE CURRENTLY PROVIDES TECHNICAL ASSISTANCE AND SERVES ON THE ADVISORY BOARD OF THE TELE-CONSUMER HOTLINE'S SPECIAL NEEDS PROGRAM. THE HOTLINE STAFF PROVIDES INFORMATION TO CUSTOMERS ON THE COST AND AVAILABILITY OF EQUIPMENT NECESSARY TO ENSURE THAT THOSE WITH IMPAIRMENTS HAVE CONTINUED ACCESS TO THE BASIC TELEPHONE SYSTEM.

MESSAGE RELAY SERVICE IS VITAL TO HEARING AND SPEECH IMPAIRED PERSONS. SOUTHWESTERN BELL TELEPHONE HAS COORDINATED WITH STATE AND NATIONAL ORGANIZATIONS INTERESTED IN IMPROVING MESSAGE RELAY SERVICE. IN TEXAS, THE COMPANY FUNDED A MESSAGE RELAY RESEARCH PROJECT THROUGH THE TEXAS COMMISSION FOR THE DEAF. THEIR FINDINGS LED TO AN ASSESSMENT OF MESSAGE RELAY SERVICE AND IMPROVEMENT IN THE CURRENT SYSTEM. THE TEXAS LEGISLATURE RECENTLY PASSED HB174 UNDER WHICH WILL BE ESTABLISHED STATEWIDE MESSAGE RELAY SERVICE. SUCH SERVICE HAS ALSO BEEN MANDATED IN OKALHOMA.

TO COMMUNICATE OVER THE TELEPHONE, A DEAF PERSON MUST USE A TELECOMMUNICATIONS DEVICE FOR THE DEAF. HOWEVER, FOR A DEAF PERSON TO COMMUNICATE WITH A HEARING PERSON WHO DOES NOT HAVE A TELECOMMUNICATIONS DEVICE FOR THE DEAF, A RELAY SERVICE IS REQUIRED. THIS INTERFACE IS CURRENTLY HANDLED BY LIVE OPERATORS who translate text to speech and speech to text to allow communication between hearing and deaf individuals.

However, this arrangement has several inherent disadvantages, including high labor costs, limited availability of the service to the deaf community and a lack of privacy for its users.

We believe part of the answer to cost and privacy issues is technology. Southwestern Bell Telephone is currently involved in Bellcore's Telecommunications Network for the Deaf Trial, which will automate many of the relay operator's functions. Bellcore is the research arm of the Regional Bell Operating Companies.

The Telecommunications Network for the Deaf service has been tested in the laboratory. In order to determine if its features meet the deaf consumer's needs, and in turn refine the service's capabilities, plans have been made to test the service with Telephone Exchange for the Deaf, Inc. a non-profit organization providing operator relay services in Washington, D.C. and Northern Virginia. Southwestern Bell Telephone has agreed to support this trial to further develop this technology for use in our territory.

Given the current level and anticipated growth of TDD penetration among the hearing-impaired community, the Telecommunications Network for the Deaf service could potentially save as much as $173 million per year nationally in relay operator cost. It would also improve the disabled customer's ability to use the telephone

BECAUSE IT IS CONVENIENT, PRIVATE, AND ALLOWS ACCESS TO BUSINESSES AND SERVICES WITHOUT USING AN OPERATOR.

YOU'LL HAVE SOME IDEA OF THE BENEFIT OF THE TELEPHONE IF YOU'VE USED THREE-WAY CALLING, A SERVICE THAT ALLOWS YOU TO HOLD A MEETING THROUGH TELECONFERENCING...OR SPEED DIALING, THE SERVICE THAT ALLOWS YOU TO PROGRAM PHONE NUMBERS AND CALL THEM QUICKLY BY PUSHING JUST TWO BUTTONS.

PERHAPS YOU'RE ALREADY FAMILIAR WITH HOME SHOPPING AND BANKING OR EVEN TAPPED INTO A COMPUTER DATA BASE. AS SERVICES LIKE THESE BECOME MORE ADVANCED AND MORE WIDESPREAD THE MEANS OF ACCESSING THEM WILL REMAIN SIMPLE.

THE DOOR TO MANY OF THE NEW SERVICES IS THE PUSH-BUTTON PHONE.

THE FACT IS THAT ALL THESE NEW SERVICES INVOLVE NEW WAYS TO MANAGE INFORMATION.

THEY ALSO OFFER SECURITY TO THOSE LIVING ALONE...ADDED INDEPENDENCE, AND OVERALL CONVENIENCE AND EFFICIENCY TO THOSE WHO RELY ON THE PHONE EACH AND EVERY DAY.

BUT, BEST OF ALL, THESE FEATURES ARE VERY EASY TO USE.

WE'RE ALSO EXCITED ABOUT THE VOICE AND DATA GATEWAY TRIALS, THE LARGEST CONSUMER TRIALS IN THE NATION NOW UNDER WAY HERE IN HOUSTON.

USING THE VOICE GATEWAY, A CUSTOMER CAN DIAL AND RECEIVE A VARIETY OF RECORDED MESSAGES AND SIMPLE INSTRUCTIONS TO ACCESS A WIDE RANGE OF INFORMATION. WHILE USING THE DATA GATEWAY, A CUSTOMER SEES LISTINGS FOR INFORMATION AND ENTERTAINMENT OPTIONS ON A SIMPLE VIDEO TERMINAL OR PERSONAL COMPUTER SCREEN.

OVER A MILLION PEOPLE WILL HAVE ACCESS TO THE GATEWAY BEFORE THE TRIAL CONCLUDES NEXT YEAR. MANY DISABLED PERSONS HAVE FOUND THE GATEWAY THE ANSWER TO ACCESSING SERVICES AND INFORMATION THAT HAD BEEN UNAVAILABLE IN THE PAST.

THE GATEWAY'S POSSIBILITIES ARE NEARLY UNLIMITED. FOR DISABLED PERSONS, THE GATEWAY COULD OFFER INFORMATION ON SHOPPING FROM HOME, TRAVEL, SPECIAL COMMUNITY EVENTS, HEALTH CARE, PHOTOGRAPHY, SPORTS, DINING, AND THE LIST GOES ON AND ON...

ALL THESE SERVICES ARE AT A PERSON'S FINGERTIPS. THE BOTTOM LINE IS THAT THESE GATEWAYS CAN IMPROVE THE QUALITY OF LIFE FOR DISABLED PERSONS.

WE WANT TO PROVIDE SERVICES THAT ARE PRACTICAL AND USEFUL FOR PEOPLE. SOUTHWESTERN BELL TELEPHONE IS COMMITTED TO BRINGING THESE NEW SERVICES TO DISABLED PERSONS AND CUSTOMERS OF ALL AGES AND ABILITIES. BUT WE'RE LIMITED IN WHAT WE'RE ALLOWED TO DO FOR CONSUMERS. WE'RE RESTRICTED FROM OFFERING CERTAIN PRODUCTS AND SERVICES. WHAT WE NEED TO REMEDY THE SITUATION IS A CHANGE IN GOVERNMENT POLICY AND RULES THAT GOVERN HOW WE'RE REGULATED.

AMERICANS ARE DEPRIVED OF TELECOMMUNICATIONS BENEFITS CURRENTLY ENJOYED AND WIDELY AVAILABLE IN OTHER COUNTRIES. FREEDOM OF THE REGIONAL BELL HOLDING COMPANIES TO MANUFACTURE TELEPHONE SERVICE EQUIPMENT AND TO PROVIDE FULL INFORMATION SERVICES COULD FACILITATE DISABLED CUSTOMERS ENJOYMENT OF EXPANDED WORLD-CLASS INFORMATION-AGE TELECOMMUNICATIONS PRODUCTS AND SERVICES.

INFORMED CONSUMERS, REGULATORY SAFEGUARDS, ANTITRUST LAW AND MYRIAD TELECOMMUNICATIONS COMPETITORS ARE MORE EFFECTIVE GUARDIANS FOR FAIR COMPETITION AND A HEALTHY ECONOMY THAN ARTIFICIAL BARRIERS SUCH AS THE MODIFICATION OF FINAL JUDGEMENT RESTRICTIONS.

THE MFJ IS THE RESULT OF THE BREAKUP OF THE BELL SYSTEM, AND BARS SOUTHWESTERN BELL AND OTHER BELL COMPANIES FROM BRINGING MANY OF THE KINDS OF SERVICES I'VE DESCRIBED TO OUR CUSTOMERS.

THE MODIFICATION OF FINAL JUDGEMENT BARS SOUTHWESTERN BELL FROM THREE AREAS OF BUSINESS CRITICAL TO THE DEVELOPMENT OF TELECOMMUNICATIONS PRODUCTS AND SERVICES:

- ORIGINATING INFORMATION TO BE TRANSMITTED OVER THE TELEPHONE NETWORK
- DESIGNING, OR MANUFACTURING TELECOMMUNICATIONS EQUIPMENT
- PROVIDING MOST LONG-DISTANCE SERVICE.

If allowed to use our capabilities, Southwestern Bell Telephone could strengthen the economy and make it more competitive. Our inability to compete due to MFJ restrictions has negatively affected competitiveness, jobs and innovation.

If disabled persons have access to these services our communities will benefit. Access to information and services will increase economic development in our communities. Disabled persons will have the opportunity to use services and products that have been inaccessible in the past.

Because of the MFJ restrictions, Southwestern Bell and other Bell Operating Companies may not even be allowed to offer message relay services. There is a possibility that message relay may be classified as an information service and/or interexchange service prohibited under the MFJ. Bell Atlantic has asked Judge Greene to determine if the regional Bell operating companies are permitted to offer message relay services without a waiver.

We believe that message relay services are in the public interest. Provisions must be added to the current legislation to provide "safe harbor" exemptions from the MFJ so that the necessary research development and network operations may be performed by the Bell operating companies.

We recommend that some Federal dollars be allocated toward research and development of automated message relay. It's possible that such a system could be accelerated, minimizing the need for live

OPERATORS. IT WOULD BE BENEFICIAL TO "LEAP-FROG" TECHNOLOGY...MAKING ACCESSIBILITY TO THE NETWORK AS CONVENIENT TO THE DEAF AS IT IS FOR OTHER TELEPHONE USERS.

SOUTHWESTERN BELL TELEPHONE APPLAUDS THE CONCEPTS OF THE AMERICANS WITH DISABILITIES ACT. WE ALREADY SUPPORT EMPLOYMENT OF DISABLED PERSONS AND HAVE MADE NECESSARY MODIFICATIONS FOR THEM TO DO THEIR JOBS WITHIN OUR COMPANY.

BUSINESS MUST HELP PROVIDE DISABLED PERSONS THE SAME EQUAL OPPORTUNITY THAT HAS BEEN PROVIDED TO OTHER MINORITIES AND WOMEN. WE MUST WORK TOGETHER TO END DISCRIMINATION AGAINST PERSONS WITH DISABILITIES.

Mr. **Owens**. Thank you very much.

[Applause.]

The next witness is Mr. Robert C. Lanier, President of Handar Corporation, and the Chairman of the Metropolitan Transit Authority of Harris County.

Mr. Lanier.

STATEMENT OF ROBERT C. LANIER, PRESIDENT, LANDAR CORPORATION, AND CHAIRMAN, METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY

Mr. **Lanier**. Thank you very much.

I have worked on this public service end of the transportation business for the last six or seven years before chairing the board of Metro, I chaired the State Highway Commission.

We looked at this question of lifts and vans on equipment of Metropolitan Transit Authority. And we voted here a month or so ago to add lifts to all buses and the smaller vehicles purchased as they are added to the fleet.

[Applause.]

The question was a difficult one. We already had a van service that picked up disabled persons and carried them on a door to door service. This van service handled about 540,000 boardings a year. We looked at the Los Angeles system which does not have the van service, but which has lifts. It costs them about the same amount of money. They moved about 90,000 boards a year, about one-fifth or one-sixth of what we did with the same money.

We had hearings on it. I visited privately with Mr. Dart, Lex Frieden, Peggy Nosick. And it seemed to me, and this is my view, the fact was that the van was the more cost-effective service. That is to say, it moved the most people for the least amount of money.

On the other hand, in talking over the problem and listening to the handicapped persons, there was another issue, it seemed to me, at stake, and that was that these persons who wanted to make their contribution, who wanted to fully participate in society looked at the requirement to take a van at the absence of service on demand that one might get on a bus. And it was sort of an extension of the equal but separate doctrine.

In other words, they resisted the notion that a group of our citizens could be separated from the rest of society and told, even if it was true, that these separated facilities are equal to what the rest of society has, and they wanted to fully participate.

And we came down on the side of what we thought was that larger value. It is my notion that at the heart of the American system is the inclusion process. It is a part of what is going on here in my lifetime that has made me the proudest as an American. And it is an area where, if we are going to spend some extra money, and I think these lifts will cost some extra money, I think the money in the main is justified.

You spoke of Congressman Mickey Leland. There was a time in my lifetime when he could not have made this contribution. He could not even have voted in the state. And it is not just, it is not just that. He or other persons are allowed to contribute and have gainful employment, although I think that is important, it is also that there are people out there that could make wonderful contributions, as Congressman Leland did, that would benefit us all if they can—if they are allowed to make that contribution.

[Applause.]

And we decided to have the lifts and the van service, because were we not to do that we would be adding lift service, that is true, but we would have a smaller closed service to the handicapped community. In other words, the same dollars would be transferred over there, but it would cut our service by some 80 percent. So we as a community decided to do both.

If anything, we will probably take a look at the van service and extend it on work trips to areas that we do not now extend it. And at the risk of—when I was a youngster in high school there was a poem I read as required reading. That was in the year 1940. That was 49 years ago. But I remember the idea of that poem my whole life. And I have got just three—I will tell you I am not accustomed to quoting poetry in speeches, but I have got just—I generally would be thought of as a cost-effective person. But I have got three couplets from Thomas Gray's "Elegy Written in a Country Churchyard."

And the idea behind it is that he was walking through a country churchyard and it was largely deserted, cover up with leaves, and he saw the tombstones there, and they had names, Tom Smith, Jane whatever, and it was in a rural English town and he wondered what person buried there society had never given a chance to which that person was capable, and that was the underlying thought of the poem, and these three little couplets illustrate that thought:

"Full many a flower is born to blush unseen, and waste its sweetness on the desert air."

"Some mute inglorious Milton here may rest, some Cromwell, guiltless of his country's blood."

"Here rests his head upon the lap of earth a youth, to fortune and to fame unknown."

And the notion I guess is that who knows what in this little country churchyard a Cromwell might lie, a Milton might lie, to whom society never gave a chance to contribute, not just for themselves, but to all of society.

Thank you.

[The prepared statement of Robert C. Lanier follows:]

ROBERT C. (BOB) LANIER
CHAIRMAN, LANDAR CORPORATION AND THE
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
SUMMARY OF TESTIMONY BEFORE
SUBCOMMITTEE OF THE EDUCATION AND LABOR COMMITTEE
ON SELECT EDUCATION
AUGUST 28, 1989

THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS (HOUSTON METRO) FORMALLY VOTED TO OUTFIT ITS NEW BUSES, VANS, AND MINI-BUSES WITH WHEELCHAIR LIFTS, COMMENCING WITH THE FIRST PURCHASES OF 300 FULL SIZE BUSES (60 PER YEAR FOR 5 YEARS), 51 MINI-BUSES, AND 35 MICRO-BUSES.

THIS BOARD ACTION SUPPLEMENTS A DOOR-TO-DOOR PICK-UP SERVICE PRESENTLY FUNDED WITH $5,894,000.00 OF ANNUAL EXPENDITURES, WELL ABOVE THE LEVEL OF MOST OTHER CITIES.

THE WHEELCHAIR LIFT'S WERE ADDED, NOT BECAUSE WE BELIEVE THEM TO BE THE MOST COST EFFECTIVE, BUT BECAUSE WE BELIEVE THEM TO BE RIGHT. THE CONTROLLING ISSUE, AS I SEE IT, IS AN ATTEMPT TO AFFORD ALL OUR CITIZENS THE RIGHT TO FULLY PARTICIPATE IN THE ECONOMIC AND POLITICAL PROCESS. THE ANALOGY THAT COMES TO MIND IS THE OLD CONTENTION THAT MINORITIES SHOULD BE SEGREGATED UNDER THE "SEPARATE BUT EQUAL DOCTRINE". I DO NOT SUBSCRIBE TO THAT, BUT SUBSCRIBE TO THE NOTION THAT, AS BEST WE CAN, WE SHOULD AFFORD ALL OUR CITIZENS THE RIGHT OF FULL PARTICIPATION. HOUSTON METRO'S DECISION IS A SMALL STEP IN THAT DIRECTION. A STEP WE ARE COMFORTABLE WITH BECAUSE IT IS SOUNDLY BASED IN AMERICAN VALUES AND OVERALL ECONOMIC HEALTH.

MANY ARGUE THAT ALLOWING FULL PARTICIPATION TAKES PEOPLE OFF THE WELFARE ROLL, MAKES THEM INTO TAX-PAYING CITIZENS. THAT IS ALL TRUE. BUT I THINK THERE IS A LARGER VALUE. HAD U.S. CONGRESSMAN MICKEY LELAND LIVED EARLIER IN MY LIFETIME, HE WOULD

NOT HAVE BEEN PERMITTED HIS FULL PARTICIPATION. BUT, AS OUR SOCIETY BECAME MORE INCLUSIVE, IT IS NOT JUST HE, BUT US ALL WHO HAVE BENEFITTED FROM HIS LARGER THAN LIFE CONTRIBUTIONS.

WHO KNOWS WHAT OUTSTANDING CONTRIBUTION LIES DORMANT WITHIN SOME HANDICAPPED PERSON, THAT CONTRIBUTION TEETERING ON THE BRINK OF WHETHER HE OR SHE IS ALLOWED FULL PARTICIPATION IN OUR SOCIETY? THE MOBILITY PROVIDED BY A WHEELCHAIR EQUIPPED BUS FLEET IS AN IMPORTANT ELEMENT OF FULL PARTICIPATION IN OUR SOCIETY.

"FULL MANY A FLOWER IS BORN TO BLUSH UNSEEN,
  AND WASTE ITS SWEETNESS ON THE DESERT AIR.

. . .

SOME MUTE INGLORIOUS MILTON HERE MAY REST,
  SOME CROMWELL, GUILTLESS OF HIS COUNTRY'S BLOOD.

. . .

HERE RESTS HIS HEAD UPON THE LAP OF EARTH
  A YOUTH, TO FORTUNE AND TO FAME UNKNOWN;"

FROM "ELEGY WRITTEN IN A COUNTRY CHURCHYARD" BY THOMAS GRAY.

Mr. **Owens**. Thank you.

Mr. **Bartlett**. Mr. Chairman, if the Chairman would yield before we go on to the next witness. As a long-time Texan, I might just comment to the tough, hard-nosed, cost-effective leader on the observations as to how far we have come. The Texas Highway Commissioner is now quoting poetry. My compliments.

Mr. **Lanier**. Well, do not tell anybody I did it.

[Applause.]

But I believe my thoughts expressed the point. I do.

Mr. **Owens**. The Chair also wishes to note that we very seldom get such testimony. It was quite inspiring.

Mr. **Lanier**. Thank you.

[Applause.]

Mr. **Owens**. Mr. Robert Mosbacher, Jr., President and Chief Executive Officer of Mosbacher Energy Company.

STATEMENT OF ROBERT MOSBACHER, JR., PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOSBACHER ENERGY COMPANY

Mr. **Mosbacher**. Thank you, Mr. Chairman.

I am here appearing not only as president of Mosbacher Energy Company, but also as Chairman of the Texas Department of Human Services Board. I offer my testimony in both regards.

I want to begin by paying tribute to my friend, Congressman Bartlett, from Dallas. Those of us from Houston do not know well Steve Bartlett's commitment to issues of the disabled, but I have had the privilege of knowing Steve and knowing him well, and knowing that he is absolutely committed to this, and has made a tremendous contribution. As a Texas, I am proud he is part of our delegation.

[Applause.]

The Americans with Disabilities Act of 1989, provides this nation an opportunity to take another step towards ensuring civil rights and equality in America for all persons. It affords the roughly 36 million disabled persons living in the United States an opportunity to prove their willingness and ability to participate in, and enhance the work force. This bill represents an important, symbolic step towards ending discrimination against disabled Americans and providing them with equal access to opportunities in our nation.

I applaud the President, his Administration, and the key sponsors of this legislation in the Congress for their bipartisan commitment to expanding the reach of civil rights laws to include disabled Americans. This is a most encouraging example of cooperation between the Executive and Legislative Branches of our Federal Government.

Given this evidence of leadership in Washington, it becomes more incumbent upon those of us in positions of responsibility in state government to show similar leadership. To date, that leadership has been sorely lacking.

As a next step in our commitment within the State of Texas to provide the necessary focus, inter-agency coordination, targeted services, and leverage of public and private resources in a more effective manner, I will recommend to the board of the Department of Human Services that we establish an Office of Disabilities within that department.

Responsibilities of this office might include: planning, design, implementation, administration, coordination, and monitoring of services to persons with disabilities of all ages.

In addition, I have called for the establishment of a Task Force on Disabilities to assist in the establishment of this new office and to help formulate its agenda. It is my intention that these initiatives create programmatic and financial assistance systems that address the goals of this legislation, which are independence and work force participation.

The Texas Department of Human Services plays a central role in the development and delivery of services for persons with disabilities. Designated as a signal state Medicaid agency in Texas, TDHS is responsible for providing services to persons with disabilities, including health, residential, support and protective services. Many disabled persons under the age of 65, for various reasons, have not been served by the current TDHS service delivery system.

Other state agencies charged to serve persons with disabilities are limited either by function or scope of population. For example, the Texas Rehabilitation Commission provides vocational services for adults. The Texas Department of Mental Health and Mental Retardation services persons who have mental illness or mental retardation. The Texas Commission for the Blind serves persons with vision impairments. And the Texas Commission for the Deaf services persons with hearing impairments.

By more effectively coordinating the provision of services at the state level, could with the new efforts at the Federal level, I believe we can maximize the potential impact on disabled persons of these changes. What gives me particular cause for optimism is the growing consensus that we must augment income support for the disabled with a greater emphasis on initiatives for independence, self-sufficiency, and productivity.

[Applause.]

We must remove the barriers and disincentives that prevent or inhibit people from moving off such income support benefits into the work force. Clearly, the Americans with Disabilities Act, coupled with Federal financial assistance programs that reward, rather than penalize employment, will provide a pathway of support towards independence for disabled persons. It is not only good public policy, but it also makes sound economic sense.

The changes made last fall by the Congress in The Family Security Act represent the most fundamental improvements in welfare in over 20 years. This is so largely because of a commitment to make work more profitable than welfare. That is achieved by rewarding work in the form of transitional child care and health care benefits, rather than penalizing those who go to work by systematically removing one form of support after another.

The Americans with Disabilities Act follows the same general approach in terms of encouraging investment in independence and productivity, rather than dependence and debilitating idleness. Not only does it make good economic sense, but it also helps build the dignity and self-esteem of those we seek to assist.

From the perspective of a private sector employer, this legislation is also extremely important. If we are to remain competitive as a nation in the international marketplace, we must have a well trained, well education, and highly motivated work force. Millions of disabled Americans who have been denied access to the work place are well education and can be easily trained.

What is more, they are some of the most highly motivated people in our society today.

[Applause.]

If we look at the demographic changes in the work force that are taking place today and will continue through the balance of this century, it becomes increasingly critical that we call upon disabled individuals to become an appropriate part of the American work force.

I am convinced that our disabled citizens are anxious to fill that need, and with the enactment of this landmark civil rights legislation, we can achieve that goal.

Thank you, Mr. Chairman.

Mr. OWENS. Thank you.

[Applause.]

I would like to call on Mr. Howard Wolf of Fulbright and Jaworski. He also serves as the chairman of the Board of Trustees of the Institute for Rehabilitation and Research.

Mr. Wolf.

STATEMENT OF HOWARD WOLF, PARTNER, FULBRIGHT & JAWORSKI

Mr. WOLF. Thank you, Mr. Chairman.

I would like to start off by saying that the TIRR, which is the Institute for Rehabilitation and Research, is a primary not-for-profit rehabilitation hospital located in the Texas Medical Center in Houston, Texas. Maybe people that you see in the audience today have been patients of this institution, including Lex Frieden.

We have here with us the founder of TIRR, Dr. William Spencer, who is seated behind me.

[Applause.]

And to first address the issue of why is this bill so needed today, I cannot do that any better than to summarize some of the remarks of Dr. Spencer that are going to be inserted into the record.

There are now so many barriers that prevent the disabled person from accomplishing or maintaining crucial activities of daily business. For example, the lack of opportunity to use affordable transportation for shopping, for timely health care services or for access to public and private community services and assistance create needless and costly dependence on others as homebound persons. Services and economic assistance then fall upon overloaded public and private agencies.

Thus, the absence of services and support for independent living can make it nearly impossible to obtain an autonomous or control of one's own life. The alternative becomes chronic care in the hospital for the severely disabled are custodial and placed in a nursing home. Sadly, the occurrence of untreated and preventable medical complications might ensue and require very costly, intensive and recurring hospital care.

Eventually, severe dependency perpetuates a young or working-age person's lack of access to training or education and lack of employment opportunity. Physical and attitudinal barriers are additional contributions. This situation continually increases the expenditures needed from the person's family, community, state and nation. Such financial losses become unrecoverable in the absence of productivity and independence.

Facts supporting this situation have recently been reported in the national local press. For years this tragic depression has been experienced by hundreds of thousands of disabled persons, by professionals trying to assist them, by independent live-in center personnel and advocacy groups. That alone would justify the adoption of the ADA.

In addition, I would like to say that I have read the testimony of several witnesses before the Senate Committee's Subcommittee on the Handicapped, as well as numerous articles, editorial and papers supporting the adoption of the ADA. This extensive body of material aptly demonstrates that the ADA is a law that will benefit millions of handicapped Americans and is legislation whose time has come.

But I would like to go further than that, and I would like to add some words, I guess, in seconding what Dr. Van Hightower said, and seconding what Bob Lanier said. And I would submit that the ADA should be adopted not only because it will help to empower the disabled persons in our country, but also because it will help to enrich the lives of all citizens in the United States.

[Applause.]

Through my work with TIRR, I have been exposed to numerous instances where businesses, organizations and projects have had the participation of a disabled person. Invariably, once they get their "wheels in the door"—to modify a phrase—disabled persons add a new constructive, dramatic dimension to the dynamics of the situation. This is because it is impossible to work or play, in concert with a handicapped person, and not be inspired and motivated by their determination, their courage, and their perseverance.

When we deny a disabled person the opportunity to work, travel, eat or be entertained or in any way to participate in activities with other people, everyone loses. The ADA is not just a bill for Americans with disabilities, it is legislation that will benefit all Americans. It is time to pass the ADA.

And in conclusion, I would like to address an issue that concerns, I know, the committee, and specifically that you referred to, Mr. Bartlett, and that is remedies.

As a full-time practicing lawyer, I would say to you that strong remedies are essential to the effective implementation of this and other civil rights laws. The Civil Rights Act of 1964 is an effective lay today because of the private remedy provisions contained in the 1964 Act and strengthened through the years by amendment.

Civil right laws depend heavily on private enforcement. Provisions such as the right to attorney's fees, injunctive relief and damages are essential to provide private citizens a meaningful opportunity to vindicate their rights. Attempts to weaken the remedies available under the ADA are attacks on the ADA itself, and their success would make the ADA an empty promise of equality.

I am as concerned as you are about our litigious society, and about the fact that just like our national parks, our Federal courts are a national resource, and they are an over-used national resource, a taxed national resource just like our national parks. But I would say to you that, in connection with the ADA, it would not be fair and it would not be appropriate, because this legislation has been so long and so late arriving on the scene, to weaken its effectiveness by denying the remedy section its proper place.

I would say to you as members of Congress that the solution is not in short-changing the ADA, but reorienting our priorities all over the scale of access to the Federal courts and not by reducing the strength and the enforceability of this statute.

Thank you very much.

[The prepared statement of Howard Wolf follows:]

TESTIMONY ON THE AMERICANS WITH DISABILITIES ACT OF 1989

BEFORE

THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

August 28, 1989

Howard Wolf
Partner
Fulbright & Jaworski

Howard Wolf
August 28, 1989

My name is Howard Wolf. I am a partner in the international law firm of Fulbright & Jaworski. I also serve as Chairman of the Board of Trustees of The Institute for Rehabilitation and Research (TIRR) which is a not-for-profit rehabilitation hospital located in the Texas Medical Center in Houston, Texas. TIRR was founded in 1959 and is the foremost comprehensive medical rehabilitation facility providing services to patients with spinal cord injuries, head injuries and various neurological conditions in the Southwest United States.

My testimony is submitted in support of the adoption by Congress of the Americans with Disabilities Act of 1989 (ADA).

In a country which prides itself on the opportunities it provides to all its citizens, and in which fundamental fairness and human rights are standards we hold for other nations to meet, we must continue to act upon opportunities to extend the full protection of our laws and full access to the benefits of living in this country to all our citizens. Citizens with mental and physical disabilities have long been excluded by the terms of our laws from full citizenship. We have not yet drawn upon the full strength of the Commerce clause or the Equal Protection clause to broadly prohibit discrimination against people with disabilities. Instead, we have tied basic protections against discrimination in employment, transportation, housing, education and services to receipt of federal funding, thus leaving the bulk of discriminatory actions against people with disabilities without private remedy under federal law. The same employer who by federal law would be prohibited from discriminating against a woman can refuse employment to a person with a disability, for no other reason than the disability. A hotel cannot refuse lodging to a Columbian because of that person's nationality, but can to a person with a disability, for no other reason than the disability. People who can walk into a bus can sit wherever they wish; a person in a wheelchair still cannot board most buses.

Long-held stereotypes and limited opportunities for interaction between people with and without disabilities have resulted almost universally in diminished expectations about the individual abilities of people with disabilities and their potential to participate in and contribute to society. For too long, this unfounded but pervasive devaluation of the abilities of people with disabilities has served as the excuse for our history of discrimination and exclusion. In supporting the ADA, members of Congress and the Bush administration have recognized the need to make fundamental changes in our laws if we are to achieve our national goals of assuring equality of opportunity, full

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participation, independent living and economic self-sufficiency for people with disabilities.

The widespread support of the ADA is also reflective of a pressing desire to get the most from our federal budget; to spend our tax dollars in ways that maximize their use and yield the greatest return. In the past fifteen years we have committed billions of dollars to special education of disabled youth; to the rehabilitation of disabled workers; to improved care and treatment programs for disabled people of all ages. We can be proud of most of these programs and their impact on the lives of people with disabilities. But have we accomplished enough when we educate, rehabilitate and care for people with disabilities only to ignore discrimination against them in the workforce, in transportation, in public accommodations? How many well-educated and highly capable people with disabilities must sit at home every day, not because of their lack of ability, but because of the attitudes of employers, service providers, and government officials?

EMPLOYMENT

Two thirds of all disabled Americans between the age of 16 and 64 are not working. Only 25 percent of disabled Americans work full time. Of the non-working disabled population, 66 percent express a desire to work, because by working they can attain their personal goals and increase their financial stability. (1985 Harris survey conducted for the International Center for the Disabled in cooperation with the National Council of the Handicapped.) By elevating the level of employment of people with disabilities through eliminating discrimination in employment, in transportation and in other services intrinsic to successful employment, we can greatly increase the amount of tax dollars generated by, rather than paid out to, people with disabilities.

A 1987 follow-up survey of employer attitudes toward employees with disabilities indicates that an overwhelming majority of managers find that employees with disabilities perform their jobs as good as, or better than, non-disabled employees, and that the average cost of employing a person with a disability is about the same as the cost of employing a non-disabled person. Yet, despite the high marks given to people with disabilities as hard-working, reliable and productive employees, most employers plan to take no greater efforts to hire people with disabilities and give the hiring of people with disabilities a lower priority than the hiring of people from minority groups and the elderly. A new federal initiative is necessary to assure that able people with disabilities have equal employment opportunities.

PUBLIC ACCOMMODATIONS

The ADA prohibits discrimination on the basis of disability in places of public accommodation, including auditoriums, theaters, restaurants, shopping centers, hotels, gas stations, office buildings and recreation facilities.

Certain business interests urge that small establishments should be excluded from the coverage of the ADA because it will pose an economic hardship to them. The Act itself already takes the needs and special considerations facing small businesses into consideration by stating that existing facilities must be made accessible only if the changes are "readily achievable"; that auxiliary aids and services need not be provided if they would cause an "undue burden"; that only "reasonable" modifications must be made. "Reasonableness" was the foundation of Title V of the Rehabilitation Act, and that concept remains key here. Caselaw under the Rehabilitation Act clarifies how these provisions will be implemented, and courts have not been blind to the realities of small businesses.

TRANSPORTATION

The ADA also prohibits discrimination in transportation by requiring new public bus and rail vehicles to be readily accessible and usable by people with disabilities, and requiring privately owned new vehicles used in public transportation to be accessible within five years from the date of enactment.

REMEDIES

Strong remedies are essential to the effective implementation of this and other civil rights laws. The Civil Rights Act of 1964 is an effective law today because of the private remedy provisions contained in the 1964 Act and strengthened through the years by amendment. Civil rights laws depend heavily on private enforcement. Provisions such as the right to attorney's fees, injunctive relief and damages are essential to provide private citizens a meaningful opportunity to vindicate their rights. Attempts to weaken the remedies available under the ADA are attacks on the ADA itself and their success would make the ADA an empty promise of equality.

Other excellent civil rights laws, like the Fair Housing Act, have been on the books for twenty years, but have yielded no significant changes because of ineffective enforcement and remedies. In its last session, Congress made the FHA into a strong weapon against discriminatory housing practices by amending it to create meaningful enforcement mechanisms and remedies.

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Howard Wolf
August 28, 1989

CONCLUSION

I have read the testimony of several witnesses before the Senate Subcommittee on the Handicapped as well as numerous articles, editorials and papers supporting adoption of the ADA. This extensive body of material amply demonstrates that the ADA is a law that will benefit millions of handicapped citizens, and is legislation whose time has come.

But in conclusion, I would submit that the ADA should be adopted not only because it will help to empower the disabled persons in our Country, but also because it will help to enrich the lives of all citizens of the United States.

Through my work with TIRR I have been exposed to numerous instances where businesses, organizations and projects have had the participation of a disabled person. Invariably, once they get their "wheels in the door" (to modify a phrase), disabled persons add a new constructive, dramatic dimension to the dynamics of the activity. This is because it is impossible to work, or play, in concert with a handicapped person and not be inspired and motivated by their determination, courage and perserverance.

When we deny a disabled person the opportunity to work, travel, eat or be entertained or in any way to participate in activities with other people, everyone loses. The ADA is not just a bill for Americans with disabilities, it is legislation that will benefit all Americans. It is time to pass the ADA.

Mr. **Owens**. Thank you.

[Applause.]

The Chair would like to note that Dr. William Spencer has submitted written testimony which will be entered into the record without objection.

Without objection, we would also like to announce that the written testimony of all of today's witnesses, or any additional testimony submitted within the next 10 days, will be included in the record of this hearing.

We also want to note that we will include in the record the names of all the volunteers who helped to make this hearing possible.

I would like to ask one question of all of the witnesses. I think Mr. Wolf has opened it up. You are business people, and on the other hand, you feel great understanding and sympathy for this problem.

What do you think we should do with respect to remedies? In the agreement made between the White House and the Democratic leadership in the Senate, we have primarily limited remedies to administrative procedures. That is a critical question. The bill that we are actually considering today is the bill of the House of Representatives which still has a strong remedy section in it. We would like an opinion from each one of you on that matter.

I think we have heard Mr. Wolf already. Mr. Lanier?

Mr. **Lanier**. Does the administrative remedy now proposed allow the aggrieved person to go straight into a given agency and get relief granted? Is that the nature of the relief or is it different?

Mr. **Bartlett**. If the Chairman would yield.

As I understand, the dispute as to whether we use the Senate bill use of the Title VII under EEOC, at which the aggrieved person would file a claim with the EEOC as we do under the Civil Rights Act of 1964. And only in the case of clear consistent pattern or practice would then a lawsuit in the Federal court be permitted. I may be oversimplifying that, but that would be filed by the Justice Department.

The Senate version would abstract the '64 Civil Rights Act. The House version would go beyond that and permit a lawsuit under U.S. Code 1981, which prevents punitive compensatory advantages, which or not an administrative complaint had been filed. So that is the distinction.

Mr. **Lanier**. Well, my own various experiences some years ago when I was a practicing lawyer, and then also I practiced labor law. Without knowing that much about the specifics, one difficulty with litigation is it costs so much money and it takes so long to get to the court. In the state court here, it takes two or three years. In the Federal court, somewhat shorter.

In labor cases of discrimination, the problem there was that where a person claimed he was discriminated against for union activity, it might be two or three years before he got a favorable or unfavorable finding to that effect.

My notion would be, without knowing the specifics of the statute, and maybe it is not the only exclusive thing, but if some sort of administrative remedy could be set up where the complaint could be quickly heard and quickly disposed of and the staff so that speed could be accomplished, would strike me as perhaps as an effective remedy.

Mr. **Owens**. One of the problems in the administrative remedy process is the fact that the agencies have tremendous backlogs also. It takes them years to——

Mr. **Lanier**. Well, I understand. I think if you did that, if you did that, you would have to calculate what your likely case load would be, and it would need to be funded at a level that would allow a speedy hearing, or else the remedy would be worthless.

I think you just need to calculate your case load, calculate your expense, and provide funds for it, or I would not use that remedy. I would let them go straight to court.

Mr. **Owens**. Thank you.

Mr. Mosbacher?

Mr. **Mosbacher**. Mr. Chairman, I would associate myself with Mr. Lanier's remarks, and I think the worst thing that we can see as a result something that became so time consuming that in fact it took years to bring closure.

So whether you are talking about remedies or whether you are talking about trying to establish clear definitions along the way, I think reasonableness will be kind of the test and we must avoid overloading the courts, because the bottom line is whether you are overloading the administrative agency or you are overloading the courts, you end up deferring the goals that you are trying to accomplish, which is moving more people into the work force.

So I would try to find a way to put it on a short circuit and bring it to closure within 30 to 60 days. Now how you do that, I do not now, but that would be my recommendation.

Mr. **Owens**. Do you think 30 to 60 days is a reasonable time period?

Mr. **Mosbacher**. Given how long it takes to resolve most other things, yes, sir. I think 30 to 60 days would be reasonable.

Mr. **Owens**. Thank you.

Ms. Comfort?

Ms. **Comfort**. Well, I am not a labor specialist. I do not have anything more to add than what these gentlemen have brought out.

Mr. **Owens**. Ms. Comfort, let me just note that you said some very interesting things in your statement in regards to removing barriers which would prohibit your company from moving forward in giving help in the area of telecommunications for deaf people. We will take note of that. There is another committee of Congress which is primarily responsible for that.

However, I just wondered in one case—the manufacturing of devices. Is that really an issue for local and regional companies? If each regional company were to engage in its own manufacturing, would not the costs be much higher than if a national company does it on a larger scale, allowing the costs to be brought down as the manufacturing of the devices increases?

Ms. **Comfort**. What is happening is that the United States manufacturing companies are not manufacturing telecommunications equipment. Over 90 percent of telecommunications equipment is now produced by Japanese companies. So basically we do not have domestic manufacturers with the except of maybe AT&T, very few others. So basically we have lost the market. The market is an overseas market.

So I think by allowing the regional operating companies to manufacture, you have seven domestic manufacturers which could help our balance of trade and help us get back our competitive edge in technology.

Mr. Owens. Thank you very much. That is very useful information.

Mr. Bartlett.

Mr. Bartlett. Mr. Chairman, I just want to make sure I understand Mr. Wolf's testimony.

Are you suggesting that in the ADA's final passage it should go beyond the '64 Civil Rights Act in terms of remedies and include U.S. Code 1981, go beyond the racial discrimination?

Mr. Wolf. As I understand the bill that is presently the House version which does go beyond that, I think it should, yes. I think a right without a remedy is very——

Mr. Bartlett. Well, do you think the '64 Civil Rights Act has worked enough for purposes of race discrimination?

Mr. Wolf. I think it is now starting to. I think it took a long time to gather momentum, and I would like to see this statute, which is way overdue, ride on the shoulders of that act, and pick up where it left off.

Mr. Bartlett. Would you likewise extend compensatory impunity damages in U.S. Code 1981, with reference to racial discrimination, be in Title VII for racial discrimination?

Mr. Wolf. Yes, I would.

Mr. Bartlett. You would extend that also?

Mr. Wolf. I do not see that as the issue here, but if you are asking my personal opinion on that, yes, I would.

Mr. Bartlett. Excellent testimony. I picked up at least three different suggestions for some improvements to the legislation. A time limit on EEOC cases, for example, 30 to 60 days Mr. Mosbacher has suggested. And I think that would have to include additional resources for the EEOC. If we are going to require the EEOC to respond more timely, it seems to me we ought to provide additional resources, and perhaps streamline some of their procedures.

And second is a safe harbor for both manufacturing and for relay services. This subcommittee does not have technical jurisdiction over that, but this subcommittee delights in finding way to expand our jurisdiction in Congress, so we may take you up on that, Ms. Comfort.

I would also note that in the Senate provision of the bill is an area that does relate to some of the things we are discussing, and it does seem to me to be generally agreed that it stay in the bill. And that is the provision for technical assistance to be available to private-sector employers.

As private-sector employers begin to learn what reasonable accommodation is readily achievable and undue hardship begin to open up to employment opportunities with persons with disabilities, private-sector employers need to have a readily achievable source of information for technical assistance, for ramps, for telecommunications, for electronic equipment. And I think we will include in the bill some kind of a source at the Federal level for technical assistance so that the dry cleaning shop on the corner will have someone to call and say, what does this mean and what kind of technology is available.

Mr. Lanier.

Mr. **Lanier**. Again, if we could go back to the idea that they have a separately funded mediation service that has familiarity with labor disputes and undertakes to bring the parties together through a conciliatory process, that is somewhat useful. And on the funding, to assure a speedy disposition.

We are discussing here in the state now a remedy that has some possibility. The idea is that a drug user would get a quick mandatory sentence, and the idea being discussed is to set up a separate court to hear that, more or less like a corporation court where that person would be brought to trial very, very quickly.

And here you might consider some mechanism for bringing the matter before a sort of separately funded, not putting the burden on everybody else with a time limit they cannot comply with. You see that throughout the Federal agencies, but a separately funded group of folks that would hear these complaints and either mediate or dispose of it.

Mr. **Bartlett**. Let me move from there to an employment question. It has not yet been raised in this hearing and I would like to ask each of the four of you if you would like to answer it, how would you propose.

There is some ambiguity in both the Senate and the House versions of the bill, although we are getting closer, there remains some ambiguity as to what do we intend to say about the ability of an employer to deny employment to a person who is a user of illegal drugs.

The Senate provision at this point essentially provides that an employer could deny employment to a person based on their usability of drugs. But it seems to indicate, or it may indicate that the employer could be required to prove that it had an effect on their job performance, making it performance-related.

Now, my question just in layman's terms, if you were drafting this bill, would you draft it in a way that an employer upon determining that one of his employees or prospective employees is a user of illegal drugs, would be permitted to termination employment for that person without regard to job performance?

Or do you believe the employer should be required to relate that to job performance?

Mr. **Lanier**. I think I would run him off that day.

Mr. **Bartlett**. Just not even at the close of business that day, just right at——

Mr. **Lanier**. Hand him is keys.

Mr. **Bartlett**. Mr. Mosbacher?

Mr. **Mosbacher**. I agree with that. I do not see how we can send the signal we want to send, which is we do not want to continue to tolerate drugs in the work place, if we are going to make these crazy distinctions between taking drugs, which affects your job, versus taking drugs that do not affect your job. That is a distinction without a difference, in my opinion.

Mr. **Bartlett**. So if the Federal law were to define a drug user as a person with a disability per se, you just do not see that as a disability.

Mr. **Mosbacher**. Not a particular, yes.

Mr. **Bartlett**. Ms. Comfort?

Ms. **Comfort**. Right now at Southwestern Bell we require a drug testing before hiring a person. And if a person would fail to pass that, then he would not, obviously, be hired.

We do have a policy that if an employee is found to be taking illegal drugs, then we would certainly work with that employee with rehabilitation, but we would not tolerate that.

Mr. **Bartlett**. Mr. Wolf?

Mr. **Wolf**. Well, what we are dealing here with, Mr. Bartlett, is a statute which has to do with control, control of your own life, and independence. And I would say that someone who is using drugs, and I realize this may be a simplistic approach to this problem, but I would say that someone who is using drugs made a choice. And if we are ever going to get control of that issue in this country, we have to make people responsible for their own conduct.

The people that this statute is designed are things that are beyond their control, and they are trying to get control of their lives. And I would just support very strongly what Mr. Lanier said. I would say someone who is using drugs and who come through this statute, they should not be employed.

Mr. **Owens**. Will the gentlemen yield for a moment?

Mr. **Bartlett**. I would be happy to yield.

Mr. **Owens**. For clarification, let me just give you an example. A young man graduated from law school, worked in the U.S. Attorney General's office in New York, and was found guilty of using cocaine. He has gone before a judge and was mandated to enter a treatment program. He is in the treatment program and it is publicly known that he is a drug user.

Are you saying that this individual does not have a chance anymore in the work place?

Mr. **Wolf**. No. I am saying that someone who has been rehabilitated.

Mr. **Owens**. Someone who is in a rehabilitation program, who otherwise would be an illegal drug user. We should not have people doing illegal things in the work place. I agree 100 percent. But here is a drug user who is in a rehabilitation program mandated by the court.

Are you saying that this person should not be allowed to——

Mr. **Wolf**. No, I am not saying that. No.

Mr. **Owens**. Thank you very much.

Mr. **Wolf**. Not at all.

Mr. **Owens**. Mr. Bartlett.

Mr. **Bartlett**. Thank you for your help on that. I think as Congress considers the bill, I think that that the area of alcohol abuse will in fact become increasingly clear and will come down on the side of the drug-free work place, and I think the legislation is moving in that direction.

Let me ask Ms. Comfort two additional questions.

First of all, in your employment policy now with Section 503, which I think you stated you have an affirmative action policy for the employment of persons with disabilities.

What kind of remedy system do you have built into that if someone believes they have been denied employment at Southwestern Bell based on their disability? What are their remedies?

Ms. COMFORT. Well, it would be the same remedies as one who might feel that she has been discriminated against who are a minority. It is the same process. At least I believe that is the case.

We have our internal 800 number or hotline number where an employee can seek some remedies internally before going to a more official body. But I am not an expert in the labor field, so I cannot go any further than that. But it would be the same as any other discrimination.

Mr. BARTLETT. You do not have then a separate system which a person with a disability could appeal back to the personnel department, or back to someone in Southwestern Bell?

Ms. COMFORT. It is all part of the affirmative action program, and we do have an employee, for instance, here in Houston whose job is to work with those who have declared themselves as having a handicap or a disability. So we really handle it as part of the affirmative action process.

Maybe legally there is some differences, but internally we handle it all pretty much the same. Of course, a person with a disability might need some special things that a person who feels that they are discriminated another way such as accommodations and flexibility in work hours and that sort of thing. So we work very hard to make those accommodations.

Mr. BARTLETT. It might be helpful, Ms. Comfort, for this committee, if you could, if Southwestern Bell could provide for the committee subsequently both some sort of indication of which kind of appeals have been used and what the results were, so a description from the person here in Houston who is doing it, of the types of accommodations that you made in specific instances. It would be very helpful for us to be able to look at it.

[The requested information will be available in the office of the Subcommittee on Select Education.]

And one last question. And this comes to a section of the bill that can be as yet unresolved I think in the minds of Congress, and that is, in the relay system itself, the bill as passed now in the Senate is still somewhat ambiguous, not as to whether a relay system would be required for a handicapped person to be able to talk over the telephone to a non-hearing impaired person. The question that is still somewhat ambiguous is who pays for that system.

In Southwestern Bell's practice, how is the payment structured? Obviously, an operator-assisted phone call throughout the conversation is an expensive proposition. And how does Southwestern Bell charge for that service now? And in your opinion, what should the Federal law say about it?

Ms. COMFORT. Well, right now we are not involved in the direct delivery of message relay service. We have operator assistance in terms of placing a call and that sort of thing, but not being an interpreter in the sense of message relay.

In Texas, such a program will be started in 1990, in September of 1990, and some entity will bid to have that function, and it will be funded 55 percent by the local exchange companies and 45 percent by the long-distance carriers for the time period, I believe, of one year until we can see how the service is really used in terms of local versus long distance. And we will recover our dollars for that by the surcharge on the phone bill. So that is kind of how that is working.

And the Public Utility commission——

Mr. BARTLETT. Surcharge for all users or for users of the service?

Ms. COMFORT. For all users. That is the mechanism in place for the recovery of the expenses.

Mr. BARTLETT. So with or without Federal, law Southwestern Bell is going to provide the service and are going to charge all users for the service?

Ms. COMFORT. We might not provide it. Whoever wins the competitive bidding process. It could be General Telephone. It could be AT&T. It could be another related telecommunications company. But the funding mechanism would be through our phone bill.

Mr. BARTLETT. But the funding is going to be provided and the funding is going to be a surcharge on all users.

Mr. Mosbacher, I would like to say I very much appreciate your testimony in support for this legislation. As you correctly noted, there is a fellow Texan, George Bush, he had a good deal to do with getting legislation to the point where it is today and likely to pass this session.

I might also say, and I appreciate the kinds words you had to say about me, but I have to say that I am quite a fan, as I know that many people in this audience are, of Rob Mosbacher, Jr., and the work that you have done at the department.

You have indeed been a voice and a real force and a champion for independent living, for covering so many of our programs, of our government programs from the state of dependency into independency, and I think you have helped to propel to the forefront the independent living issues. And in that regard, our compliments to you and the work that you do.

Thank you, Mr. Chairman.

Mr. Payne.

Mr. PAYNE. Thank you.

I would just like to commend all the panelists, particularly Mr. Lanier, for the outstanding job that you have done. We need to have not only the mini and microbuses, but also full-service buses.

I think many people fail to be as thorough as it relates to the psychological aspect of separate and equal, which I think is probably one of the most important aspects, and I think that what we are doing here is really going in the right direction, and I wish that more local agencies would do that.

Ms. Comfort, you indicated Judge Greene said that what Bell Atlantic was doing was prohibited under the MFJ, but that he would not be in opposition.

Is there any action, to your knowledge, on whether that decision has been made, do you know whether Bell Atlantic will be leaning towards making a request for the MFJ prohibiting to be reconsidered as to all the waiver?

Ms. COMFORT. First of all, our request went to the Department of Justice. It is declared for a ruling from Judge Mercer, and there the agency or the department said that a waiver would be required. We have not approached Judge Greene yet. But I guess in Bell Atlantic's request for a ruling, we did ask for a waiver and the process to be started. So we will be pursuing that certainly. And we are very optimistic that a waiver will be granted.

Mr. PAYNE. That certainly makes sense. As you may know, Bell Atlantic is housed in my State of New Jersey, and we really are very pleased with the outstanding work that the organization is doing there.

We have noted some of the points that you have raised, and I am sure that the committee will follow up with the chairman on these issues.

Thank you very much.

Mr. OWENS. Mr. Bartlett has one additional question he wanted to raise.

Mr. BARTLETT. Mr. Chairman, I appreciate the additional time. I neglected to ask a specific question to Mr. Lanier. You are our transit expert in this hearing so I need to get your opinion.

First of all, I understood your testimony to say that Houston is now going to provide both the lifts on the mainstream buses and the para-transit.

My question goes to that issue and it is, do you believe that this Federal law should—the Federal law, as proposed out in the Senate, would require both of all transit systems in the country, both the para-transit and the mainline lifts on buses.

Do you think that's what Federal law should provide, or do you think it should be somewhat different?

Mr. LANIER. Let me say, first of all, that a number, maybe even most of the people in the transit industry think it should not. I would disagree with that. I think you need to provide both. And one reason is if you are going to provide the lifts, if you don't provide the van service. You take a blind person, the lift is of no benefit to them.

[Applause.]

A retarded person, a retarded person is not helped by the lift. And the lifts reach a particular portion of the handicapped community. But if you pass a law that simply says "lifts", and then if there is sort of a general obligation for the remainder of the handicapped community, my feeling is that the dollars spent in the one area would perhaps crowd out service in the other.

You run next into the question of total dollars that an agency can spend serving this particular area. And the question is, would the lifts and the van service, as a combination, be an excessive burden. I really, given the way—I will say this tactfully—given the way the transit agencies spend their money, I do not think that this is below the cut line in terms of the priority of decisions.

In terms, for example, I would rather myself spend the money to serve the handicapped than I would building new rail systems.

They speak of image. I would rather have the image of being an agency that services all its people. So my notion would be that we ought to do both because if you do not, there will be an equally significant segment of the handicapped community, perhaps they are not represented here, but they will be there, for whom the lifts are not appropriate.

The question I think you will have to consider is what is the total burden. In the case of Houston, this total burden will end up running between $5 and $10 million a year. Well, we are $6 million now; probably $7 or $8 million a year.

We have got about 20 million a year of formula money from the Federal Government. We occasionally have discretionary grants we get from the government. We have overall over a $200 million a year budget. I would not make this item that I would cut.

Mr. **Bartlett**. There is one proposal that is at least being discussed that would place a cap on what the Federal requirement is, not the cap on total expenditures, but at least that a cap of 2 percent of the operating budget——

Mr. **Lanier**. A what?

Mr. **Bartlett**. A cap?

Mr. **Lanier**. Of what?

Mr. **Bartlett**. A cap of the operating budget.

Mr. **Lanier**. No, but what is the percentage?

Mr. **Bartlett**. At 2 percent. They say that the Federal law would require—would have a requirement no more than 2 percent of the operating budget.

Mr. **Lanier**. Just a point there on the curve. A 2 percent cap will be absorbed in a normal transit agency if you include depreciation as an expense, which it is, but the use of the lift. And if you both mandate the lifts and have a 2 percent requirement, it will leave an agency, and that may be your judgment, it will leave the agency free to decide whether or not it will have vans. But the mathematical results——

Mr. **Bartlett**. So a 2 percent cap is underestimated here.

Mr. **Lanier**. Well, they presently have a 3 percent cap, and that's a regulation. But that was struck down by, as I understand it from Lex Frieden, that was struck down in the Philadelphia court. But 3 percent is just about the van cost.

Mr. **Bartlett**. And do you think that technology is going to be dramatically improved for lifts on buses over the course of the next 10 years, or do you think it will be about where we are today?

Mr. **Lanier**. Of course, I do not know. I would be inclined to—I have thought a little bit about this, and I do not quite know the language to suggest. But I would try to leave some room in a section for developing technology.

Mr. **Bartlett**. Thank you.

Thank you, Mr. Chairman.

Mr. **Owens**. I want to thank all the witnesses. It has been very informative and inspiring testimony. Thank you very much.

[Applause.]

Our final panel consists of the Honorable Ashley Smith of the Texas House of Representatives, and the Honorable Chet Brooks of the Texas State Senate.

I understand Mr. Brooks has not arrived yet. We will start with the Honorable Ashley Smith.

STATEMENT OF HONORABLE ASHLEY SMITH, TEXAS HOUSE OF REPRESENTATIVES

Mr. Smith. Thank you, Mr. Chairman, and members. It is my distinct pleasure and honor to appear before you today at the request of Mr. Lex Frieden, the Executive Director of the Institute for Rehabilitation and Research Foundation.

We commend you for your accomplishments on the Americans With Disabilities Act, and we are especially proud of the Texas favorite son, Congressman Steve Bartlett, for his service on this committee.

I will keep my comment brief and to the point It is no secret that Texas has experienced economic difficulties for which we are just beginning to recover. Keeping all Texans employed is an important part of that recovery. As of July, 1989, Houston's unemployment rate stood at 6.5 percent, and the Texas unemployment rate was 7.3 percent. We can do better, and the Americans With Disabilities Act can help.

Because we are in a recovery posture, we are committed to keeping the cost of doing business in Texas under control. We would respectfully request that, in your deliberations over the ADA, that you would emphasize those aspects of the bill which would assist Texans in achieving full employment of its citizens while avoiding the burdens that might arise out of punitive damages and related expenses that small businesses in Texas cannot afford.

Our Department of Commerce reminds us that over 80 percent of the employment in Texas is attributable to small business enterprises, and we would commend you for the exemptions and phase-in of small businesses as are present in the terms and conditions of S933.

Texas is fortunate to have the opportunity to provide input into your congressional process, and we thank you for your hard work and commitment.

My comments provide somewhat greater detail in writing which I previously submitted for your consideration. If I or any of my staff can be of any service to you, we would welcome that opportunity. And I would be happy to respond to any questions.

[The prepared statement of Hon. Ashley Smith follows:]

Congresssional Field Hearing
House Committee on Education and Labor
Subcommittee on Select Education
August 28, 1989, Houston, Texas

Gentleman, I would like to take this opportunity to extend a warm welcome to all members of the Subcommittee on Select Education of the House Committee on Education and Labor. It is our pleasure for you to be visiting in Texas, particularly in Houston. Mr. Chairman, it is indeed a privilege to be here today and to provide input for your deliberations on H.R. 2273, the "Americans with Disabilities Act of 1989."

By way of introduction, I would like to enter into the record a commendation for the individual efforts of Mr. Lex Friedan and for the collective efforts of the Houston-based Institute for Rehabilitation and Research Foundation. Mr. Friedan and his staff continue to deliver quality assistance and to promote advancements for the disabled community and I express thanks on behalf of the entire Houston community for his efforts.

As a member of the Texas Legislature, I hold in high esteem and great appreciation our representative government. Your Subcommittee's presence in our community is the personification of that representation. The legislative branch delivers laws to the electorate, on the one hand; while, on the other hand, listens to citizens for directions of what is needed. We thank you for effort and commitments necessary to provide good government. We are especially proud of one of Texas's favorite sons, Congressman Steve Bartlett for his contributions to this Subcommittee and numerous other issues of importance to Texans.

It is not a very well kept secret that the citizens and governments of Texas have experienced economic difficulties from which we are just beginning to recover. The state constitution mandates a balanced budget. In 1987, the Legislature passed the largest tax package in our history because of a sizeable revenue shortfall. This year the Governor took a strong position against any new taxes. That positition was accomplished to a great extent by the Comptroller's projections of continued recovery.

However, the current recovery trends hinge on a very delicate balance. The trends will continue to improve by increased employment. Concomitantly, the state's budget can be enhanced by reduced demand on services. The concept of the ADA, represents a potentially positive influence toward continued economic health and stability in Texas by increasing the number of people in the workforce and by decreasing dependence on benefits and services.

Human resources are our nation's most precious resource. Currently there are between 37 and 43 million disabled persons in America. The Rutgers University Bureau of Economic Research indicates that a total of $169.4 billion was spent by all entities (federal, State/local, and private) during FY86 for disabled persons aged 18-64.

It is only reasonable to expect that there will be costs involved with implementation of any form of either H.R. 2773 or S. 933. As already stated, there is a considerable cost involved by not moving forward with this landmark legislation.

It is my understanding that many aspects of H.R. 2773 and S. 933, are modeled after key portions of previous federal laws - Title VII of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act Of 1973. There appears to be a general consensus that implementation of Section 504 occurred without great financial disruption to the states and contractors receiving federal funding.

The ADA expands the scope of Section 504 to include all governments entities and private businesses. It is my understanding that there is no estimate of the nationwide cost of this proposal. For me, the unknown costs present an area of concern for Texas business owners and for Texas government. Many businesses in this state still have a precarious future.

Additionally, it is my understanding that the committee version of S. 933 represents the end result of considerable negotiations between the administration, the Attorney General and the Senate Labor and Human Resources Committee. Based on the information available, the markup of S. 933 addresses many of my concerns about the costs of implementation and enforcement.

The Substitute incorporates numerous, additional waivers and exemptions not found in the current House version. The Substitute includes a phase-in for coverage of employers and includes an effective date of 2 years from the date of enactment. During the first 2 years after the effective date of the Act, only employers with 25 or more employees are covered. After that period of time, the coverage will include employers with 15 employees.

The Substitute defines some of the key terms that might otherwise increase the potential for litigation. These include definitions of such items as "readily achievable", "auxiliary aids and services", "undue hardship", and "reasonable accommodation".

The potential for litigation is indeed an extremely sensitive issue in Texas due to the impact of judicial decisions on the state's budget making process. Consequently, the Bush administration's insistence on no punitive damages holds a particular attraction. The Substitute deletes the authority to seek compensatory and punitive damages. Injunctive relief has been incorporated as the primary remedy for violation.

The concept of extending federal civil rights protection to disabled citizens is an issue that is overdue. My personal view is that the Senate substitute, endorsed by the President, his administration, and the Attorney General provides the best approach for the citizens and businesses of this state by striking a critical balance between disability rights and business concerns.

Mr. OWENS. Thank you, Representative Smith.

I think you heard part of the testimony of the previous panel.

Mr. SMITH. Yes.

Mr. OWENS. There is a general feeling that this bill does not impose undue hardships for municipal governments and for private industry, and that compliance can be achieved without any great burden that will be assumed by these agencies.

Are you saying that you are not certain that that is the case when you make the appeal for not imposing any compliance requirements which might burden the Texans?

Mr. SMITH. I would be very supportive of Rob Mosbacher's comments and Bob Lanier's comments in response to your questions. I think they have a hands on the premise's view of the circumstances and can best respond to those types of questions.

I feel very confident, to the extent that they would not impose additional costs, and I would take their assessment on face value.

The emphasis that I would place from a state perspective is one of recognizing that we are focusing our energies and efforts on what we can do for business recovery, and so our concerns are of a nature to avoid additional expenses related to business.

In reviewing some of the summaries related to comparison of the Senate and House bill, it was my observation that there were a number of comments as to the imposition of punitive damages. My concern would be that which I think has been expressed by the Attorney General and then supported by the President that the elimination of punitive damages would be an issue that we would find more acceptable in the bill than the inclusion of those punitive damages.

Mr. OWENS. Several persons have raised questions about the need for personal attendant services. The present system is prohibitive in terms of once a person goes to work and earns any amount of income, they are denied assistance from the state for a personal attendant.

I think your legislature did consider this problem to some extent, or is considering it. Would you care to elaborate on what is under consideration and your viewpoints on that?

Mr. SMITH. If I understand your question correctly, it may relate to an article that I was just reading where a recent study indicates that, although there may be a great deal of emphasis on the entry level for the disabled, that there are subsequent times where advancement within the system is not being properly attended.

The legislation that you have presented for consideration by this hearing I think is a very effective means of addressing that advanced stage of consideration for advancement in the system. And I find that a very encouraging prospect.

Mr. OWENS. Yes, I am specifically referring to a comment made by Senator Brooks in his written testimony. It appears that Senator Brooks has had trouble getting here, but he did forward his testimony prior to the hearing. He states: "They wanted jobs, but our programs were not structured to meet their needs. Our program was structured around what bureaucrats thought they needed. We were able—that is, the state legislature—to convince our colleagues that personal attendant care for working people was a good investment and put $850,000 in the state's biennial budget for this purpose."

I wondered if you know more about that and could clarify it for us.

Mr. SMITH. I will have to defer to the Senator on his comments. I apologize to you.

Mr. OWENS. Okay. Thank you very much.

Mr. Bartlett.

Mr. BARTLETT. Mr. Chairman, I would comment that Senator Brooks has such seniority in Texas state government having served in the Texas State Senate since right after the Battle of San Hacinto, that he deserves the right to use the time frame of his choice.

I might say that I know that Ashley Smith has been quite involved in employment rights and employment opportunities in the State of Texas, and I very much appreciate your testimony.

As I understand what you are suggesting is that the goal of this legislation, as it would be of state law in prohibiting discrimination, the goal is to prohibit discrimination and make sure that people can obtain employment. And you can best do that through administrative remedies and through injunctive relief where if you find a case of discrimination, an injunctive relief is that you have got to stop, cease and desist. And it seems to me your testimony is that you can best do that through injunctive relief and other administrative remedies as opposed through punitive damages and compensatory damages and the whole panoply of law suits.

As I understand your testimony, you are urging us to err on the side of administrative and injunctive relief against punitive damages and compensatory damages.

Mr. SMITH. Thank you, Congressman. That expresses very well my intention in the testimony today. And beyond that, the only other consideration that I would offer today in my testimony would be that the phase-in aspects for small business should receive some favorable consideration to the extent you deem it appropriate, in that over 80 percent of the employment in the State of Texas is attributable to what our Department of Commerce identifies as small businesses.

To the extent that the obligations can be phased in to permit them to absorb not only the difficulties of recovery of this economy, but what additional obligations might be placed on them through the legislation, we would deem that to be a reasonable pursuit to the ends of this act.

Mr. BARTLETT. Well, I think it is fair to suggest that as we extend, as we should have long ago, in civil rights protection versus disabilities, extend that to the private sector. It is fair to suggest that small employers have a year or two years, in this case, to understand what it is and to begin to understand how to make the accommodations. And it is not that we are going to let them off the hook, because we should not, but I think the EEOC and the administrative remedies, and the Justice Department will have their hands full with the larger employers for the first two years. And by phasing it in, as you have suggested, it provides for better law and for better accommodation and ultimately for disabled persons hired.

I thank the gentleman for his testimony.

Mr. **Owens**. Thank you.

Mr. Payne.

Mr. **Payne**. I do not have questions, but I would hope that most of the administrative remedies for punitive damages will not surface as a deterrent. I do not like damages either, but I do not have that much confidence just with a kind of laissez-faire attitude that many Americans possess.

Mr. **Owens**. Thank you, Mr. Payne.

I see the Honorable Chet Brooks has arrived, and we welcome him.

[Applause.]

You may proceed, Senator Brooks.

STATEMENT OF HONORABLE CHET BROOKS, TEXAS STATE SENATE

Mr. **Brooks**. Thank you, Mr. Chairman. I apologize for being late, but I think there is a wonderful irony to be observed. This is one of the only times, I believe, in my life that I have ever noticed that a person who is not disabled could not find a parking place.

[Laughter.]

I frequently find wrong people or people who are not disabled blocking the disabled person's place, but today there was no parking place for anyone. You have a very good turnout here.

Mr. Chairman, I have presented already to the committee, I have already sent to the committee a formal statement, and I will not duplicate those observations. I am very pleased that the subcommittee has come to Houston and to Texas. We have been working for some time at the state level and also in our national council state legislatures to try to deal with the problems of disabled Americans.

In our state, we are very proud of some of the advances we have made. We are very frustrated by some of the attempts we have made that are still not quite there, but I think suffice it to say we have one of the most active communities and groups of advocates anywhere in the United States and whatever successes we have been able to achieve are, of course, to their credit.

I would like to touch on about three or four issues that we are trying to deal with in our state now. We believe that the Americans With Disabilities Act of 1989 will be a landmark piece of legislation that may in itself mean more to disabled Americans now and in future generations than any other single act we have ever seen passed in the United States.

[Applause.]

It has many excellent provisions in it. It recognizes and seeks to address problems of opportunities for education, opportunities for jobs, public awareness, the problem of having just people across the country aware of problems that disabled Americans face in trying to get a chance. Access being the major barrier at all places.

You, I am sure, already heard or soon will hear of some of the advances made in Texas and in this community of Houston in trying to improve access. The latest victory that we are extremely proud of is the decision by our Houston Metro that buses that will be ordered in the future will have lifts on all of them, and they will have access for everyone.

We had for a time been trying to serve disabled Texans, and particularly disabled Houstonians, with special buses, but those special buses simply do not follow general routes, and they are not dependable as transportation if you are trying to hold or job, or if you are trying to meet a class schedule.

We believe that being integrated into the total system will be a very major improvement for our people. And there is one thing I guess we should all remember, that everyone of us in this whole nation is just one auto accident or one major virus away from being disabled, and we should always keep that in mind no matter whether we are fortunate enough not to have encountered disabilities yet in our lives.

And I am pleased that Congress is working hard to try to strengthen the Federal statutes and, of course, that will result in stronger Federal programs. We in the states are very anxious to interface with the Federal effort, to be supportive of that effect in whatever way we can, and we will even put some money where our mouth is. We will even try to get the state match necessary to get new services and new opportunities out there to our people all across the country.

[Applause.]

I think the written statement that I have presented to the committee will speak for itself. And in that I have gone into some detail about the specific legislation we have passed in recent times in Texas, about the provisions and how we are trying to implement those provisions and some areas we hope to anticipate legislation in which we may have greater improvement and greater services, greater awareness and greater access for our people.

I deeply appreciate the opportunity to be with you today, and I will certainly pleased to respond to any questions the distinguished committee members might have.

[The prepared statement of Hon. Chet Brooks follows:]

SUBCOMMITTEE ON SELECT EDUCATION OF THE U.S. HOUSE COMMITTEE ON EDUCATION AND LABOR

Testimony on the Americans with Disabilities Act of 1989

Senator Chet Brooks, Texas Senate
August 28, 1989
Houston, Texas

Thank you for the opportunity to speak to you about the Americans with Disabilities Act of 1989 currently being considered in Congress. This legislation is probably the most significant measure for people with disabilities to ever come before the U.S. Congress, and I would like to share with you my thoughts on why this legislation is so important to the people of Texas and every other state.

In the 27 years I have served in the Texas Legislature, I have seen many changes in the laws as well as in the attitudes of the public and legislative members. Awareness and sensitivity with regard to issues affecting people with disabilities have probably increased more significantly than most other issues in the health and human services realm. But we still have a long way to go to reach a barrier-free society.

In my opinion, we are fooling ourselves if we believe the issue of civil rights for people with disabilities cannot directly affect each and every one of us. Everybody is vulnerable - we are all just one car accident, one virus away from a disability. Medical advances in this country assure a growing disabled population, but our societal advances toward an integrated society are not keeping in stride.

Just as with other major civil rights issues addressed by our nation in the past, basic rights for people with disabilities have to be addressed at a national level. We cannot effectively piece these protections together state by state, person by person. Routinely my staff and I hear personal stories from individuals who have gone to their boss, their grocery store, their bank, and by requesting or demanding, have gained access to fundamental services necessary in every day life. There are even more stories of frustration when such efforts are unsuccessful or when initial successes are only met with yet another obstacle. This method of change is a never ending process, and, an ineffective approach toward broad, societal changes.

Can you imagine where we would be today if we had accepted such a piecemeal method of improving access to employment and businesses for minority citizens? It would be unacceptable, and we all know it. Access for people with disabilities is no different, and obviously the many individuals involved in developing this legislation have realized this fact. The Americans with Disabilities Act of 1989 gets to the heart of the essential changes needed to create a semblance of a "level playing field" for the disabled --- employment, access to public transportation and public services, access to services provided by private businesses, and access to communication systems.

Over the last 10 years in Texas, as in many other states, we have moved toward an emphasis on home-based programs for people with disabilities, and this is good. Due to a lack of community programs, many people who were capable of leading independent lives on their own or with their families were institutionalized and, consequently, unable to reach their full potential as citizens of this society. Now we are recognizing that home-based services are really not enough. We need to take another step to actively help more people with disabilities move out of the home environment into the workplace.

A perfect example of how our system of human services sometimes stops short of this ultimate goal was demonstrated during the past legislative session in Texas when the Senate Finance Committee took testimony about personal attendant care from people in independent living programs. They told us the income guidelines to receive help from the Texas Department of Human Services were so restrictive that anyone with employment, no matter how minimal, was ineligible to receive attendant care. We had created a real "Catch 22" situation which virtually guaranteed a life of total dependency for many of these individuals. They wanted jobs, but our programs weren't structured to meet THEIR needs --- our programs were structured around what bureaucrats THOUGHT they needed. We were able to convince our colleagues that personal attendent care for working people was a good investment and put $850,000 in the state biennial budget for this purpose.

Now, some of these individuals can go out into the community to seek employment. But without the same basic services available to people without disabilities, can they really compete for jobs? What if public transportation, communication systems, or employment sites are inaccessible? What if they face discrimination from employers who ignore the capabilities of the individual because of years of stereotyping people with disabilities as helpless? These are the reasons the bill we are discussing today is of utmost importance.

The way I see it, MOBILITY is the key. We live in a very mobile society. In order to move up in a job or sometimes to even keep a job, people may have to move their residence. However, if a paraplegic in Austin has the opportunity for a promotion in San Antonio, she is out of luck if she is dependent on the regular public transit system to get to her job. She can schedule a special public transit vehicle, but what if her work hours are irregular or don't coincide with the limited availability of these vehicles? To some extent, this is also true in Houston --- but not for long due to some very significant gains made here recently to make public transit accessible.

Access to communication systems is also essential today to remain gainfully employed. Last session we passed legislation creating a statewide message relay system for the hearing and speech impaired. This is real progress for our state and we should experience a great deal of economic development as a result. However, Texas legislators can only address intrastate telephone access. Congress can assure access for all U.S. citizens within each state and between the states.

The point is that it shouldn't matter if you live in Houston or Austin or Texas or New York. People with disabilities shouldn't have to worry about whether their new job is taking them to an "enlightened" community with local accessibility ordinances or state laws that have removed unfair barriers. They should be able to move with their job or family anywhere in this country and KNOW basic rights and accessibility in the community are available to them. Federal legislation is the only way to ensure such uniformity.

It also shouldn't matter HOW a person became disabled. The cause of a disability, whether it be from a virus, personal negligence, or heredity, has no relevance when it comes to guaranteeing basic individual rights. Take, for example, the current controversies about anti-discrimination measures for people with Human Immunodeficiency Virus (HIV), which leads to AIDS. The President's Commission on AIDS and the Texas Legislative Task Force on AIDS, both bipartisan committees, found discrimination to be at the root of service delivery problems for people with AIDS. The federal government recognizes AIDS as a disabilitiy in determining medical eligibility for Social Security programs. Yet, many lawmakers, both at state and federal levels, insist on excluding people with AIDS or HIV from civil rights protections due to the ways in which HIV is transmitted. People with AIDS or HIV-related disabilities should have the same protections afforded other people with disabilities. The Americans with Disabilities Act would bring anti-discrimination laws in line with this point of view.

Legislators often complain about people who are too dependent on government. It's a big issue in our state legislature, as it is in Congress. In order to do something constructive about such "dependency", those of us in government must LISTEN more carefully to the people affected by our public policies. If we would just open the doors for people with disabilitites, they would go through them. All they are asking from government leaders are assurances that obstacles to their self-sufficiency are removed so they can lead independent, productive lives. The Americans with Disabilities Act of 1989 will go a very long way toward this goal and I urge you and your colleagues to enact it into law.

Mr. **Owens**. Thank you, Senator.

Could you substitute the mike on the end for your mike. Your mike occasionally goes dead, I'm afraid. Can you move the other mike over?

Mr. **Brooks**. Oh, this one?

Mr. **Owens**. Yes, sir.

Before you arrived, I had a question concerning your written testimony. There is a lot of concern about the personal attendant care service. You did comment in your written testimony about the state taking some steps to deal with that problem in appropriating some money.

Could you elaborate on that a little and how it works?

Mr. **Brooks**. Yes, sir. That is one of the most essential programs I think we have in place, and one that, frankly, I think that we in the states elected for a long time. Now we are very aware, much aware that in order for a person to have access to independent living and be independent, they must have some assistance in areas where they simply cannot handle all of their personal needs themselves.

The attendant care program is a vital and viable program that enables disabled persons to live independently and to take advantage of job opportunities, of education opportunities, and to become just productive and mobile members of our society. And we have tried to increase the funding to the attendant care. At times we have been victimized in our state by the ebb and tide of, of course, revenues, state revenues, similar I am sure to what you face at the national level.

We had a little misfortune in our Texas oil patch. OPEC threw a little shot at us that we are still trying to recover from in Texas as in some other states, but even despite all of those problems, I am very proud of the leadership that our Lieutenant Governor Bill Hobby, and other Texas leaders have demonstrated in hanging in there for health care and human services, including the kind of services that disabled need such as attendant care. And even in the hardest of hard times after the oil patch went flat in Texas, we were able—it took us 13 months of sessions and special sessions to do it, but we finally passed a very significant tax bill in Texas, and we were able to fund the essential services and to increase specific programs like the programs that we are so proud of, like the attendant care.

And we are very hopeful that we will have the opportunity to continue that kind of leadership and get those kind of results for years to come.

Mr. **Owens**. The $850,000 that you mention, is that matching for Federal funds, or is that a program independent on its own?

Mr. **Brooks**. Initially, Mr. Chairman, we put in state dollars to develop some programs. We also had a good cooperative opportunity with a couple of the Federal programs where we could get some match, where we could deliver those services jointly.

We have also tried to link up even private sector support where we can, and we have been successful in several parts of our state, where we could even get foundations or private companies, private corporations or individuals to join us in either pilot projects or perhaps in services for a specific targeted purpose or a particular target group.

Mr. **Owens**. Thank you very much.

Mr. Bartlett.

Mr. **Bartlett**. Senator Brooks, my commendation on your attendant care legislation. The absence of attendant care is in fact one of the primary barriers to employment for persons with disabilities. Again, it is the Catch 22. You get attendant care if you are not employed and you do not if you are employed.

Is it too early to ask for results at this point? Do you have any compilation of changes in the behavior of employment as a result of this legislation?

Mr. **Brooks**. It is probably a little premature for us to give you good hard statistical data. We are checking on that through our state agencies. We are working directly with the providers and, of course, the individuals receiving assistance.

I know personally from individuals with whom I am acquainted and work closely, that it has a very significant effect, positive effect on people's ability to get a job, hold a job, meet other kinds of commitments, and they are doing some technology training, updating of technology. If they are in a field where they need to do continuing education, all of those kinds of services are open and accessible to them.

Mr. **Bartlett**. As you obtain data, it would be helpful if you could pass them on up to the congressional level for use in other programs.

I have two comments, both of them basically related, springing off the attendant care issue. In many cases we found at the Federal level, and I know it is true at the state level also that it is not so much—what is needed is not so much the creation of a new Federal program or a new state program. It is not new appropriations. But oftentimes what is needed is to identify the barrier, and in this case in Medicaid, and change the rules of the game so that someone who is employed has—someone who becomes employed has that ability to remove that barrier.

Oftentimes what I know is true at both the Federal and the state level, and is an indication in the attendant care, it is not so much a new program as it is to remove any existing barriers of the Medicaid program.

And with that, I would like to comment that I am not certain what the state is doing at this point. But I would suggest that at the Federal level we found some years ago the bible or the blueprint that we began to use when some years ago we authorized, not just authorized, we mandated the National Council on Handicapped to prepare a report that turned out to be one of the reason that we are here today. It is called "Towards Independence."

And we mandated that the council identify that whole spectrum of barriers to independent living that were currently in Federal law, and the mandate was very, very clear. We did not ask them to come forward with new programs or with new Federal ideas or with new benefits. We just simply asked for a compilation of all of the barriers that were in current Federal laws that restricted people from full independent living.

I am only too familiar with some, on an anecdotal basis, some of the barriers in state law. ICFMMRs, for example, require medical modeling for group homes when in fact a group home is not necessarily a medical model. Oftentimes it is just a chance for people to live, and there are a number of barriers in that. One of them is disabled people living in ICFMMR are not allowed to take a vacation such as you and I would take a vacation for no particular good reason. It is just simply that is the law.

So one of the things I would like to work with you that the state may consider would be to authorize someone to conduct that comprehensive review of all of the barriers so that then you can begin to dismantle those barriers one at a time. And I commend you for the work that you and Mr. Smith have already done on that, and we look forward to working with you in the future.

Mr. BROOKS. I agree with you 100 percent. It is the removal of disincentives. The recognition and removal of disincentives probably is more important than creating new services and new programs. We know what many of the things that will work. We know they will work. We have already demonstrated they will work. We do not have to go field test them anymore. We know they will work. It is just getting people the access to those kinds of services and link them up with the providers that can help them.

Mr. OWENS. Mr. Payne.

Mr. PAYNE. Senator, I have no questions, and your entrance into the thralls of the after 27 years in the state legislature certainly answers any questions I might have. You are on the right side, indeed. With what the state legislature is doing in spite of the problems that you have currently, I would hope that this would be a model for some of the other states that are lagging behind. So I would just like to commend you and the legislature on your excellent work. Thank you.

Mr. OWENS. I would like to thank both of you gentlemen as well as all of the witnesses who appeared today. We want to thank the audience, thank all the many volunteers who helped to make this hearing possible, and thank Houston generally for its great hospitality. The volunteers that helped out at this hearing were Warren Charles, Paul Chase, Susan De Vault, Joyce Frieden, Roxy Funchess, Laurie Gerken, David Kinneson, Linda Pickle, Sally Phillips, Tom Sellers, Vickie Harris Smith, and Ellen Woodall.

The hearing of the subcommittee is now adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned subject to the call of the chair.]

[Additional material submitted for the record follows.]

COMMENTS ON THE AMERICANS WITH DISABILITIES ACT HR 2273

By: W.A.Spencer, M.D. RE: Americans with Disabilities act, Houston Congressional Hearings August 28,1989

OPINION: These are the personal opinions of the author and may be supported by the appended list of references, personal and otherwise at the end of these comments.

(1) This bill is an opportunity bill because it will provide new essential opportunities for at least hundreds of thousands of persons with disability of many origins in the near future.[1] They would now be able to obtain in the community ordinary technical training or professional education, access to jobs for which they are qualified, as well as fulfillment of those civic responsibilities we all treasure as a basic human and constitutional right. This proposed bill affords an incredible opportunity to reap personal independence and productivity now going to waste. On enactment it will insure the success of medical restorative and comprehensive rehabilitation achieving the basic outcome of independent living.

Why is this bill so needed today? Now there are many barriers that prevent the disabled person accomplishing or maintaining crucial activities of daily living. For example the lack of opportunity to use affordable transportation for shopping, for timely health care services or for access to public and private community services and assistance create needless and costly dependency on others as a homebound person. Services and economic assistance then fall upon overloaded public and private agencies. Thus the absence of services and support for independent living can make it nearly impossible to attain an autonomous lifestyle with control of one's own life. Too, the alternative becomes chronic care in the hospital for the severely disabled or custodial placement in a nursing home. Sadly, the occurence of untreated and preventable medical complications may ensue and require very costly intensive and recurrent hospital care.

Eventually, severe dependancy perpetuates a young or working age person's lack of access to training or education and lack of employment opportunity. Physical and attitudinal barriers are additional contributors. This situation continually increases the expenditures needed from the person, family, community, state, and nation. Such financial losses become unrecoverable in the absence of productivity and independence. Facts supporting this situation have recently been reported in the national and local press.[2] For years this tragic progression has been experienced by hundreds of thousands of disabled persons, by professionals trying to assist them, by independent living center personnel and advocacy group members.

Those objecting to this bill are not comparing the inevitable needless public and private expenditures against the lesser costs for the removal of the physical and societal barriers as proposed in this bill. Nor is there any consideration of the great annual and aggregate lifetime economic as well as social losses to the family, the community the state and the nation!

(2) Our experience in Houston and elsewhere, has shown that access to community life is far less costly than has been projected in the estimates currently claimed by some spokesmen of business and industry.[3] They should go back and read the experience of industrial giants like IBM, CDC, XEROX and Dupont whose management found the cost effectiveness of workplace modifications and access and greater productivity achieved by so called "disabled" workers. They even demonstrated less absentiism, illness and turnover than among their "able bodied" workers.

(3) Extensive and careful studies of the Presidentially appointed and Congressionally authorised National Council on the Disabled and the President's Committee on Employment of People with Disabilities has substantiated the magnitude of this need by means of independent national surveys, reports of the National Research Council on "Injury in America", and testimony of public and private agencies and affected persons.[4] These sources also provide conclusive evidence of the beneficial consequences of a systematic approach to this great national problem[5] This proposed legislation is another great step in a path our nation has embarked upon to control disability, along with all other industrialized nations. If HB2273 is enabled as it is written it will become a true milestone in the long trail to independence for the disabled,which began after World War One. It will close the circle of cost effective Federal programs and entitlements including the Rehabilitation act of 1973 -PL9312, the Open Housing act for the disabled, the Technology Assistance act PL100407,the Civil Rights Restoration act, the Education for all Handicapped Children act PL 94142, and various other components of entitlements for research, demonstrations, technology and services in legislation for the Veterans Department, the National Institutes of Health, National Science Foundation, the Vocational Rehabilitation Administration, the Social Security Administration, Department of Defense. Of course the levels of funding appropriated may be insufficient for the magnitude of disability, but the tools exist. HB2273 should provide more evidence of the cost effectiveness of these many entitlements needing to be funded and considered as part of a whole and integral effort of our nation.

(4) Opposition to this bill may be understandable, by those who have not faced disability personally or in their own family. They may not have had to experience the full consequences of disability. Perhaps they dont appreciate the benefits returned to our nation in realization of the productive potential of the disabled person. Yet they must perceive the value of eventually controlling huge economic outlays by the public sector, private insurers, and purchasers of health and disability insurance. This is clearly a consequence of the ever increasing costs of dependency and medical or custodial chronic care. How can one fail to appreciate the way in which increased availability of rehabilitation services, technology and assistance with home support for independent living provide a powerful way to stem the tide of inexorable financial payments for disability? How tragic that industrialized countries may expect 1.5 to 2.0 dependant young and elderly for every working person in the first half of the next century.[6] How can one ignore the daily heroic efforts of even the most severely disabled persons wresting themselves from the abyss of dependency and contributing to the strength and productivity of our society? Recently, the dollar savings of eight to ten dollars realized for every dollar expended for rehabilitation services was reported by workman's compensation insurance and casualty insurance companies in actuarial experience.[7] What return on investment in our modest expenditures and entitlements for restorative medical and rehabilitative services! Studies and experiences of independent living programs continually demonstrate the much lesser cost of personalized assistance and home support than long term care in nursing homes.

We therefore are so heartened that President Bush endorsed the passage of this bill and is willing to sign it as an investment in helping to stem these human and economic losses that are so much greater than the overblown cost estimates for removal of barriers to the independence of our nation's disabled persons.

Failure to achieve the opportunities so beneficial and so needed by millions of our nations disabled persons is now unthinkable because it can be accomplished! Return on investment in humane as well as monetary terms is incredible.

The potential benefits of this legislation so offset the expense of providing access to the opportunities of resuming living again that passage of HR2273 deserves great priority in today's public agenda.
Our millions of citizens of working age who have suffered the devastating disability of trauma and disease together with those legions of older Americans who would continue to be productive and live independently as long as possible deserve no less!

Thank you for the opportunity to testify and encourage the enactment of this important contribution to our nation's disabled persons.

William A Spencer

William A. Spencer, M.D.
Emeritus Professor of Rehabilitation Medicine
Baylor College of Medicine, Texas Medical Center
Houston, Texas

References and sources-

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3 New York Times, August 14, 1989
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5 Reports to the President and the Congress of the National Council for the Disabled, and reports of the President's Committee on the Employment of Persons with Disability. 1986, 1987 and 1988.
6 The Economist, article on the Graying of America, 1985 Vol and No and page to be established
7 Presentation American Congress of Rehabilitation Medicine, 1986

On 28 August 1989, a Congressional Hearing, chaired by Congressman Major Owens, was held in Houston, Texas at the Multi-Service Center on the American's With Disabilities Act. I wish to have my following testimony included into the records of that hearing.

TESTIMONY OF SALLI B. PHILLIPS, EEO SPECIALIST Salli Phillips
US ARMY CORPS OF ENGINEERS, P.O. BOX 1229, GALVESTON, TEXAS
WEDNESDAY, 6 SEPTEMBER, 1989

As we approach the 1990's it is important for us to understand and be empathetic to the needs of all our citizens, including the physically challenged. As a disabled person, I have experienced discrimination in employment, in transportation, and in access to public facilities and I support legislation like the American's With Disability Act. I also feel that it is the responsibility of the Federal Government to support and pass legislation like the American's With Disability Act, giving disabled persons access to housing, public facilities, transportation and employment. As we have experienced in the past, you can not change attitudes and prejudices but you can pass legislation that protects the rights of all citizens.

Quality of Life is a constant aspiration for many disabled people. We strive for a quality of living comparable to that of our able-bodied friends. Why should we be required to plan ahead every time we go out to eat, or to a movie, or to participate in any leisure activities? Why should we be excluded from participating in such activities? Why should we be required to take someone with us every time we go out because businesses are not accessible? Access, is this not a right that should be afforded to all citizens? Why should we not be given the opportunity to work towards a career and progress in that career? No able-bodied person would go through what a disabled person must go through because they would change the laws. Are we asking to much of Congress to pass legislation that would require businesses, who are providing services to ALL persons, to make their buildings accessible with ramps, to make their bathrooms accessible and provide accessible parking? Or would Congress instead, tell all disabled people that this burden is their own? After all, disabled persons are only as disabled as their environment makes them. Take away the barriers, and a disabled person becomes less disabled.

I pose this question to each member of the committee overseeing this legislation. If you were disabled, do you think you could perform the job you are presently doing today? And, would you, if you had become disabled early in your career, be where you are today? If you answered yes to the first question, it is because you know you are a capable person, despite any physical disability; if you answered no to the second question, then perhaps it is time for you, as a member of congress, to change the laws.

I wish to thank the committee for their time and support of this legislation.

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SEP 11 1989

On 28 August 1989, a Congressional Hearing, chaired by Congressman Major Owens, was held in Houston, Texas at the Multi-Service Center on the American's With Disabilities Act. I wish to have my following testimony included into the records of that hearing.

TESTIMONY OF SYED ZAHID, CIVIL ENGINEER, US ARMY CORPS OF ENGINEERS, P.O. BOX 1229, GALVESTON, TEXAS
WEDNESDAY, 6 SEPTEMBER, 1989

We the people, "Disadvantaged" they call us, have been discriminated against in many ways. We all know it. And it is about time for all citizens to acknowledge it. The Disability Act of 1989 is definitely a stepping stone for equality for disabled people. My hats off to you and your committee for your effort and contribution towards this legislation.

When I took an oath to become a citizen of this country, I promised to serve this country at all times and by God, I will do it and I am doing it. I am doing it by being a productive citizen, by being a member of a great American Work Force.

I believe every American, every citizen, every disabled man believes in it. But unfortunately there are restrictions (of course a silent one, not official) to hiring the disabled. That's where we need support the most. To me, an essential support for disabled people means to have a job. And in order for people with a disability to be a full time worker (of course again., if one wishes and is able to be) I suggest the following advantages be given to disabled workers in order to be successful employees:

a. A reasonable accommodation has to be made on a case-by-case basis. The factor of being hired has to be on an individual need.

b. Complete flextime, which basically means a person with a weekly salary schedule, should be able to give 40 hours of regular work in 7 days instead of 5 and his working time should be completely flexible. This is a must for disabled people. Their health, their need is not like a physically able person. That's the reason their time needs are different. If ones salary schedule is biweekly or monthly, then ones time of 80 hours or 160 hours also should be completely flex. As long as he can perform his duties and work 80 hours or 160 hours - what's the harm. I strongly think that will help a good number of disabled people to get back to full time work and off disability income.

c. When on is sick and unable to come to work, then his absence should be given a kind consideration and I suggest the following in order to keep him on payroll and on the job:

1. Leave sharing program. His co-workers should be able to donate their vacation and sick leave towards the needy.

2. Company itself should be able to sustain the leave for a period of time and if necessary put him on leave without pay but not terminate or put him on disability unless one wishes to.

3. Life and health insurance must be given to all workers regardless of disability. No one can predict death unless you are on your death bed. I have outlived many healthy people and so have other disabled people. We are not high risk people as Insurance companies brand us.

4. I also do believe the Small Business Administration should come forward with regulations to help the disabled who show interest and potential to do business. Utilization of creative minds is very important. This is particularly good because a disabled man always understands the needs of other disabled men and he will definitely be more helpful and understanding for other's needs.

The private industries, medium and large, should be able to give all the above advantages to the disabled worker. It is beneficial to the company itself, general tax payers, the government, the country, the society and definitely to himself.

We claim we are the Champion of Human Rights. Lets practice it at home. We are not asking for handouts but just to give us the opportunity to work.

I hope this "Act" levels with our dream.

I am available to work in any capacity with any committee for such cause.

SYED ZAHID

SEP 12 1989
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8752 Aldwick Dr.
Dallas, Texas 75238
September 2, 1989

Honorable Major Owens
Chairman, Subcommittee on Select Education
Committee on Education and Labor
House of Representatives
2181 Rayburn Building
Washington, D.C. 20515-6100

Dear Congressman Owens:

On August 28, 1989, I testified during the public forum session of your subcommittee hearing regarding the Americans with Disabilities Act. This letter contains the highlights of that testimony, and it also forwards the JAMA article that I promised to send. By way of background and introduction, two of my affilliations are that I am an active member of the National Alliance for the Mentally Ill, and I am a member of the state Independent Living Council.

ATTITUDINAL BARRIERS

Persons with a chronic mental illness (CMI) constantly face enormous attitudinal barriers, due to the public's misconceptions about these illnesses. The public generally feel that the CMI are dangerous. But, in truth, as stated by the National Institute of Mental Health, persons with mental illness are about as dangerous as the public at large.

Much of the public think of these citizens as being lazy, or just not adequately motivated, incorrectly assuming that they do not even have a legitimate illness or disability. One of the major mental illnesses is chronic depression. Enclosed is a recent article from the Journal of the American Medical Association. It reports on a major study which concluded that "The poor functioning uniquely asssociated with depressive symptoms, with or without depressive disorder, was comparable with or worse than that uniquely associated with eight major chronic medical conditions."

Another misconception is to underestimate the vast numbers of persons disabled by serious mental illness. In the State of Texas, population 14.2 million, the Texas Department of Mental Health and Mental Retardation reports that there are 1.3 million citizens in the prioity population, that is, those most needing services. That is over nine (9) percent of the total!!!

Another attitudinal problem is the widespread belief that the CMI cannot be helped. Based on the work that is going on in Dallas County it appears that someone forgot to tell folks there that the CMI could not perform well in regular job situations. In May of this year I attended an awards banquet in Dallas, Texas, where dozens of these fine citizens were honored for their work records, and seven of them received recognition for working continuously for five or more years. Truly these citizens can be helped, and they can become productive, if given a chance.

JTPA FUNDING

I just want to underscore the point made earlier in the hearing by Congressman Don Payne...Job Training Partnership Training Act funding is available to those organizations serving disabled persons. However, our state Independent Living Council has noted that such organizations do not take advantage of this source of funding. So I would urge these organizations to contact the JTPA Private Industry Council in their community and apply for a grant/contract.

DISCRIMINATION AGAINST DISABLED PERSONS

Title IV of the Americans with Disabilities Act will provide redress for the type of discrimination that took place in Dallas with a program called Anchor Services. This was a supported employment program for CMI, and it occupied a suite of offices on the fifth floor of an office building. After being in operation less than six months, the building manager wrote letters and put on a lot of pressure, trying to force Anchor Services to move out...not because of any breach in the lease, but only because the clients "look strange, and they act strange, and the other tenants are afraid of them".

Thank you for giving me this opportunity to testify before your committee. I strongly urge passage of the ADA.

Sincerely,

Bill Pyle

BILL PYLE

Encl. JAMA article,
Aug. 18, 1989

Copy:
Congressman Steve Bartlett

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The Functioning and Well-being of Depressed Patients

Results From the Medical Outcomes Study

Kenneth B. Wells, MD, MPH; Anita Stewart, PhD; Ron D. Hays, PhD; M. Audrey Burnam, PhD; William Rogers, PhD;
Marcia Daniels, MD; Sandra Berry, MS; Sheldon Greenfield, MD; John Ware, PhD

We describe the functioning and well-being of patients with depression, relative to patients with chronic medical conditions or no chronic conditions. Data are from 11 242 outpatients in three health care provision systems in three US sites. Patients with either current depressive disorder or depressive symptoms in the absence of disorder tended to have worse physical, social, and role functioning, worse perceived current health, and greater bodily pain than did patients with no chronic conditions. The poor functioning uniquely associated with depressive symptoms, with or without depressive disorder, was comparable with or worse than that uniquely associated with eight major chronic medical conditions. For example, the unique association of days in bed with depressive symptoms was significantly greater than the comparable association with hypertension, diabetes, and arthritis. Depression and chronic medical conditions had unique and additive effects on patient functioning.

(JAMA. 1989;262:914-919)

See also pp 907, 925, and 943.

THE POLICY and clinical impact of both medical and psychiatric conditions is increasingly being assessed not just by their prevalence and associated mortality, but by their impact on subjective patient well-being and functional status.[1-4] Estimates of that impact are used to justify funds for training, research, and service provision. Well-being, or the subjective assessment of quality of life and health, and functional status, or the capacity to perform tasks and activities, are primary concerns of patients, their families, and clinicians. Poor well-being and functioning are also of policy interest because of societal costs due to loss of productivity and any associated use of health services.[5]

The awareness that chronic health problems can profoundly affect patient functioning, and that patients treated in alternative health care provision systems might differ in the functional outcomes achieved, led to the development of the Medical Outcomes Study (MOS). Tarlov et al[6] describe the aims of the MOS and the rationale for studying patients in three health care provision systems who had one of three chronic medical conditions or depression. In this article, we present evidence that in part justifies the focus on depression, namely, that it is associated with large decrements in patient well-being and functioning. A companion article[7] addresses similar issues for the chronic medical conditions.

While the literature indicates that depression is associated with limitations in social and role functioning,[8-10] few studies have comprehensively examined the well-being and functioning of depressed patients. Herein, we describe unique associations of depression with multiple domains of well-being and functioning. We believe there is a tendency for many clinicians to view the limitations associated with depression as more subjective or of less clinical significance than those associated with major chronic medical conditions. While previous studies[11-20] have estimated associations of specific chronic medical conditions, such as hypertension, diabetes, and heart disease, with multiple domains of patient functioning, such studies have not directly compared patients with depression with those with specific chronic medical conditions. We do so herein, to provide a clinical "yardstick" of the morbidity associated with depression.

In the United States, at least half of patients who receive any mental health care receive that care only from general medical clinicians, and the remainder have at least some visits to mental health specialists.[21,22] Previous authors have reached conflicting opinions about the clinical comparability of patients treated by the two provider sectors.[23] Thus, to understand the functioning of patients with depression in any health care provision system, it is necessary to contrast these two patient groups, as we do herein.

In current clinical practice and research, there are two major paradigms for defining depression: the general phenomenon of depressive symptoms and specific depressive disorders (eg, discrete psychiatric disorders defined by the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition*[24] [*DSM-III*]). While the general medical sector tends to conceptualize depression according to the former definition, much of the mental health specialty sector conceptualizes depression

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From The RAND Corp, Santa Monica, Calif (Drs Wells, Hays, Burnam, Rogers, Daniels, Greenfield, and Ware and Ms Berry); Department of Psychiatry and Biobehavioral Sciences, UCLA Neuropsychiatric Institute and Hospital, UCLA School of Medicine, Los Angeles, Calif (Dr Wells); Institute for Health and Aging, University of California, San Francisco (Dr Stewart); and Institute for the Improvement of Medical Care and Health, New England Medical Center Hospitals, Boston, Mass (Drs Greenfield and Ware).

The conclusions are those of the authors and do not necessarily reflect the opinion of the sponsors or the authors' institutions.

Reprint requests to The RAND Corp, 1700 Main St, Santa Monica, CA 90406-2138 (Dr Wells).

according to the latter.[illegible] One of the specific goals of this article is to inform this debate by contrasting the morbidity associated with depression, as defined by these two paradigms.

METHODS

The MOS is an observational study of adults who receive care either in a group practice–style health maintenance organization, a large multispecialty group practice, or a single-specialty solo or small group practice. The MOS was designed to assess processes and outcomes of care for patients with hypertension, diabetes, coronary heart disease, or depression. This article uses baseline MOS data collected in 1986 from patients at the time of an office visit in these three systems of care in three US sites. For fuller details on the design of the MOS, see the article by Tarlov et al.[1] The three study sites are Los Angeles, Calif; Boston, Mass; and Chicago, Ill. At each site, one large health maintenance organization and several large multispecialty group practices were selected.

A clinician sample was selected to represent the specialty groups providing the majority of care to patients with the four target conditions. The groups were internists, family practitioners, cardiologists, endocrinologists, diabetologists, psychiatrists, and psychologists. Clinicians eligible for participation in the MOS (1) were between the ages of 31 and 55 years; (2) were board eligible/certified or licensed for independent practice; and (3) had direct patient care as their primary professional activity. The MOS attempted to enroll all eligible clinicians in the participating health maintenance organizations and large multispecialty group practices. The health maintenance organizations and large multispecialty group practices included 266 eligible clinicians, of whom 225 (85%) agreed to participate in the MOS.

In the single-specialty solo or small group practice sector, a multistage selection process was used. In the first stage, 2216 clinicians were initially selected by stratified random sampling from lists provided by national professional associations. Of these, 1525 (69%) were contacted. Through a series of two telephone interviews, 511 physicians were identified as eligible and agreed to a final selection interview. Of these, 298 (58%) agreed to participate in the main study. Among single-specialty solo or small group practice clinicians, participants and nonparticipants were similar in demographics and clinical training, but participants spent more time in direct patient care. Participants and nonparticipants at the final selection stage did not differ in experience with or attitudes toward depression, as assessed by a self-administered questionnaire. The total number of participating clinicians in all settings was 523.

Each participating clinician was asked to invite all adult English-speaking patients visiting the practice over a specified period (9 days on average) to complete a self-administered questionnaire (the Patient Screener). Screening occurred between March 13 and October 31, 1986. Complete questionnaires were obtained for 74% of eligible patients in multispecialty group practices and 65% of patients in single-specialty solo or small group practices (N = 22 462). To reduce respondent burden, two versions of the Patient Screener were fielded, each administered to a random 50% of patients. This article uses data from the random half of patients (n = 11 242) who completed a version that included a battery on well-being, functioning, and chronic medical conditions.

Depressive Disorder and Symptoms

To facilitate assessment of depressive disorders in such a large patient sample, a two-stage case-finding procedure was used. First, patients completed an eight-item depression symptom scale included in the Patient Screener. This scale, developed specifically for the MOS, elicits information on intensity of symptoms of depression (eg, feeling sad or crying spells) over the past week and on periods of depressed mood over the past year. Burnam et al,[illegible] using data from two independent secondary data sources, developed a scoring algorithm for the eight items (each item was weighted by its coefficient in a logistic regression predicting probability of having depressive disorder) and identified a cutoff score (.06) that has excellent sensitivity and acceptable positive predictive value for identifying persons who have *DSM-III* depressive disorder. By *depressive disorder* we mean major depression alone, dysthymia alone, or the combination of both conditions, ie, "double depression." We use exceeding the cutoff as our indicator of current depressive symptoms.

Second, patients who exceeded the cutoff score on the depression symptom scale and who were eligible for a longitudinal phase of the MOS were contacted for a follow-up telephone interview that included the depression section of the National Institute of Mental Health's Diagnostic Interview Schedule (DIS).[illegible] The DIS is a highly structured diagnostic interview that determines the presence of psychiatric disorders according to *DSM-III* criteria.[illegible] Wells et al[illegible] demonstrated that telephone and face-to-face administration of the DIS are equivalent in terms of identifying lifetime depressive disorders, and that the test-retest reliability of the DIS is acceptable for identifying a sample of depressed patients in a two-stage procedure. The longitudinal phase of the MOS was limited to patients with hypertension, diabetes, coronary heart disease, or depression who had an ongoing relationship with the MOS clinician, who could complete self-administered questionnaires, and who did not have an acute major physical condition that could severely and temporarily limit their functioning.

Among the 11 242 patients in the sample, 2467 exceeded the cutoff on the depression symptom scale. Of the 1876 who were also eligible for the longitudinal study, 1137 (61%) completed the telephone DIS interview. Those who did not complete the telephone interview had 0.5 more years of education, on average, than noncompleters ($t = 2.7$; $df = 1874$; $P < .01$; two tailed), but there were no significant differences in mean age, sex, recentness of last health care visit, or mean depression screener score (t's range from 0.3 to 1.3; each $P > .10$). We control for education in the analyses reported herein. Thus, we do not think that nonresponse on the telephone interview poses a serious bias to our results.

Those scoring above the cutoff score on the depression symptom scale were defined as having depressive symptoms. Current depressive disorder was defined as meeting all of the following criteria: (1) lifetime major depression or dysthymia, by *DSM-III* criteria (the only exclusion criterion was lifetime mania); (2) an episode of major depression or period of dysthymia during the last 12 months; and (3) no remission (ie, ≥2 months with two or fewer depressive symptoms[illegible]) since the onset of the recent episode. Helzer et al[illegible] found that the lay-administered DIS tended to underdetect true cases of major depression in persons who just missed meeting full *DSM-III* criteria, ie, those with clustering of symptoms in three rather than four Criteria B symptom groups of major depression. To enhance the sensitivity of the DIS, we modified our criteria for a recent episode of major depression to include persons with clustering in only three symptom groups. Only 43 patients entered the sample owing to this modification.

Chronic Medical Conditions

The definitions of eight chronic medical conditions are given in Table 1. Each

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Table 1.—Definitions of Patient-Reported Chronic Conditions

History of hypertension	Patient was told by a physician, nurse, or other health care professional that he or she has high blood pressure or hypertension.
History of diabetes	Patient was told by a physician, nurse, or other health care professional that he or she has a high blood sugar level or diabetes.
Current advanced coronary artery disease	Patient was told by a physician, nurse, or other health care professional that he or she has had a heart attack, myocardial infarction, or coronary and that it occurred within the last 12 months. Or, the patient reports now having heart failure or an enlarged heart (with or without angina).
Current angina only	Patient reports now having angina, but neither recent myocardial infarction nor heart failure.
Current arthritis	Patient reports now having arthritis.
Current back problems	Patient reports now having back problems, including disk or spine problems.
Current lung problems	Patient reports now having asthma or other severe lung problems, such as chronic bronchitis or emphysema.
Current gastrointestinal disorder	Patient reports now having ulcer (duodenal, stomach, or peptic) or chronic inflamed bowel, enteritis, or colitis.

Table 2.—Definitions of Measures of Functioning and Well-being*

Measure	No. of Items	Definition	Reliability†
Functioning			
Physical (+)	6	Limitations due to health in activities such as sports, climbing stairs, walking, dressing, and bathing	0.86
Role (+)	2	Extent to which health interferes with work, housework, or schoolwork	0.81
Social (+)	1	Extent to which health interferes with social activities such as visiting friends or relatives in the past month	0.67‡
Bed days (−)	1	Number of days in bed due to health in the last 30 days	NA
Well-being			
Current health (+)	5	Perceptions of current health, such as feeling well or ill	0.87
Free of pain (+)	1	Extent of bodily pain in the past month	0.78‡

*For (+), high score indicates better functioning and well-being; for (−), high score indicates poorer functioning and well-being. NA indicates not applicable (only one version of one item).

†Based on data from the complete patient sample.[illegible] Internal consistency reliability (Cronbach's α[illegible]), unless otherwise noted.

‡Estimate based on the correlation between alternative versions of the item.

condition was assessed by one or two items in the Patient Screener. The items required a simple yes-or-no response. We also identified patients who had no chronic conditions. These patients had neither depressive symptoms nor any chronic medical condition defined in Table 1, nor any other chronic problem assessed by the Patient Screener: cancer in the last 3 years; major neurological problems; cardiac pacemaker; limb amputation; kidney disease; legal blindness; or other problem.

Sociodemographic Factors and Clinical Specialty

The Patient Screener elicited data on age, sex, education, and income. The self-designated medical specialty of the treating clinician was determined from data from professional societies and telephone interviews of the MOS clinicians.

Well-being and Functioning

The Patient Screener elicited information on six domains of functioning, defined in Table 2. A detailed description of these measures is available in the article by Stewart et al.[illegible] The measures were based on the general health status measures used in the RAND Health Insurance Experiment.[illegible] All measures except days in bed are scored from 0 to 100, with 100 representing perfect health on that construct. The "bed days" measure is the number of days spent in bed in the past 30 days.

Statistical Analysis

We used the general linear model to conduct analyses of covariance to compare the functioning of patients with current depressive disorder (the "disorder" group), those with depressive symptoms in the absence of depressive disorder (the "symptoms only" group), and those with no chronic conditions. The covariates were age, sex, education, specialty (mental health specialist vs medical clinician), presence or absence of each chronic condition, interactions between specialty and each chronic medical condition, and interactions between specialty and depression group status (current disorder, symptoms only, or no chronic conditions). For these analyses, we excluded the 1330 persons with depressive symptoms who were ineligible or refused the telephone interview, because we did not know if they had depressive disorder.

Least-squares multiple linear regression was used to estimate the unique associations of each functional status and well-being variable with depressive symptoms (with or without depressive disorder) and with each chronic medical condition. These models used the full sample. The independent variables were sociodemographic characteristics (age, sex, education, and income), specialty, each chronic medical condition, and depressive symptoms (exceeding the screener cutoff).

The SEs and inference statistics presented herein are unadjusted for the clustered sampling design. The intraclass (within-provider) correlations in patient functioning were quite small, ie, .03 to .12, and thus would have minimal effects on the results. In a sensitivity analysis, we determined that the correction was, in fact, trivial.

Because we report many significant findings in a consistent direction, a Bonferroni correction[illegible] for multiple comparisons is too conservative. We comment on results significant at the $P<.05$ level or better, but also present the actual level of significance ($P<.05$, .01, .005, .001, or .0001). We determined that our main conclusions would not be affected by a strict Bonferroni correction, which would impose a significance level between .001 and .005 for most comparisons.

RESULTS

Sample Characteristics

On average, patients of general medical providers are 48 years old, while patients of mental health specialists average 40 years of age ($P<.05$). As shown in Table 3, compared with patients of general medical providers, patients of mental health specialists are more likely to be white, more likely to be highly educated, less likely to be married, and more likely to be female. Patients of general medical providers have a relatively higher prevalence of five out of eight chronic medical conditions and a lower prevalence of back problems.

Well-being and Functioning of Depressed Patients

Table 4 presents the adjusted mean well-being and functioning of patients in each specialty group who have depressive disorder, depressive symptoms only, and no chronic conditions, based on the analyses of covariance. Out of the 24 possible pairwise comparisons (types 1 through 4 in Table 4) between the two depressed groups (one at a time) and the group with no chronic conditions, the depressed group has worse functioning in 17 comparisons and significantly better functioning in 1 comparison.

We compared patients with depressive disorder vs those with depressive symptoms only, for each type of provider sector (comparison types 5 through 6 in Table 4). Among patients of medical clinicians, those with depressive disorder have worse current health than those with symptoms only. Among patients of mental health specialists, those with depressive disorder have worse physical and social functioning and perceived current health and more bed days and bodily pain than those with depressive symptoms but no disorder.

We also contrasted depressed patients treated by the two provider sectors (comparison types 7 through 8 in Table 4). Among patients with depressive disorder, those treated by mental health specialists have poorer social functioning than those treated by general medical clinicians; but among patients with depressive symptoms but no disorder, patients of general medical providers have worse physical functioning and more bodily pain and days in bed.

Depressive Symptoms Compared With Chronic Medical Conditions

We estimated the unique associations of each functioning indicator with any depressive symptoms (with and without depressive disorder), relative to comparable associations with specific chronic medical conditions. Table 5 presents the mean score on each functioning indicator, estimated from the multiple linear regression models and adjusted for all covariates in the models.

As shown in Table 5, the physical functioning of patients with depressive symptoms, other factors being equal, is significantly worse than that of patients with four of the chronic medical conditions; it is significantly better than that of patients with current advanced coronary artery disease and current angina only. Patients with depressive symptoms have significantly worse social functioning than patients with each of the eight chronic medical conditions. Role functioning is significantly worse for patients with depressive symptoms than for patients with six of the chronic medical conditions; but it is significantly worse for patients with current advanced coronary artery disease than for those with depressive symptoms. Patients with depressive symptoms have significantly more recent days in bed, other factors being equal, than do patients with six of the chronic conditions; but they have fewer days in bed than patients with current advanced coronary artery disease. Current health is significantly worse for the depressive symptom group than for those with each of the conditions except the two heart conditions. Patients with depressive symptoms have significantly more bodily pain than do patients with five of the medical conditions, including angina only. They have significantly less pain, other factors being equal, than do patients with current arthritis.

We found no significant interactions between depressive symptoms and any of the chronic medical conditions, across all dimensions of well-being and functioning. Thus, depressive symptoms

Table 3. – Patient Characteristics by Provider Group*

Characteristic	All Providers (N = 11 242), % (SE)	Medical Clinicians (N = 9867), % (SE)	Mental Health Specialists (N = 1375), % (SE)	Significance†
Male	39 (0.5)	39 (0.5)	38 (1.3)	P<.05
Married	54 (0.5)	56 (0.5)	46 (1.3)	P<.0001
Completed high school	87 (0.3)	86 (0.4)	94 (0.6)	P<.0001
White	79 (0.4)	78 (0.4)	89 (0.9)	P<.0001
Hypertension history	34 (0.4)	36 (0.4)	21 (1.1)	P<.0001
Diabetes history	12 (0.3)	13 (0.3)	6 (0.6)	P<.0001
Current ACAD	5 (0.2)	5 (0.2)	1 (0.3)	P<.0001
Current angina only	4 (0.2)	4 (0.2)	2 (0.4)	P<.0001
Current arthritis	21 (0.4)	22 (0.4)	16 (1.0)	P<.0001
Current back problems	6 (0.2)	5 (0.2)	7 (0.7)	P<.01
Current lung problems	8 (0.3)	8 (0.3)	8 (0.7)	NS
Current gastrointestinal disorders	8 (0.3)	7 (0.3)	9 (0.8)	P=.35

*Sample size varies slightly by characteristic owing to missing data. ACAD indicates advanced coronary artery disease; and NS, not significant.

†The significance level (P) for comparison of patients of medical clinicians and mental health specialists.

Table 4. – Adjusted Mean Well-being and Functioning of Patients With No Chronic Conditions, Depressive Disorder, and Depressive Symptoms Alone, by Specialty*

	General Medical Provider			Mental Health Specialty			Significance of Comparisons†							
	NCC Group (N = 2288) (SEM)	DIS Group (N = 166) (SEM)	SYMP Group (N = 468) (SEM)	NCC Group (N = 202) (SEM)	DIS Group (N = 144) (SEM)	SYMP Group (N = 174) (SEM)	1	2	3	4	5	6	7	8
Functioning														
Physical (+)	88.1 (0.53)	81.3 (2.02)	80.1 (1.36)	86.3 (1.42)	81.5 (2.11)	87.8 (1.86)	P<.05	NS	P<.001	NS	NS	P<.05	NS	P<.001
Social (+)	91.7 (0.44)	80.3 (1.56)	84.1 (1.08)	80.2 (1.10)	73.4 (1.88)	82.8 (1.47)	P<.0001	P<.0001	P<.0001	P<.0001	NS	P<.0001	P<.0001	NS
Role (+)	87.0 ([illegible])	74.6 (2.46)	77.5 (1.65)	83.8 (1.77)	72.3 (2.65)	78.3 (2.32)	P<.0001	P<.001	P<.0001	NS	NS	NS	NS	NS
Bed days (−)	0.75 ([illegible])	1.12 (0.22)	1.22 (0.15)	0.66 (0.18)	0.92 (0.24)	0.06 (0.21)	NS	NS	P<.01	P<.05	NS	P<.001	NS	P<.0001
Well-being														
Current health (+)	73.9 (0.46)	64.3 (1.63)	58.9 (1.08)	74.5 (1.17)	56.7 (1.75)	60.6 (1.53)	P<.0001	P<.0001	P<.0001	P<.0001	P<.05	P<.05	NS	NS
Free of pain (+)	73.4 (0.58)	80.4 (2.00)	63.6 (1.36)	78.3 (1.43)	67.1 (2.14)	73.6 (1.87)	P<.0001	P<.001	P<.0001	NS	NS	P<.05	NS	P<.0001

*Adjusted for sociodemographics, presence of chronic medical conditions, and interactions of specialty with each medical condition and with an indicator of depression group status (no chronic conditions, depressive disorder, or depressive symptoms alone). For (+), higher score indicates better functioning and well-being; for (−), higher score indicates poorer functioning and well-being. NCC indicates no chronic conditions; DIS, depressive disorder; SYMP, depressive symptoms alone; and NS, not significant.

†The comparison types are as follows: 1, medical sector, comparison of DIS and NCC groups; 2, mental health sector, comparison of DIS and NCC groups; 3, medical sector, comparison of SYMP and NCC groups; 4, mental health sector, comparison of SYMP and NCC groups; 5, medical sector, comparison of DIS and SYMP groups; 6, mental health sector, comparison of DIS and SYMP groups; 7, among DIS patients, comparison of medical and mental health sectors; and 8, among SYMP patients, comparison of medical and mental health sectors.

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Table 5.—Predicted (Adjusted) Mean Well-being and Functioning for Patients With Depressive Symptoms and Chronic Medical Conditions*

	Functioning				Well-being	
	Physical (+) (n = 8072)	Social (+) (n = 9175)	Role (+) (n = 8808)	Bed Days (−) (n = 8332)	Current Health (+) (n = 8897)	Freedom of Pain (+) (n = 9184)
Depressive symptoms	77.6	81.2	73.7	1.40	58.7	64.5
Hypertension history	86.4†	94.8†	90.0†	0.38†	72.1†	77.5†
Diabetes history	81.5‡	88.8†	80.7†	1.02§	64.2†	76.3†
Current ACAD	65.8†	83.6	60.4†	2.08§	60.6	70.8†
Current angina only	71.2§	88.8†	72.4	0.30†	60.6	70.0‡
Current arthritis	80.8§	92.1†	83.6‡	0.53†	68.9†	60.4†
Current GI problem	82.9†	88.4†	79.9†	0.80§	64.2†	66.1
Current lung problem	75.5	88.5†	78.6‡	1.14	64.3†	73.0†
Current back problems	79.0	93.2†	82.0†	0.76§	73.0†	66.6
No chronic condition	88.1†	95.8†	90.0†	0.41†	75.7†	78.8†

*The predictions are adjusted for sociodemographics, presence of medical conditions, depressive symptoms, specialty, and interactions of specialty with each medical condition and with depressive symptoms. Significance level is for difference in functioning between each medical condition and any depressive symptoms. For (+), higher score indicates better functioning and well-being; for (−), higher score indicates poorer functioning and well-being. ACAD indicates advanced coronary artery disease; and GI, gastrointestinal.

†P<.0001.
‡P<.005.
§P<.01.
||P<.05.
¶P<.001.

and chronic medical conditions have additive associations with patient functioning and well-being.

COMMENT

We have demonstrated that depressive disorder and depressive symptoms in the absence of disorder are associated with limitations in multiple dimensions of patient well-being and functioning when compared with patients with no chronic conditions. We further conclude that the functioning of depressed patients is comparable with or worse than that of patients with major chronic medical conditions. The only chronic conditions having associations with functioning comparable with those of depressive symptoms were current heart conditions.

We found that the effects of depressive symptoms and medical conditions on functioning were additive. For example, the combination of current advanced coronary artery disease and depressive symptoms was associated with roughly twice the reduction in social functioning associated with either condition alone. Perhaps this is one reason why patients with comorbid depressive/medical conditions may be especially likely to come to the attention of physicians.[illegible] Comorbid medical conditions are also of importance because they can complicate the assessment of depression by masking or mimicking symptoms of depression.[illegible]

By clarifying the morbidity associated with depressive disorder and symptoms, our findings underscore the importance of appropriate assessment and treatment of depression across health care settings.[illegible] To the degree that such treatment improves patient outcomes in terms of functioning, patient suffering and societal costs associated with family burden, work loss, and service use may be reduced.

Is there a difference in morbidity for patients with depressive disorders vs depressive symptoms in the absence of disorder? Consistent with Klerman's[illegible] assertion, we found that patients with depressive symptoms, even in the absence of depressive disorder, had poor functioning; their symptoms were thus of considerable clinical significance. Moreover, we found that differences in functioning between patients with depressive disorder and those with depressive symptoms but no disorder were largely limited to patients visiting mental health specialists. Perhaps this is one reason why the distinction between depressive disorder and depressive symptoms may appear relatively less relevant to medical clinicians. While the two paradigms for defining depression may identify patients with similarly poor functioning, they may have different implications for clinical course or treatment response. We are now exploring these issues using data from the MOS.

We found that patients with depressive disorder who visited mental health specialists had much worse social functioning than similar patients visiting medical clinicians; but among patients with depressive symptoms only, those who visited general medical providers had relatively worse physical functioning and more bodily pain and bed days. One possible explanation for these findings is that patients select providers on the basis of how their depression is manifested. Because we adjusted our comparisons for the presence or absence of each specific common chronic medical condition, we know that the differences by specialty visited are not due to differences in prevalences of these conditions. But we did not control for differences in severity of each medical condition. Patients of medical providers could have relatively more severe medical illnesses. Similarly, the relatively poorer social functioning observed for depressed patients in the mental health specialty sector could be due to a greater severity of depression or higher prevalence of comorbid psychiatric disorders in this sector.

Our indicators of chronic medical conditions were based on patient self-reports. Stewart et al,[illegible] using physician-reported data, reached similar conclusions about the well-being and functioning of patients with hypertension, diabetes, and heart conditions, relative to a group with no chronic conditions, as those reported herein. For two medical conditions, hypertension and diabetes, our definition relied on a history of ever having the condition. By contrast, all patients in the depressed sample had active symptoms at the time of the index visit. The functioning and well-being of patients with hypertension or diabetes would probably have been worse than reported herein had we limited our definitions to active or severe disease. In the future, we will use data from the MOS to determine how severity of hypertension, diabetes, heart disease, and depression is related to the functioning and well-being of patients.

Our assessment of depressive disorders relied on the DIS. While its validity has been questioned,[illegible] no "gold standard" diagnostic assessment tool for *DSM-III* disorders exists for comparison.[illegible] The DIS was the most appropriate structured diagnostic instrument for the MOS.[illegible]

The MOS patient sample is representative of the typical visit and thus overrepresents frequent users who might have poorer functioning. These patients are of particular policy interest, however. The study is restricted to large urban cities and to particular group practices, and thus our conclusions may not be generalizable to other settings. While the response rates were moderate for some groups of clinicians and patients, especially in the single-specialty solo or small group practice sector, they were higher than expected for a study of private practices and there was little evidence of nonresponse bias. We have presented results from a cross-sectional, observational study. Thus, causal interpretations are not warranted. Depressive symptoms and disorder could result from functional limitations, as well as cause them.

Are self-reports of functioning by depressed patients accurate? Previous authors have noted that depressed patients are unrealistically pessimistic.[8] We found strong associations between depressive symptoms and bed days, which is generally considered a more concrete indicator of morbidity.[6] To further evaluate this concern, we estimated the partial correlation (adjusted for demographics) between each of the six domains of functioning and well-being and the recentness of the last health care visit (an indicator of intensity of use of health services), using data from the Patient Screener. We tested these correlations separately for patients with depressive symptoms who did or did not have a comorbid chronic medical condition. Of 12 partial correlations, 9 were significant at the $P<.001$ level and 3 were significant at the $P<.01$ level. Thus, even if depressed patients' assessments of their functioning are to some extent unrealistic, they are nevertheless of considerable consequence.

Clinicians are trained to suspect the presence of depressive disorders on the basis of functional impairments in patients, eg, social withdrawal. As a result, there may be some concern that our conclusions reflect circular reasoning, ie, depression is both defined by and associated with functional limitations. However, the *DSM-III* criteria for depressive disorders do not include indicators of limitations in the domains of functioning studied herein. Functional limitations caused by depressive disorder are considered secondary to it, rather than part of its definition.

Our findings therefore present several yardsticks by which to measure the morbidity of depressed patients: yardsticks that can be interpreted by medical and mental health specialty clinicians alike. Depression, as defined by either of two commonly used paradigms, is perhaps more like chronic medical conditions, in terms of morbidity, than has previously been appreciated.

This work was supported by grants from The Robert Wood Johnson Foundation, Princeton, NJ; the Henry J. Kaiser Family Foundation, Menlo Park, Calif; the Pew Charitable Trusts, Philadelphia, Pa; and the National Institute of Mental Health, Rockville, Md (grant MH [illegible]); and by The RAND Corp out of its own research funds. Cooperation and assistance in recruiting physicians and patients was provided by the American College of Physicians, Philadelphia, Pa; the American Academy of Family Physicians, Kansas City, Mo; the American Academy of Pediatrics, Elk Grove Village, Ill; the American Psychiatric Association, Washington, DC; the American Psychological Association, Washington, DC; and their local chapters in the MOS study sites. Specific individuals are acknowledged in the accompanying overview article.

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Karen Michel
609 Meadowlark Lane
Baytown, Tx 77521

September 1, 1989

U S Representative Steve Bartlett
House of Representatives
Subcommittee on Select Education
Committee on Education and Labor
Washington DC

Dear Representative Bartlett,

I wish to include the following, in addition to my verbal testimony at the ADA hearing in Houston on August 28, 1989:

I believe that my former employer Exxon, did not treat me fairly.

1] My supervisor (Exxon) said that I had a bad record, which was not true.

2] My supervisor would not let me have a TDD in my office, but the TDD was in the supervisor's office so they could answer and decide to let me use it or not.

3] The supervisor who made false statements about my work records was moved to Personnel and later layed off.

I have not been able to get another job and I don't believe TRC tried to find me one.

Sincerely,

Karen Michel

Karen Michel

State of Texas
House of Representatives
P.O. Box 2910 • Austin, Texas 78768-2910
512-463-0590

Mike McKinney
District 13

P.O. Box 370
Centerville, Texas 75833
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August 28, 1989

The Honorable Major Owens
Chairman, House Subcommittee on Select Education
114 Cannon House Office Building
Washington D. C. 20515

Dear Congressman Owens:

I understand you will be hearing testimony on the Americans With Disabilities Act on August 28, 1989 in Houston. I would like to express my support for this piece of legislation.

This is a very important issue that I feel should be addressed immediately. I appreciate your consideration of my opinion, and thank you for your time.

If I can be of service on this or any other matter, please let me know.

Sincerely,

Mike

Mike McKinney

MM/bw

Counties: Grimes, Houston, Leon, Madison, and Montgomery

1530

HEARING ON H.R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989

JOINT HEARING

BEFORE THE

SUBCOMMITTEES ON EMPLOYMENT OPPORTUNITIES
AND SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 13, 1989

Serial No. 101-51

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HEARING ON H.R. 2273, THE AMERICANS WITH DISABILITIES ACT OF 1989

WEDNESDAY, SEPTEMBER 13, 1989

House of Representatives,
Subcommittees on Employment Opportunities
and Select Education,
Committee on Education and Labor,
Washington, DC.

The subcommittees met, pursuant to notice, at 10:10 a.m. in Room 2175, Rayburn House Office Building, Hon. Major R. Owens [Chairman] and Hon. Matthew G. Martinez [Chairman] presiding.

Members present: Representatives Owens, Martinez, Payne, Jontz, Bartlett, Ballenger, Smith, and Gunderson.

Staff present: Eric Jensen, staff director; Terry Deshler, legislative assistant/clerk, Employment Opportunities Subcommittee; and Bob Tate, Select Education Subcommittee.

Chairman **Martinez**. Let me have your attention. I am calling the meeting to order. I am joined in the panel at this time by the chairman of the Select Education Subcommittee. Let it be announced at this time that this is a joint hearing of the Subcommittee on Select Education and the Subcommittee on Employment Opportunities.

The hearing today is on the Americans With Disabilities Act. We will receive testimony on a bill that works toward eliminating the discrimination against the physically challenged. We are hopeful that its passage will enfranchise the rights of disabled in this country so that they might participate in the productivity of our country and become self-reliant.

However, we cannot take for granted the passage of this bill as there are obstacles. There are many in our communities who are naturally fearful of any cost or inconvenience this new law will create. However, the fact is that many states already provide this protection.

This bill enables the whole country to be governed under the same conditions as those states that have had the foresight to pass such legislation.

We then enfranchise the rights of all our citizens. Let me point out that as a nation, we should not be proud that it has taken us so long to work towards ending systematic oppression of the disabled in our country.

I am pleased that here in Congress we have finally gathered enough will and support to make an attempt to end the shunting of our nation's citizens to the limbo of non-participation and dependency.

It is time that we stop this wastefulness. There are more than 43 million disabled in our society who are idle and dependant. With the American Disabilities Act, we can make a difference in their lives. Failure to take advantage of this opportunity robs our nation of a productive and enthusiastic human resource base.

This wastefulness not only burdens society with support payments, but perpetuates a tragedy of denying the aspirations of individuals who seek self-sufficiency and wish to join the mainstream of our society. By passing the Americans With Disabilities Act and insuring equal access to opportunity, we will have broken down one of the final barriers in our society to equal opportunity.

The Americans With Disabilities Act is a civil rights priority whose time has come. Now is the time to give to the disabled of our country back their personal and professional dignity.

I look forward to the testimonies given today. I will now turn to Major Owens for his opening statement and turn the meeting over to Major Owens.

Chairman OWENS. Mr. Chairman, I have no opening statement. I would like to note the fact that these hearings are being held at a time when we should be applauding the wisdom of the President and the leadership of the Senate.

Also, I would like to applaud the fact that the full Senate has passed a bill. We in no way, with these hearings, wish to impede the progress of the bill. We only offer these hearings as an opportunity for the people to add their wisdom so that we may be able to refine the bill in some way and make some adjustments which are important and productive. But, by all means, we want to move the bill and move it rapidly.

We want no impediments. We want no opportunities for those forces—Neanderthal forces out there which are gathering—to in some way decimate the great qualities of the present Senate bill.

So, without any further comment, I want to welcome our first witness, Mr. Evan Kemp, the Commissioner of Equal Employment Opportunities Commission. Mr. Kemp.

STATEMENT OF EVAN KEMP, COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION

Mr. KEMP. Thank you, Mr. Owens. I am here today to talk about employment discrimination against people with disabilities. Twenty-six years ago, I was entering my last year at the University of Virginia Law School. I signed up for interviews with 39 of the top law firms in the country.

I had 39 interviews and 39 flat refusals. Several told me that the reason I was not being hired was that I was disabled.

Chairman OWENS. Could you talk just a little bit louder, Mr. Kemp?

Mr. KEMP. Others said that I wasn't hired because they feared that I would be discriminated in air travel. It was the most traumatic experience of my life and I found it devastating at that time.

Because of my uncle who was the late columnist, Drew Pearson, I did secure a job with the Internal Revenue Service. I started in

October of 1964 as a GS-5. Within less than seven years, I was a GS-15.

In 1971, I broke my leg because I was denied an accommodation, a very minor accommodation, at the Securities Exchange Commission.

It was interesting that I had the same degree of weakness I had before I broke my leg, but after that others perceived me quite differently. I was considered severely disabled afterwards because I had to use a wheelchair. The way I define "severely disabled" is a disability that able-bodied people think is so bad that they would rather be dead than have that disability.

I never got another grade increase at the SEC until they advertised for a job as a supervisor. I was told that I couldn't apply for a supervisor position because I was in a wheelchair. In 1977, I sued the government for denying me a supervisory position on that basis and won that case. In 1980, I left the government to become executive director of the Disability Rights Center.

There are several things that I notice even today that I consider to be discriminatory. One is that when people meet me, they don't assume that I work or have a job. It surprises them when I tell people that I am a commissioner at the Equal Employment Opportunity Commission. They say, "Gosh, I didn't realize that was a part-time job. Do you meet four times a year?"

The other thing that I find rather shocking is that people do not listen to people with disabilities. They assume that they are mad at the world, that they haven't adjusted to being disabled, et cetera.

I think I can illustrate it with a couple of issues that have come before Congress in the last year. First, the question of paratransit. If people would listen to what disabled people say, would look at the studies, it wouldn't be a controversy.

Paratransit does not work for mainstreaming disabled people. It has never worked for getting people to a job. It is great for getting people to a doctor's appointment once a month, maybe to a shopping center, but it cannot work to mainstream people with disabilities.

If you talk to any disabled person, whether employed or not, they will tell you the same thing—people do not listen to disabled people.

Another example is that the first politician who listened to me, and I think to other disabled people, was George Bush and it impressed me so much that I left a very strong Democratic family and converted to the Republican party.

Through 1982, I had always voted the straight Democratic ticket. Since then, I have voted the straight Republican ticket.

Another illustration of not listening to disabled people is my experience with wheelchairs. I ended up in a wheelchair after I broke my leg at the SEC and I found that it didn't meet my needs.

I gathered the information that was used by the Justice Department in an anti-trust suit against Everst & Jennings. The U.S. government won that case in 1979, but there was no second, no rival to Everst & Jennings.

I got a group together and we purchased a run-down, second-rate wheelchair company. The only thing that we did differently is that we listened to disabled people.

Today that wheelchair company is the leading wheelchair manufacturer in this country. We have made money every year. Everst & Jennings has not made money any year domestically since we took over Invacare.

Everst & Jennings still will not go and talk to disabled people. They are still making chairs that they think will satisfy disabled people, but which don't.

I think in closing I'd like to say that the ADA is a monumental bill. Basically, it's turning around a policy that has been dominant for a number of years, that is the segregation of disabled people into a dependency relationship.

It is saying that we want disabled people independent. We want them having control of their own lives and that is quite a statement.

I remember in one of the meetings at the White House, a person who was opposed to ADA stood up and said, "Who had the bright idea of taking disabled people out of the charity pity model and put them in the civil rights model?" I think that really explains what this bill is all about.

If I can answer any questions, feel free to ask them.

[The prepared statement of Evan J. Kemp, Jr. follows:]

TESTIMONY OF
EVAN J. KEMP, JR., COMMISSIONER
U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE HOUSE SUBCOMMITTEES ON SELECT EDUCATION AND EMPLOYMENT OPPORTUNITIES

SEPTEMBER 13, 1989 AT 10:00 A.M.

I am here today not as a Commissioner of the U.S. Equal Employment Opportunity Commission, but as a person with a disability. I am 100% for the Americans With Disabilities Act. But there are those who ask "Does it make economic sense to integrate disabled people into society?" Other people inquire "How many disabled people are there really?" While others ask "Does it really matter? Isn't medical science going to cure most disabling conditions?" Both disabled people and nondisabled and politician and nonpoliticians have all asked these questions many times.

To answer these questions and others, I have found it necessary and helpful to have a philosophical framework to work from. I would like to share it with you.

The disability rights movement addresses the problems of all our citizens who are different in some respect from what society considers to be an acceptable American: the 28 year old, 5'10", 160 lb, male WASP with no physical or mental impairments. I believe that the problems encountered in employment, education, and access to transportation and other public facilities by the physically and mentally disabled are but newsworthy examples of the real, but private, frustrations many of our nondisabled citizens face in these same areas every day.

The disability community seems at times to be a cacophony of voices. Beneath the clamor and confusion there is a common philosophical thread which unites the disabled and places them in the vanguard, in calling for modifications and adjustments to our technology and institutions, in order to make them work for all Americans. Opening society will improve the quality of life not only for the disabled but for all our people.

Moreover, our country will be increasingly less able to afford our present welfare and support systems for the disabled. They often foster dependence instead of independence. The desire of disabled people to be integrated into society, and the need for social programs to serve only the truly needy, are each advanced by the independence movement of disabled people.

The mythical American made the United States the strongest economic power in the world. Henry Ford made one automobile to fit the mythical American and employed mythical Americans to build it.

At the height of our industrial revolution, we were so enamored of the mythical American that we forced 15% of the population that was left-handed to become right-handed. With mass production, it was more economical to make all right-handed scissors than to manufacture 85% for the right-handed and 15% for southpaws. Those Americans who deviated too far from the mythical American were excluded from society and sent to special schools, sheltered workshops, institutions, or kept at home in the closet. There was a cost to society in excluding people who were different, but it was minor in comparison to the economic benefits our industrial era brought us. By the 1980s, one dollar in every 12 that the Federal Government spent was a direct payment to a disabled person or to a disability program. What had started out as a minor cost had escalated into a major drain on our economy.

But the new economic era described by Toffler, Nesbit, and others, no longer needs the model or concept of the mythical American. Products and jobs can be tailored to the individual. Disabled people can be employed by the new high-tech industries which are beginning to dominate so much of our society.

For the first time in memory, the jobs are there for disabled people. But the biggest barrier disabled people face in securing these jobs is attitudinal. The cost of these attitudinal barriers is immense. The cost to society of excluding just those disabled people of working age is estimated by the U.S. Department of Labor to be $300 billion a year.

Many transit systems installed escalators when building their facilities. Escalators can be dangerous. There are 60,000 reported injuries a year on escalators in the United States alone. Half of the people over 45 have sight problems that make escalator riding dangerous for them. They use or are in need of bifocals. Children who use escalators are at a high risk, especially in the winter time.

Elevators are available for the disabled. Unfortunately, they break down often and at a rate the general public would find intolerable. For example, many elevators in the District of Columbia Metrorail system "are not operational because they have broken down and have not been repaired in a timely manner." Paralyzed Veterans of America v. Washington Metropolitan Transit Authority, No. 776-72-LFO, Slip op. at 1 (D.D.C. Oct. 19, 1988).

When these systems were designed, if they had been designed for all ages and not just for the mythical American, there would be escalators for less than half the people in our society, and elevators for the majority of people--those over 45 with sight problems; for the elderly; for children; for pregnant women; for adults with strollers; for people using wheelchairs; for those with mobility or grip impairments; and for people who are subject to seizures. The list goes on and on.

I would like to make three points. First there is an immense cost to society of excluding disabled people. Further, medical science is not going to cure disability. Medical science has yet to cure the lasting effects of most disabling conditions. In fact, when medicine is properly practiced, many more lives of critically injured people are saved, resulting in more people with disabling conditions.

And lastly, we as a society have to acknowledge the fact that the disabled are not just a small, identifiable, and vocal group. Any of us could become disabled. We have to acknowledge that 51.9% of us can become pregnant; 100% of us have been children; and many of us will be elderly.

We have to stop thinking of disability as a charity or a soft news issue. It is an issue for all ages, for all of us.

Chairman Owens. I would say that person at the White House asked the right question. He understood that it was a bright idea.

Mr. Kemp. No, he didn't approve of it.

Chairman Owens. I yield to Mr. Bartlett for an opening statement and for questions.

Mr. Bartlett. Thank you, Mr. Chairman. I do have a couple of comments and then it will lead into question, Mr. Kemp of you. First, I want to say to Commissioner Kemp how much I admire his work and his leadership on this legislation.

The legislation has been a long time in coming. I have shared with others in the past that I reached the conclusion, a tortuous conclusion from one who has never been a fan of new Federal laws, but a conclusion, nevertheless, about a year ago that there is today and has been for some time a need to extend civil rights protections to persons with disabilities.

I am glad to see that it looks like we are going to be able to achieve that in this session of Congress. Having said that, my second conclusion was that the version of the ADA as introduced in the House and in last year's session was replete with overstatements and overdone and did a good deal more than extend the civil rights protections to persons with disabilities.

The good news from that is that the President and the Senate concluded some non-political but very intense and substantive discussions and negotiations on what should be in a bill that extends civil rights protections to persons with disabilities. In essence, and this is oversimplifying it, but in essence, they concluded that for purposes of employment, the Congress would extend the 504 protections to everyone in the private sector after a certain threshold for small business and for purposes of public accommodations we would extend the Civil Rights Act of 1964 protections with obvious requirements of modifications based on the uniqueness of disabilities and undue hardship and reasonable accommodations and such that are well-established in law.

I have just been told that I couldn't be heard in the back, so I only know a little bit of sign, so I probably will speak louder then.

The Senate-passed bill was, in fact, the result of rather intense negotiations by all parties. It is not a watered-down version, in my opinion. It is a version that does accomplish the goal which is extending those civil rights protections.

The Senate-passed bill, in my judgment, gives the Congress and the United States the opportunity to pass this law, to pass a bill into law, and make it stick, and make it work. Thus, I would have several admonitions.

First, I think the House bill, as introduced, has been helpful in moving the process along. At this point, my conclusion is that we should then begin to deal with the Senate-passed-bill as the mark that we then work from.

I have never been one, as a legislator, to believe that any bill is perfect and, therefore, I think everyone on each of the committees should have the opportunity to amend or alter the bill as it comes through the committee obviously with the recognition that any alteration, major alteration, has to be careful to make sure that it doesn't drive one of the other members of the coalition away from the bill.

So, the alterations I would be thinking of would be areas in which all sides could generally agree that there was a semicolon in the wrong place or that we used a set of words that were different than what we intended.

For example, the Senate passed a bill, that as I recall opposes the direct threat or safety to the public or consumers in the case of an exception. One might want to convert that to significant risk language as in the Arline decision, and I am not suggesting when I say we do that, I would just suggest that would be the nature of the types of alterations that we would make.

I do have a couple of specifics and let me ask them in a form of a question. That is really the first. Mr. Kemp, in your knowing everything you know about Congress and the substance of all of the legislation, would you recommend that we use the Senate-passed bill as a mark to proceed from or would you recommend that we use the House bill, the introduced bill, as a mark or something in between?

Mr. **Kemp**. I would recommend the Senate bill. ADA has gone through a lot of different stages. The first ADA was introduced in April of 1988. It was quite different than the bill that was introduced on May 10th of this year and the bill that came out of the negotiations between the Senate and the White House is quite different from the bill that was introduced in May.

I think that it does represent the hard work of a group of people in the Senate and the hard work of a group in the White House. I think this is the first bill concerning disabled people that has been taken seriously by Congress and by the White House.

The President set up a working group in March of this year to include most of the departments and agencies in the Federal Government. You had to be an assistant secretary or above to attend.

This group learned about the ADA, learned about mainstreaming disabled people in society and learned an awful lot. I think that they contributed to the compromise that came out on August 2nd.

So, I think I guess I would use the Senate bill as the mark.

Mr. **Bartlett**. Are you happy with the Senate bill in substance as well as in procedure?

Mr. **Kemp**. Yes, I think so. I don't want to be in a position of saying, "Gosh, the House should just automatically okay the bill," because I do think that the House has a duty to look at it and consider it and learn about it. I do think it could do it in a very quick time.

I remember the President of Turkey, who is a dictator at Attaturk. He wanted to westernize the Turkish language and he brought up some of the best linguists in the world to Istanbul and some said, well, it would take thirty years and some people said it would take fifty years and he said he didn't want to wait that long. He put everyone in a room and said, "You can't come out until you come up with a western language," and they did it in two weeks.

I think that the House could really look at this bill, really consider it, really understand disability, and have a decision by the end of this month.

Mr. **Bartlett**. So, it is your conclusion that we can proceed faster, significantly faster, if we proceed from the Senate——

Mr. **Kemp**. Yes, I think so.

Mr. BARTLETT. Second question, the Senate did not deal with the issue of a pre-emption, that is to say, the bill was silent as is the House on the possibility of a defendant being sued under the ADA, the Rehabilitation Act state statutes, and other legislation.

Now, conceptually, do you think that we should have some sort of a preemption section in the bill so that if you are sued under the ADA, if it is the same set of facts, then that is going to be the basis of all litigation on that subject?

Mr. KEMP. I think that the courts have handled questions like this in the past and where there is inconsistency between the ADA and state law, the ADA would be the law.

There are some states that have done a whole lot better job of mainstreaming disabled people than other states and probably their laws are a lot better than the ADA.

I don't think that we should preclude those states that want to have a higher standard.

Mr. BARTLETT. So, perhaps, not preempt state statutes, but other Federal statutes. Let me ask you specifically. Currently the bill in both versions says that ADA does not preempt 504, so that a Federal contractor would be required to comply with both.

Now, since they are both virtually identical, if not identical—the intent is that they be identical or on the same track—do you think that we should have ADA preempt a complaint or a suit under ADA, preempt a future complaint or suit under 504 or 503, based on the same set of circumstances, obviously?

Mr. KEMP. I think that the ADA is probably going to be the dominant bill in this area. I think that judges and lawyers, just like all of us, are lazy and are going to use the ADA as their model.

I think in a few years that we can speak about 504 still being in existence, still being a way to go, but most people probably would be proceeding under the Americans with Disabilities Act.

I think to clarify your first question, Steve, I don't think that—where it is inconsistent, why don't we follow the pattern that is done under Title VII of the Civil Rights Act?

If it is inconsistent, Title VII is in control. If the states have a better system, we allow that to be the dominant law.

Mr. BARTLETT. So, you would follow the Title VII preemption approach?

Mr. KEMP. Yes.

Mr. BARTLETT. All right, that is very helpful. Thank you.

The second question is one that is a new question, so I phrase it with the understanding that you may or may not have thought about it because it is one that I just uncovered or discovered yesterday, and, again, it is a relatively modest question on the Senate-passed bill.

The Senate-passed bill states as undue hardship—essentially sets the test of undue hardship for accommodation, for reasonable accommodation—sets the test of undue hardship on a per employer basis, that is, the size of the employer.

The Parental Leave Act and the Plant Closings Act—by the Parental Leave bill, proposal and Plant Closings bill—by contrast set the meaning of undue hardship on a per site basis. What that means, as I understand it, is that if a restaurant in a chain of a 1,000 restaurants, that individual restaurant could and should be

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required to make accommodations, so long as it didn't propose an undue hardship—so far, so good.

An undue hardship might be defined for an individual restaurant at $2,000 or $2,500 or $10,000 or some dollar amount, but an individual restaurant, if you view undue hardship as its impact on the parent company, then one could at least contemplate a million dollar reasonable accommodation at one restaurant because it is a large company even though all the million dollars would only be spent at one site.

Would you think it would productive to explore the site specific definition of undue hardship?

Mr. **Kemp**. No, I don't think so. I think the Plant Closing Bill is really talking about a particular plant that is closing, a site, so I can see the site approach there. The ADA is talking about mainstreaming disabled people.

If only the one restaurant site is required to make those accommodations, it would limit a disabled person who might be very successful as a manager and would be promoted to being district manager, but he could not get that promotion because the other parts of the company were still inaccessible to him.

Mr. **Bartlett**. I understand your answer. As I said, this is a new topic. My question may have bypassed your answer or maybe not. Let me try to rephrase it.

The question is, how do you define the level of expenditures on a company that would be regarded as an undue hardship? You can't define it in dollar amount because it depends on how big the revenue source is for that company. That is to say, building a ramp for an individual company is clearly not an undue hardship.

Building into the wall a breathing machine may well be if it is just simply one employment site. So, the question is, should you measure the size of expenditures based on the size of the employment site or based on the total revenues of the parent company?

Mr. **Kemp**. I think I understand your question, and I have always felt that until you take the economics out of employment decisions, the more severely disabled in our society won't get jobs.

Now, the Europeans passed their integration laws during the first World War in 1917. There were two basic approaches. The German approach placed a quota on each corporation.

The British approach gave the company a tax credit for any accommodation that was used. My feeling is that in a couple of years, Congress will pass a law giving a tax credit to corporations for their reasonable accommodations, so we really won't have to answer this question.

If the accommodation is too expensive for a corporation, if the corporation is anti-disability, they are going to find a way to say that this is not a qualified disabled person.

Mr. **Bartlett**. So you would expand it as much as possible then, as far as——

Mr. **Kemp**. Yes, right now, and I think that the tax credit is needed. People talk about the cost of this bill, but the one thing that we keep forgetting is the cost of excluding disabled people from society runs about $169 billion a year.

We can spend an awful lot of money before we even come close to that $169 billion.

Mr. **Bartlett**. Mr. Chairman, I have one additional, essential question, but my time has expired. I would be happy to wait for the second round if the members are waiting or ask it now. It is the chairman's choice.

Chairman **Owens**. You may proceed.

Mr. **Bartlett**. Mr. Kemp, now, the Senate passed an amendment that said that nothing in this bill can be construed to include homosexuals as a disabled group. That is the subject of some amount of controversy, at least in limited groups.

My question of you is, in your opinion, is there anything in the bill, leaving aside that amendment, if that amendment were not in there, is there anything in the proposed legislation that would include sexual preference in any back door or front door way as a disability, A, and, B, should we, regardless of your answer to the first question, should we include that exception, or that clear statement that sexual preference is not a disability under this bill?

Mr. **Kemp**. I don't think that—no to the first question, Mr. Bartlett. The second——

Mr. **Bartlett**. On the record, the answer is, there is nothing in the bill that includes, in your opinion, at all, that includes sexual preference as a disability or a protected class of individuals?

Mr. **Kemp**. Yes. I don't think there is anything in the bill that includes sexual preference as a disability.

Mr. **Bartlett**. Nothing at all, all right.

Mr. **Kemp**. I think the definition that the doctors have does not include them as being disabled or as behavior that should be considered a disability.

I think that there is this concern, because of the whole AIDS controversy, that a person that is a homosexual might claim that he is perceived as having the AIDS virus, and I think that the amendment that was added in the Senate version of the bill clearly addresses that problem.

Mr. **Bartlett**. So, if you were in our shoes, would you keep that amendment in the bill?

Mr. **Kemp**. Yes, I would.

Mr. **Bartlett**. Thank you. Thank you, Mr. Chairman.

Chairman **Owens**. Mr. Commissioner, I neglected to congratulate you on your promotion to the position of Chairman designate of the EEOC. Congratulations.

Mr. **Kemp**. Thank you.

Chairman **Owens**. Relating to that, let me ask, will the passage of the ADA bill, in your opinion, require the use of additional resources for the EEOC to enforce its provisions?

Mr. **Kemp**. It certainly will. We were asked to estimate the increased cost and we figured it would be about $27 million dollars.

Chairman **Owens**. The increased cost would be $27 million?

Mr. **Kemp**. Million dollars, yes, which does not come close to the $169 billion dollars it cost to exclude disabled people. I think that we need it quite quickly, or at least the start of that money, because there is going to be a lot to be done between the time of the passage of the law and the time that we get jurisdiction.

On every other act that has been passed, we always get behind the eight ball and we are always in a position of trying to catch up.

So, with that experience in mind, I think that Congress should be willing to increase our budget right now.

Yesterday they cut it from a $189 million dollars down to $183 million overnight, which I think is a great shame.

Chairman OWENS. You have a blueprint to make your case if the bill is passed?

Mr. KEMP. Oh, yes. We have used the Federal sector, and drew from the Federal sector and made, I think, very honest estimates of the increased cost. Twenty-seven million dollars just wasn't pulled out of the sky.

Chairman OWENS. Where did you get the $169 billion from? I have heard a variety of figures given as the amount spent annually on persons with disabilities. Is this an official figure that has some backup?

Mr. KEMP. Oh, yes, Ed Berkowitz wrote a book on disability policy and his estimate of Federal, state, and private payments to disabled people to keep them out of the work force was $169 billion. In my prepared——

Chairman OWENS. That is a combination of Federal, state, and private.

Mr. KEMP. Private. In my statement, which I hope has become part of the record, I use the Department of Labor estimate that it roughly costs society $300 billion a year to exclude disabled people.

Chairman OWENS. I know that we, for practical reasons, are talking about moving the Senate version of the bill. Would you comment on the enforcement provisions, and maybe cease to be practical for a little while and talk about what they ought to be, or what amendments might be made in the future?

Mr. KEMP. The disability community did back down on the remedies that they wanted, and I think there are fewer remedies than the original bill had, the one that was introduced on May 10th.

I think that we have got to see what happens in the next few years. If truly we are getting disabled people into the work force, if discrimination lessens in our society, maybe this is the scheme that works.

Again, you know, this bill is more a statement of policy to the whole world. It is saying, "We are not going to exclude disabled people anymore. We are not going to consider them second-class citizens. We are going to bring them into society."

It is not something that is going to happen overnight. It is going to take time. I know in my argument for this bill I said it is like changing the course of the Queen Elizabeth going across the ocean, and that going across the ocean now means going towards segregation of disabled people, keeping us in sheltered workshops, special schools, keeping us out of society.

What this bill does is turn us around toward independence, self-sufficiency, true integration, and you don't do that overnight. So, let's just wait and see what happens on the enforcement part.

Chairman OWENS. In the opening remarks of your testimony you made a very personal and moving statement. Let me ask you this. In your view, has there been any attitudinal shift on the part of the general public since the passage of the Education of the Handicapped Act, of the Rehabilitation Act of 1973; that is, a shift toward viewing people with disabilities for what they can do and not just for what they cannot do, or do you think we penetrated the public conscience?

Mr. **Kemp**. I think the younger generation has. I remember little kids would rush up to me and ask me why I was in the wheelchair and things like that and the parents would be very embarrassed and say, "You can't ask questions like that."

The people who assume that I am not working are older people, people over 40. People who assume that any opinion I have is clouded because I am in a wheelchair are people over 40. Younger people, I think, accept what I say, think that I do have a job and can work. So it is a very generational attitude.

Chairman **Owens**. Thank you very much. Mr. Jontz.

Mr. **Jontz**. Thank you, Mr. Chairman. Commissioner, I am sorry I was not present for your opening statement, but I have had a chance to read it and appreciate your testimony.

I would like to ask you two or three questions that relate to some of the concerns that have been raised by various parties, and may be raised later this morning, and get your response, based on your experience with the EEOC.

Your own personal experience, I think, puts you in a unique position to be able to respond to some of these questions, and I would like to raise them and hear your comments. One of the concerns that many have expressed about this legislation is the use of various phrases which appear in different statutes and also appear in this statute, such as "undue burden," "readily available," "reasonable accommodation," "readily achievable," "essential functions," and so forth.

What response can you make to the criticism that those words are indefinite in their meaning? What response can you make to the allegation that these sort of words just make work for attorneys and courts? As one who has experience in this area, what assurance or consolation can you give to the business owner, or the citizen, who fears the indefinite nature of words of this sort?

Mr. **Kemp**. Well, there is a history for all the words except for "readily achievable." We have had the Rehabilitation Act of 1973 for the last 16 years. "Undue hardship" is used in that, "reasonable accommodations" is used in that. Your other terms are also used there.

I think the one thing that the Act does is it asks employers to look at the disabled person as an individual, look at his strengths and his weaknesses, and look at the job that the employer wants filled and see if that person can fill the job.

I think that it is a process statute. I can be qualified for a job with one company and not qualified for a job with another company, even though its the same job. Under Title VII, that wouldn't occur. If I were qualified for one job, generally I would be qualified for the same job in different corporations. I wouldn't not get the job because the corporation was a new corporation or was in worse financial shape than another one.

So, it is basically a process that this statute comes down to. It says that the employer looks at the individual, looks at his disability, determines whether the disabled person can do that job with or without an accommodation.

If it was with an accommodation, will the accommodation—is one available? If there is one available, is it a hardship on the employer? So, this talk about it being indefinite, I think, is thinking of group approaches to things.

When you talk about the individual approach, the terms aren't indefinite. It is a revolutionary statute. I mean, it is telling people that you have got to go and look at the individual, stop looking at the group, stop having stereotypes about the groups.

Mr. JONTZ. I appreciate that answer. Let me follow up with another set of concerns that I have heard from the business community. Perhaps you have already answered the question in your first answer, but I think a lot of business people will want to know what they specifically have to do to avoid injunctions or fines or what have you. They would like to know, "Will we have to put in this sort of a ramp, or this sort of a door, or what sort of training has to be implemented?"

I guess they look at the breadth of the possible things that they could have to do, and it just seems so immense. Employers would have less fear if they knew specifically that they have to do a, b, c and d, in order to satisfy the conditions of the law. Many people very honestly and sincerely want to satisfy the conditions of the law.

Perhaps you have already answered the question by saying it really is a process that the employer has to go through, but would you respond to the concerns of the employer who says, "I want to meet the requirements of the law, but I just don't know exactly what I have to do?"

Mr. KEMP. I think this is one of the revolutionary aspects of this bill. There are no really a, b, c, d, e answers that a corporation can do. I think what a corporation has to do is to start thinking of the individual and not the group, to really make the whole employment process meaningful to both himself and the individual that he is hiring.

As a matter of fact, I think that what we do in the disability area should be done across the board. Corporations that have a policy right now of taking an individual approach to able-bodied people and have a very structured process of interviewing and determining whether to hire somebody, I think have good work records, have good records with the EEOC.

Those that take the group approach, I think, have bad employer/employee relationships. As a matter of fact, this law, if anything, I think will help corporations to make that change from bad relationships with their employees to good relationships with their employees. It probably would save them a great deal of money.

Mr. JONTZ. So, your advice to the businesses would be, rather than worry about all sorts of possibilities, look at the individual, look at your own specific situation, and, in fact, the requirements of the law will not be burdensome if you look at the individuals. Is that your response to those businesses?

Mr. KEMP. Yes, and you have to do away with your stereotypes. A person in a wheelchair just has a mobility impairment. It doesn't mean that he can't hear, can't see, can't reason.

A person that is mentally retarded can see and hear and often doesn't have a mobility impairment. Just look at the individual, and don't come to the interview with stereotypes. That is my best advice.

Mr. **Jontz**. It would be your judgment, if a business takes that approach, it shouldn't make any difference whether they are a small business in a rural community or a bigger business in a large city. It makes no difference if they look at the individual and look at the process.

The smaller business shouldn't feel like they are unreasonably burdened by the requirements of this law.

Mr. **Kemp**. Yes. Also, we have got to take in the demographics, that we are going to have an acute labor shortage by the end of this century, the early part of the next century, and the small business is the one that is creating the jobs in our economy today.

If they don't start hiring disabled people, they are going to have to go either raid other companies, use bribes to get them to come work for them, or import foreign labor. I think that this country, the real answer to it is to start to hire disabled people.

The last time we were really hired in numbers was during the Second World War, when 12 million people were fighting, and we were needed, but as soon as the war ended, we were out of a job.

Mr. **Jontz**. Just one last question, with the indulgence of the chair. Does ADA make a distinction between intentional and unintentional action by the employer, or does it make any difference? How would you respond to that question?

Mr. **Kemp**. There was an amendment, I think, in the Senate that said that if there was a good faith effort by the employer, that they wouldn't be penalized. I have yet to—though I was down in the anteroom last Thursday from 4:00 to 10:30, I am probably the last person in the world to ask what amendments were passed and not passed.

It was a very confusing seven hours, but I think there was an amendment that would differentiate between a good faith effort and a non-good faith effort at least.

Mr. **Jontz**. What would be your response to whether that is desirable or not, based on your experience with EEOC and some of the problems relating to this whole area?

Mr. **Kemp**. I think that we have to realize that it is a process, that the first determination is whether the person is a handicapped person. Then you make a determination of whether he is a qualified handicapped person.

To do this you look at his limitations and look at the job and see if he can do the job with or without an accommodation. Then you determine if the accommodation can be given or is it available, and if it is available, is it an undue burden.

So, it is a process, and I don't think that corporations which can show that they go through that process will be held liable for anything. But if they think that a person in a wheelchair is mentally retarded and has one foot in the grave and another on a banana peel and don't hire him for that reason, and don't look at the individual, then I think they should be held liable.

Mr. **Jontz**. I thank you for your comments.

Chairman **Owens**. Did Smith and Ballenger walk in at the same time? I think so. Mr. Ballenger?

Mr. **Ballenger**. Mr. Kemp, I am sorry. I was late also and missed your statement, but I read it, and became very interested in the discussion you just had because I am a manufacturer still and have some employees back home.

I was thinking to myself—in fact, Peter and I both said—you were talking about the labor shortage that was going to come in the next century, where I come from, the labor shortage is already there. Unemployment rate has been under three percent for the last two years. We are doing everything we can to locate workers

Listening to you talk, I was reminded of my plant in North Carolina. Back in the days when it was built, current laws and regulations on discrimination were not in place. The plant was built in very hilly country in western North Carolina and was built into the side of a hill.

Given the slope of the land, the office space and everything is away from the ground level. I was just sitting here thinking, I think I have discriminated ever since I built the place, but never knew I was doing it, because my office, where the employment possibilities are, is up maybe ten steps, through an airlock with double doors, and there is no way to get into that place if you are in a wheelchair.

Mr. **Kemp**. No back door?

Mr. **Ballenger**. No back door. Surprisingly, we never thought about it.

Mr. **Kemp**. So, people that come to clean your office have to bring their machinery up those ten stairs——

Mr. **Ballenger**. Yes.

Mr. **Kemp**. [continuing] and hurt their backs and other things like that? Of course, you work with compensation claims?

Mr. **Ballenger**. The EEOC has had me before them several times, and so I understand what you are talking about.

[Laughter.]

Mr. **Ballenger**. The fact that one of the positive things that may come out of this bill is the fact that some people really discriminated without even having the slightest idea that they were doing it. With a labor shortage in the future, employers may be more likely to hire the handicapped individuals. Because you know as well as I do that people in wheelchairs are much more dependable, they are more likely to show up every day, and they will do a better job.

In this particular example I mentioned, if the plant is already designed and built and there is no access for people with wheelchairs and the plant does not do any business with the Federal Government, were this bill law at the present time, would I be breaking the law?

Mr. **Kemp**. More than half of the disabled people don't need reasonable accommodations. There are the people that, you know, had cancer 30 years ago and are discriminated because of that cancer. So we really are just talking about less than half the people.

Now, it sounds like your plant would be good for most disabled people, except people in wheelchairs, and if it is not accessible, I can see circumstances where it would be an undue burden to make it accessible. I don't see why you would have to hire them.

Mr. **Ballenger**. I was just handed a list. North Carolina has a law, for Handicapped Protection Act, and it is a list of things that are necessary or not necessary—there are both sides of the coin—at least in state law in North Carolina.

I was wondering—I don't know whether you have seen this or not before.

Mr. **Kemp**. No, no, but I have visited North Carolina quite a bit. It is quite a progressive state on disability issues.

Mr. **Ballenger**. I wondered if it is possible you might look at that section of our law and get back to us as to where you think the pluses and minuses are and where we might clash as far as North Carolina law and the Federal law that we are about to pass may come.

Mr. **Kemp**. Yes, I think it is one of the states that this law really doesn't affect that much. Recently I took a vacation in Oregon, and that is an extraordinarily accessible state. They advertise that whitewater rafting was accessible to disabled people.

So, I decided to take them up on it, and they didn't blink an eye at me. It looked like they had done it a 1,000 times before. So, the bill is going to have an uneven effect across the country, and North Carolina, I think, is one of the states that is not going to be affected that much because it has had a very good record of accessibility.

Mr. **Bartlett**. Would the gentleman yield?

Mr. **Ballenger**. Yes.

Mr. **Bartlett**. I thank the gentleman for yielding because I was unclear on the answer to the original question. I want to make sure that I am clear and also it is clear on the record.

If an employer, such as Mr. Ballenger, large employer of a manufacturing plant, has an employment office where you intake prospective employees, as I understand it, this law would say that the employer would have to make that employment office accessible on a reasonable basis, reasonable accommodation, to prospective employees, including large numbers of people who would be in a wheelchair, because you don't know who wants to apply in a wheelchair as long as you are inaccessible because they don't apply.

Now, am I reading that right? This bill would say that he would have to make that, at least the employment office accessible?

Mr. **Kemp**. Yes, which is usually a very inexpensive accommodation. One thing that I have always found out, if people really want to hire disabled people, really want them to participate, the accommodations never cost much money.

If they don't want them, the accommodations go right through the ceiling. As a matter of fact, an example is at Duke University. The chapel there is accessible for a wheelchair and that ramp cost $1 million, and it is completely useless because it is made out of marble and it is as slippery as an ice rink.

Sears and Roebuck made their whole national headquarters accessible for $7,600 with TTY's, ramps, this and that and the other thing. It is hard to believe that they could do it for that cheap a price. But if a person wants disabled people, the accommodations really don't become a burden. If they don't, they always do.

I think that we have to realize that more than half the disabled people do not need accommodations. The ones that do—there have been two studies that show that most accommodations are very, very inexpensive.

Right now, with the labor shortage less than three percent, you probably are offering money to your employees if they could bring somebody to work that has a job. If you had disabled people down there, you might not have to——

Mr. BALLENGER. I can accept that, but being a person who has continuously refused to do business with the Federal Government because of the regulations you automatically get into because you do business, I would again ask the question that my fellow congressman asked: Would I be mandated by this law to do that?

Mr. KEMP. Mandated to do——

Mr. BALLENGER. To make accessible at least the personnel section of my company for wheelchair people. I am just curious the way you interpret the law.

Mr. KEMP. It does seem to me that every company that I go to or corporation, I have no problem getting into it. You might have those three or four steps, but I bet that there is a lawn there that I could go across and hand my application in.

I think that, you know, talking about where your office is, I bet there is some way that persons can get in there with the machines that are needed to clean the office.

Mr. BALLENGER. Sure. I am not saying that I wouldn't do that, but the question is, would I be mandated by the law that I would have to do it?

Mr. KEMP. Yes.

Mr. BALLENGER. Thank you.

Mr. BARTLETT. If the gentleman would further yield, and then when we get to my amendment which will apply this law to Congress, you will have to do the same thing in your congressional office, and it is about time.

Mr. BALLENGER. I agree with that a 100 percent. Thank you, Mr. Chairman.

Chairman OWENS. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Kemp, I am sorry I missed your opening comment, and I guess I would like to start by not only congratulating you on your appointment, but thanking you and the administration for once again taking leadership on an issue that has cried out for leadership for many years.

I, at the risk of sounding partisan, or at least proud to have an administration that is willing to say there are issues that need to be dealt with finally and begin to deal with them, ADA being one of them, I am very pleased and proud to have that kind of leadership which calls the Congress to finally do something.

I was going to answer yes if you didn't, Cass. I see this bill as, in my mind, the biggest piece of legislation certainly since 94-142, and I am not a student of legislation.

I think we have to learn how to say there will be some disruption, and it is going to hurt a little, because if there wasn't and it didn't, then we aren't—either there isn't a problem, or we are doing everything right to begin with.

So, somehow we need to have an attitude, it seems to me, that understands that it is going to involve change, and change creates friction, and friction creates trouble sometimes, and that we are welcoming and anticipating that we are going to go through those times in trying to create a level playing field for all Americans.

I know you referred in your opening comments to the Senate version of the bill, S9-33. Would you be willing to cite just two or three of what you think are the important adjustments or points that they have reached in that bill that would commend it?

I know you have said that you think it would be a good starting point in the House. Unless you did that in greater detail than I got from the quick run-through of your testimony, could you give us three or four examples where you think the tone of that bill is an improvement in terms of developing a good starting place?

Because I see the bill we passed as a starting point. I don't see it as like the end of the job at all, any more than 94-142 is finished 15 years later. We are after a good, strong doable starting point, and I would be interested in just a little more comment on the Senate version of the bill.

Mr. **Kemp**. The most controversial part of the bill that was introduced on May 10th of this year, the ADA, was a public accommodation section, and there was give and take by both the administration, the disability community and the Senate on this section, and I think it is a fair compromise.

We have got to be able to get our hair cut, buy our clothes, get our food so we can eat, but this was by far the most controversial section. I think disabled people did compromise an awful lot in this area and on transportation and other things. From the bill that was introduced on May 10th, the thing we gave up were stronger remedies,

So I think it is an even tradeoff, and I think the disability community has gone about as far as it can go without really having a backlash.

I would like to explain, and I think your point was well taken, and maybe I was tending to minimize the disruption, that our society really was built for the mythical American. I think that the best book on disability is still Huxley's "Brave New World," which was written in 1933 as political satire. I think we went an extraordinary long ways to realize what he was talking about. I can remember in school that if you were left-handed, your left hand was tied behind your back, because it was easier to make machinery and scissors and other things for all right-handed people.

What the Disability Rights Movement is all about and what the Americans with Disabilities Act is forcing us to do is to start looking at the individuals, stop looking away from the mythical American. I think this Act is going to have a profound effect on older workers and allow them to work longer, because this is needed if our economy is to survive.

It is estimated in the year 2007 for every two workers, there are going to be two people getting Social Security, and one of those two workers is either going to be a disabled person or an older person.

So, I think it will disrupt society, but, you know, it is needed to really start including people into society because of the great exclusion of people during the industrial mass production, assembly line businesses.

Mr. **Smith**. Thank you.

Chairman **Owens**. Mr. Payne.

Mr. **Payne**. Thank you very much, Mr. Chairman. I am sorry to be late. I came at 9:30 and went back to my office, and you see what happens. You talk about disruption.

I have no specific questions. I certainly would like to compliment you, though, for all the fine work that you have been doing. I had the privilege to be with Chairman Owens and Representative Bartlett from Texas at a recent hearing in Houston, where I would imagine 500 or 600 persons showed up during the course of that hearing and we had a very thorough discussion.

Most of the issues were discussed. I was very impressed with the manner in which the hearing was organized. In fact, it was the best organized hearing that I have seen since becoming a Member of Congress. Although it has only been six months.

We do need disruption. As a matter of fact, we should have had people making representatives and senators feel uncomfortable by last year, when there was no action on the bills.

When I was younger, we used to disrupt a lot. We would block traffic and disrupt presidents of colleges who couldn't get into their offices, and I was thinking and mentioning it to Chairman Owens that maybe one day we've got to have a group of people blocking up some traffic or keeping folks from getting in so they can actually see and feel how it is to be singled out for no reason of their own.

I'm just here to say I am strongly supportive of ADA, Jay Rochlin, and some of my long-time friends. Hopefully we can get this watered-down, what I considered weak version through the door since last year I understand we couldn't get it through the door, and once we get it through the door, perhaps we can strengthen it so it can be totally meaningful so that all people will have their civil rights. Thank you.

Mr. **Kemp**. Thank you.

Chairman **Owens**. Thank you again, Mr. Commissioner. I appreciate your testimony.

Mr. **Kemp**. Okay. No more questions?

Chairman **Owens**. Oh, I am sorry. Mr. Gunderson.

Mr. **Gunderson**. Thank you, Mr. Chairman. Thank you, Mr. Kemp. I apologize for being late, but I have reviewed your statement.

One of the questions that everyone brings to our offices when they come and raise concerns is the definition of "reasonable accommodation" and "undue burden." Do you want to insert any comments for the record as to how you would articulate what constitutes "undue burden" or what constitutes "reasonable accommodation"?

Mr. **Kemp**. These are old terms. They have been around for a long time, and the courts have defined them. To determine what's an undue burden you take a number of factors into consideration. How big is the employer? What are his revenues? Does this benefit one person or does it benefit a whole lot of people? Does it benefit both non-disabled and able-bodied people?

A whole host of things are taken into consideration to determine whether it is an undue burden, and the courts, I think, have done a fairly good job in defining it.

A reasonable accommodation is what is needed to allow a disabled person to work. You look at the abilities and the disability of the individual and look at the job. Now, over half the disabled people don't need any reasonable accommodation to do the job. You talk to the disabled person about what accommodation he does need and maybe go to the state rehabilitation agency to see what accommodation is needed.

Quite often, you can find somebody that is going to pay for it right now, like the state rehabilitation agencies or others. But it is an individual process and I think that that is what scares people. We don't like to look at the individual. We would like to look at groups and say, "Gosh, you know, all wheelchair people should be repairing watches and all blind people should be making brooms in a broom factory. All deaf people should be working in printing plants."

This is just requiring the employer to take a look at each employee individually, which he should be doing, and corporations that do that with able-bodied people very, very successful and have very good employer/employee relationships.

Mr. **Gunderson**. I don't know if the question was raised earlier before I arrived, but I am sure you have heard the numerous concerns raised by people in the retail community that this is going to force them to take out many aisles of goods in their stores in order to widen the aisles, that they are going to have to lower the shelves and all this.

I would just like your comment on these concerns.

Mr. **Kemp**. The one thing that I have always found is that people who are selling things always want me to come in there. They will do anything to get disabled people into the store. Our dollars are just the same as an able-bodied person's dollars.

I did have one interesting experience. Several years ago, I went into this corner grocery store, and I was in a great hurry and as I was going back to their sandwich section, I hit a bottle that was holding up about, it looked like a 100 bottles of wine.

They all came smashing down and there was about four inches of wine kind of sloshing around on the floor and I offered to pay for it, and they said no. But I was sure that the little ramp that they had installed would be gone the next day. It is there to this day. But whenever I go in there, they always rush and say, "Well, what can I do for you, Mr. Kemp?"

[Laughter.]

Mr. **Kemp**. And they don't let me near the wine.

So, I think it is a smoke screen. The place that I have my hair cut has two little steps, and I keep trying to tell them I don't want to have my hair cut there; I should go someplace else, and he keeps insisting to have my hair cut there, because my money is just as good as somebody else's. I think it is a smoke screen.

Mr. **Gunderson**. The final suggestion in this area that has been raised is that if you will look at the plant closing legislation, and if you will look at the Parental Family Leave Act, the requirements for enforcement in both areas are based on plants or sites specific.

How would you respond to a proposal that this criteria be added to the "undue burden" determination?

Mr. **Kemp**. I think in both the plant closing and the pregnancy bills, I can see the reasons for using the per site. In disability, it wouldn't work to mainstream disabled people if you were just required to make the site accessible. That is going to delay the upper mobility of disabled people.

I think the one thing from my EEOC experience that we have not done well is had upward mobility of women, blacks and other minorities and we have got to address that, and I think taking a per site approach would hurt disabled people in upward mobility.

What this bill is talking about is mainstreaming them and it is a revolutionary bill, and it is saying, "We have got to make a society that is accessible to all," and we are going to be a happier and better and more economic society.

Mr. **Gunderson**. Fine. Thank you, Mr. Chairman.

Chairman **Owens**. Mr. Ballenger?

Mr. **Ballenger**. Could I ask one more question? Since the Congressman, my friend from Wisconsin brought up the question—North Carolina law has a statement in which "reasonable accommodation does not require," and then it has a list of seven or eight things here.

I was wondering if I could send to you and have you express an opinion as to, is it reasonable as to what they have there in North Carolina, for not what "reasonable accommodation" is, but what it is not.

Mr. **Kemp**. I would love to see it, and I will write you a letter back telling you my opinion.

Mr. **Ballenger**. Thank you, sir.

Mr. **Kemp**. Okay.

Chairman **Owens**. Without objection, could you submit that for the entire committee?

Mr. **Kemp**. I will.

Chairman **Owens**. If Mr. Ballenger doesn't mind.

Mr. **Ballenger**. No, sir.

Chairman **Owens**. Thank you again, Commissioner.

Mr. **Kemp**. Thank you.

Chairman **Owens**. Our next panel consists of Mr. Jay Rochlin, the executive director of the President's Committee on Employment of People with Disabilities; Mr. Mark Donovan, the manager of Community Employment and Training Programs at the Marriott Corporation; Mr. Duane Rasmussen, the president of Sell Publishing Company; Mr. Paul Wharen, the project manager for Thomas P. Harkins, Inc.; Ms. Arlene Mayerson, the directing attorney of Disability Rights Education and Defense Fund.

Mr. Rochlin, you may begin.

Mr. **Rochlin**. Thank you, Mr. Chairman.

Chairman **Owens**. I had neglected to state before that your written testimony will be entered in its entirety for the record.

STATEMENTS OF MR. JAY ROCHLIN, EXECUTIVE DIRECTOR, PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES; MR. MARK DONOVAN, MANAGER, COMMUNITY EMPLOYMENT AND TRAINING PROGRAMS, Marriot CORPORATION; MR. DUANE RASMUSSEN, PRESIDENT, SELL PUBLISHING COMPANY; MR. PAUL WHAREN, PROJECT MANAGER, THOMAS P. HARKINS, INC.; AND MS. ARLENE MAYERSON, DIRECTING ATTORNEY, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

Mr. ROCHLIN. Thank you, Mr. Chairman. I will summarize parts of that testimony that I feel are important to express today.

I am the executive director of the President's Committee on Employment of People with Disabilities, and I am in this position after 32 years in the private sector. I was with AT&T and the former Bell System, and during my last ten years with them was responsible for developing policies and programs for the employment, advancement and retention of people with disabilities throughout AT&T and the former Bell System.

I am honored to have the opportunity to address you regarding comprehensive civil rights legislation for people with disabilities. The Census Bureau issued a report, which I would like to enter, recently which identified characteristics of Americans with disabilities and which graphically and I must add tragically, details their economic status in our society today.

I think it merits special attention. It reflects that the percentage of men with a work disability fell seven percent, from 30 percent in 1981 to 23 percent in 1988, and the income of workers with disabilities, both men and women, fell also.

In a period of general economic upturn, these figures raise serious questions about the effectiveness of current Federal and state laws barring job discrimination based on disability. Discrimination against individuals with disabilities——

Chairman OWENS. Mr. Rochlin, could you give us the title of the report again?

Mr. ROCHLIN. Yes. It is the Labor Force Status and Other Characteristics of Persons with a Work Disability, 1981 to 1988, and it was released by the U.S. Department of Commerce, Bureau of the Census.

Chairman OWENS. Without objection, the report will be accepted for the record.

Mr. ROCHLIN. Discrimination against individuals with disabilities still persists not only in the critical area of employment in the private sector, but also in public accommodations, transportation, and telecommunications.

There was a Harris Poll done that reflected that top managers in private sector corporations reflected that persons with disabilities often encounter discrimination; and yet, while most Americans with disabilities remain unemployed, total disability expenditures in this country are increasing at an alarming rate, from 19.3 billion dollars in fiscal year 1970 to a 169.4 billion in fiscal year '86, a rise of more than 800 percent.

Private sector disability expenditures paid in the form of payments through insurance policies, private pensions, and indemnity claims are becoming a greater percentage of the Nation's total disability expenditures. In 1986, such private expenditures totaled $31.8 billion.

Mr. Chairman, these are societal problems this nation faces as a result of actions or inactions that discriminate against individuals with disabilities by effect as well as by intent or design.

The principal solution to these problems must be the opportunity to work at a good job. This enables people to be self-sufficient and allows them to earn protection against illness, temporary unemployment, and to prepare for old age.

Thus, we have a societal problem with a business solution, and, Mr. Chairman, this can be one of those rare "win-win" solutions.

The front page of the September 3rd Washington Post stated, and I quote: "Faced with a severe shortage of labor, local companies such as Giant Food, Marriott and American Security Bank are hiring the hard-core unemployed. For the firms, these hires are not just a matter of goodwill—they are a bottom-line necessity."

While comprehensive civil rights legislation can provide protections from employment discrimination for persons with disabilities, it will also enhance the private sector's access to an additional resource of human capital—qualified individuals with disabilities.

In his endorsement of civil rights legislation for Americans with disabilities, President Bush called for a framework that allows for maximum flexibility to implement effective solutions, bills on existing law to avoid unnecessary confusion and litigation, and attains these goals without imposing undue burdens.

The administration believes the Senate-passed version of the Americans with Disabilities Act provides an appropriate framework for moving forward.

I commend you and other sponsors of the legislation before you for your decision to use the terms "qualified individual with a disability" to describe those individuals protected from employment discrimination and "undue hardship" to define limitations on the duty to accommodate.

These terms signal an effort to provide employers the workable and familiar framework the President demanded. In addition, the concept of reasonable accommodations stands the test of flexibility, experience, and undue burdens.

Employers have practical experience with cost effective accommodations for employees with disabilities. The President's Committee operates the Job Accommodation Network, and we've seen a 42 percent increase in its use by employers seeking advice on various aspects of accommodating employees with disabilities, and 72 percent of those inquiries have resulted in the retention or placement of workers with disabilities.

There have been studies that have reflected on the cost of accommodating people with disabilities, and as a rule, they all reflect that more than half of people with disabilities are accommodated with little or no expense. But perhaps the reality of reasonable accommodation can be demonstrated by a placement that occurred in AT&T entity in Arkansas. The person involved in this placement was Tina Saenger, who is here with me today. Seventeen years ago, an automobile accident left Tina with quadriplegia. Eight years later, she was hired by AT&T to be a long-distance operator.

The building she was assigned to was accessible, so mobility was not a problem. However, Tina has limited use of her hands and arms and a metal hand splint is required to support her right hand.

In order to operate the console that she works at, she picks up a pencil with her left hand and puts it in a clasp on the hand splint on the right hand and uses the eraser end of the pencil to depress the keys of the console.

But when she went to work, there was a rule in that office that operators were not to use pencils to key. People felt that using fingers was more sensitive and using pencils could cost errors.

Well, to make a long story short, Tina has been at work there now for over nine years, and she is still using her pencil. Her performance as an operator is accurate and efficient.

When I visited her office some years ago, and in an unsolicited comment, her manager said to me, if he'd a room full of Tinas, he wouldn't have any problems. Yet, the rule prohibiting the use of pencils still exist in that office today.

Allowing Tina to use the pencil is a reasonable accommodation to the limitations caused by her disability, as required by Section 503 of the Rehabilitation Act, but as such, does not compromise the prohibition against the use of pencils. But I must admit to you that when I was there, I suggested that since Tina did so well using her pencil, that maybe performance could be improved in the office by letting all the operators do the same.

But consider the economic impact of that simple accommodation. It enables Tina to have a job which pays well. She owns both a home and a car and supports her mother in addition to herself.

The alternative is no longer acceptable. We should not spend our tax dollars to support someone who is able to be an independent and productive taxpaying citizen, particularly when we could do so easily.

Small businesses have demonstrated ingenuity in reducing the relative costs of accommodations through such innovations as accelerated depreciation schedules for equipment purchases and subsidizing personal equipment of employees.

In Ohio, eight businesses have formed a consortium which allows the pooling of resources for disability management services. The consortium allows a level of flexibility in job restructuring and reassignments and the use of professional rehabilitation personnel who otherwise would be unavailable to small or moderate-sized businesses.

The payoff is in a reduction in the disability expenditures I mentioned at the beginning of my statement and the availability of a qualified work force.

While I no longer speak for private sector employers, I continue to be an employer of people with disabilities. Two-thirds of my staff at the President's Committee are persons with disabilities, so I continue to experience firsthand the accommodation process and also to benefit from the outstanding contributions persons with disabilities make to the role and mission of the President's Committee.

I believe employers are willing to make the investments necessary to put individuals with disabilities to work and to support fair and workable civil rights legislation that will guarantee them equal employment opportunities. The Harris Poll of employers supports that.

We must all recognize, however, that eliminating discrimination in the employment area will not solve the coming national labor shortage or the enormous problems people with disabilities must face everyday.

In order to provide meaningful protections to individuals with disabilities as well as to assure the availability of this segment of the work force to employers, civil rights legislation must be comprehensive.

It must address all the barriers to the independence and integration of people with disabilities into American life. Any break in the link in the chain that connects individuals with disabilities to the work place or prevents them from functioning independently creates a barrier that many times cannot be bridged.

It makes little sense to protect an individual from discrimination in employment if, for example, they have less than adequate accessible public transportation services. We have conducted surveys in 45 communities over the last seven years, and, consistently, inaccessible transportation has been identified as the major barrier, second only to discriminatory attitudes.

Mr. Chairman, just as business looks at the bottom line, so must we all. As I see it, the bottom line in passage of comprehensive civil rights legislation for people with disabilities is: For business, access to a qualified labor force and to a largely untapped group of consumers.

For individuals with disabilities: dignity, pride, and an improved quality of life, and, finally, independence. And for the Nation, a renewal of our commitment to equality for all and a contribution to the human spirit.

Mr. Chairman, the President's Committee stands ready to assist business in implementing the mandates of this comprehensive civil rights statute and other agencies and organizations, both public and private, are equally eager to share their expertise.

As our previous experience with bringing new classes of repressed people into the social and economic mainstream of society has demonstrated, the returns to the Nation will be bountiful.

Thank you, Mr. Chairman.

[The prepared statement of Jay Rochlin follows:]

**The President's Committee on
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Dignity, Equality, Independence Through Employment

PREPARED COMMENTS BY

JAY ROCHLIN, EXECUTIVE DIRECTOR

OF THE

PRESIDENT'S COMMITTEE ON EMPLOYMENT

OF PEOPLE WITH DISABILITIES

BEFORE THE

HOUSE SUBCOMMITTEE ON SELECT EDUCATION

OF THE EDUCATION AND LABOR COMMITTEE,

SEPTEMBER 13, 1989

ADVISORY COUNCIL

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture

The Secretary of Commerce
The Secretary of Labor
The Secretary of Health
and Human Services
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and Urban Development

The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Chairman of the Equal Employment
Opportunity Commission

The Administrator of General Services
The Director of the Office
of Personnel Management
The Director of the United States
Information Agency
The Postmaster General

Mr. Chairman, my name is Jay Rochlin. I am the Executive Director of the President's Committee on Employment of People with Disabilities. My current position follows 32 years with AT&T, the last ten of which I developed policies for AT&T and the former Bell System for employment, retention and advancement of people with disabilities.

I am honored to have this opportunity to address you regarding comprehensive civil rights protections for persons with disabilities.

In a report just released in July, the Bureau of the Census identified characteristics of Americans with disabilities which graphically, and I might add tragically, details their economic status in our society. This new Census report is so important, it merits special attention.

Here are some of the alarming findings:

A) The percentage of men with a work disability working full time fell 7 percent from 30 percent in 1981 to 23 percent in 1988.

B) The income of workers with disabilities dropped sharply compared to other workers. In 1980, men with disabilities earned 23 percent less than men with no work disability, and by 1988 this had dropped to 36 percent less than their counterparts.

In 1980, women with disabilities earned 30 percent less than women with no disabilities, and by 1988 this had dropped to 38 percent less than their counterparts.

In a period of a general economic upturn, these figures raise serious questions about the effectiveness of current federal and state laws barring job discrimination based on disability.

The editor of the Salt Lake City's Deseret News poignantly summarized the meaning of the census findings. The August 30th editorial said, "When it comes to helping the handicapped, America has slipped backward during the 1980's when we should have been making progress."

Discrimination against individuals with disabilities still persists not only in the critical area of employment in the private sector, but also in public accommodations, transportation, and telecommunications. Seventy-five percent of top managers in private sector corporations surveyed in a 1986 Harris Poll feel that persons with disabilities often encounter discrimination from employers.

Yet, while most Americans with disabilities remain unemployed, total disability expenditures in this nation are increasing at an alarming rate: from $19.3 billion dollars in fiscal year 1970 to $169.4 billion dollars in fiscal year 1986 -- a rise more than 800%.

Private sector disability expenditures, paid in the form of payments through insurance policies, private pensions, and indemity claims, are becoming a greater percentage of the nation's total disability expenditures. In 1986, such private expenditures totaled $31.8 billion.

These, Mr. Chairman, are the societal problems this nation faces as a result of actions or inactions that discriminate against individuals with disabilities by effect as well as by intent or design.

The principle solution to these problems must be the opportunity to work at a good job. This enables people to be self-sufficient and allows them to earn protection against illness and temporary unemployment, and to prepare for old age. It follows, then, that helping people to work is in the short and long-term interest of society of a whole.

Thus, we have a societal problem with a business solution. And, Mr. Chairman, this can be one of those rare "win-win" solutions.

The Hudson Institute's Workforce 2000 and Opportunity 2000 concluded that "(b)usinesses will be able to satisfy their labor needs only if they successfully confront... barriers and empower individuals presently outside the economic mainstream to take advantage of meaningful employment opportunities."

The front page of the September 2nd Washington Post stated: "Faced with a severe shortage of labor, local companies such as Giant Food, Marrriott and American Security Bank are hiring the hard-core unemployed. ...For the firms, there hires are not just a matter of goodwill--they are a bottom-line necessity."

While comprehensive civil rights legislation can provide protections from employment discrimination for persons with disabilities, it will also enhance the private sector's access to an additional resource of human capital --- qualified individuals with disabilities.

Right now, I would like to concentrate on your efforts to provide individuals with disabilities the same employment protections enjoyed by others. In his endorsement of civil rights legislation for Americans with disabilities, President Bush called for a framework that allows for maximium flexibility to implement effective solutions, builds on existing law to avoid unnecessary confusion and litigation, and attains these goals without imposing undue burdens. The Administration believes the Senate-passed version of the Americans with Disabilities Act provides an appropriate framework for moving forward.

Mr. Chairman, you and the other sponsors of the legislation before you are to be commended for your decision to use the terms "qualified individual with a disability", to describe those individuals protected from employment discrimination, and "undue hardship" to define limitations on the duty to accommodate. These terms signal an effort to provide employers the workable and familiar framework the President demanded.

In addition, the concept of reasonable accommodation stands the test of flexibility, experience and undue burdens. Employers have practical experience with cost-effective accommodations for their employees with disabilities. Last year, the Job Accommodation Network (JAN), sponsored by the President's Committee on Employment of People with Disabilities, saw a 42 percent increase in its use by employers seeking advice on various aspects of accommodating employees with disabilities. Seventy-two percent of these inquiries resulted in the retention or placement of these workers.

The 1982 Study of Accommodations Provided to Handicapped Employees by Federal Contractors reported that "no" cost was involved for half (51%) of the accommodations reported. An additional 30 percent of the accommodated workers received packages of accommodations for which the total cost was between $1 and $500."

In 1987, Honeywell, in its own report on employees with disabilities, indicated that "the majority of accommodations provided to employees with disabilities cost less than $50." Honeywell also noted the availability of federal and state tax deductions and programs such as Vocational Rehabilitation which further defrayed company costs.

Perhaps the reality of reasonable accommodation can best be demonstrated by a placement that occurred in an AT&T entity in Arkansas. The person involved was Tina Saenger, who is with me today. Seventeen years ago, an automobile accident left Tina with quadriplegia. Eight years later, she was hired by AT&T to be a long-distance operator working at the electronic consoles that have replaced cord switchboards.

She traveled in a wheelchair but mobility was not a problem since she was assigned to an office that was fully accessible. However, when she reported to the job, the Operator Services Manager became quite concerned.

Tina had limited use of her arms and little use of her fingers. A metal hand splint was required to support her right hand. In order to operate the console, she had to pick up a pencil with the thumb and forefinger of her left hand, place it is a clasp on the hand splint and then use the eraser end of the pencil to depress the keys of the console.

However, there was an office rule that operators were not to use pencils to key because of the belief that fingers are more sensitive, and using pencils could cause more errors.

To make a long story short, Tina has been at work over nine years and she is still using her pencil. Her performance as an operator is accurate and efficient.

I visited her office and in an unsolicited comment, her manager told me that if he had a roomful of Tinas, he wouldn't have any problems. Yet, the rule prohibiting the use of pencils still exists in that office.

Allowing Tina to use the pencil is a reasonable accommodation to the limitations caused by her disabiltiy, as required by current Section 503 regulations, and as such does not compromise the prohibition against the use of pencils. Although, I must admit, I did suggest that since Tina does so well using a pencil that perhaps overall office performance might be improved by allowing all operators to do the same.

Consider the economic impact of that simple accommodation. It enables Tina to have a job which pays well. She owns both a home and a car and supports her mother, in addition to herself. The alternative is no longer acceptable. We should not spend our tax dollars to support someone who is able to be an independent and productive taxpaying citizen, particularly when we can do so, so easily.

Let me share another perspective of accommodation. For years we have routinely provided secretaries without disabilities with word processors or memory typewriters, considerably more expensive than manual machines which could get the job done. But the secretary is more efficient with the word processor. And, today, it is hard to conceive of an efficient secretarial pool without access to word processing capabilities.

Or consider copy machines. I remember when secretaries typed 8 copies with carbon paper, which was much cheaper than a copy machine of today, but not as efficient. The purpose of providing an adaptive device as a reasonable accommodation to an employee with a disabiltiy is the same --- to make the individual a more efficient worker.

Small businesses have demonstrated ingenuity in reducing the relative costs of accommodations through such innovations as accelerated depreciation schedules for equipment purchases, and subsidizing personal equipment of employees. In Ohio, eight businesses have formed a consortium which allows the pooling of resources for disability management services. The consortium allows a level of flexibility in job restructuring and reassignments and the use of professional rehabilitation personnel who otherwise would be unavailable to small or moderate-sized businesses. The payoff is in a reduction in the disability expenditures I mentioned at the beginning of my statement and the availability of a qualified workforce.

While I no longer speak for private sector employers, I continue to be an employer of persons with disabilities. Two-thirds of my staff are persons with disabilities, so I continue to experience first-hand the accommodation process, and to benefit from the outstanding contributions persons with disabilities make to the role and mission of the President's Committee.

I believe employers are willing to make the investments necessary to put individuals with disabilities to work, and to support fair and workable civil rights legislation that will guarantee them equal employment opportunities.

It is important to note that 80% of Equal Employment Opportunity officers, 72% of line managers, and 56% of top managers surveyed in the 1986 Harris Poll supported the concept that civil rights laws which protect minorities against discrimination should also apply to people with disabilities. This indicates that the attitudes of business executives are generally supportive of policies which would benefit individuals with disabilities. But, it is most interesting that those closest to the problems of workers with disabilities are the most supportive of change.

We must all recognize, however, that eliminating discrimination in the employment area will not solve the coming national labor shortage or the enormous problems people with disabilities must face every day. In order to provide meaningful protections to individuals with disabilites, as well as assure the availabilty of this segment of the work force to employers, civil rights legislation must be comprehensive. It must address all of the barriers to the independence and integration of people with disabilities into American life.

A break in any link in the chain that connects individuals with disabilities to the workplace or prevents them from functioning independently creates a barrier which many times cannot be bridged. It makes little sense to protect an individual from discrimination in employment if, for example, they have less than adequate accessible public transportation services.

The President's Committee has conducted concensus meetings with leaders in business, government, rehabilitation, and disability rights in 45 communities over the last seven years. These meetings have enabled communities to identify the major barriers to employment of people with disabilities, and to reach concensus on actions which can be taken to correct those barriers. Consistently, inaccessible transportation services has been identified as a major barrier, second only to discriminatory attitudes.

Mr. Chairman, just as business looks at the bottom line, so must we all. As I see it, the bottom line in passage of comprehensive civil rights legislation for people with disabilities is:

For Business--

Access to a Qualified Labor Force and to a Largely Untapped Group of Consumers

For Individuals with Disabilities--

Dignity, Pride, an Improved Quality of Life, and Finally, Independence

For the Nation--

A Renewal of Our Committment to Equality For All and a Contribution to the Human Spirit.

The President's Committee stands ready to assist business in implementing the mandates of this comprehensive civil rights statute. Our guide for hiring people with disabilities, entitled Ready, Willing and Available, developed by our employer members and targeted to small businesses, is an example of the assistance we can offer. Other agencies and organizations, both public and private, are equally eager to share their expertise.

As our previous experience with bringing new classes of oppressed people into the social and economic mainstream of society has demonstrated, the returns to the nation will be bountiful.

Chairman **Owens**. Thank you. Mr. Mark Donovan.

Mr. **Donovan**. Thank you, Mr. Chairman. I would like to just comment that as a result of a timing issue, I have not presubmitted written testimony. What I would like to do is make some comments this morning and then submit that testimony after the fact, if I may.

I am Mark Donovan and I am with Marriott Corporation, have worked for Marriott for over 20 years at this point, and in the last five years have focused in general on creating employment opportunities for individuals who have any barrier to employment and, more specifically, on employment opportunities for individuals who may have a physical or mental barrier, individuals with disability.

I am pleased to be here and I am particularly pleased to have the opportunity to support the historic legislation that is under consideration. The issue of empowering people with disabilities to be fully contributing members of the work force in the work place is one that has been near and dear to my heart and, I might say, near and dear to Marriott's heart for some time.

I think as a result of that, Marriott is recognized as a leader in the whole issue of providing employment opportunity for people with disabilities, in being in the forefront of initiatives to enhance those opportunities.

I think it is critical to note why that is, because I think the general perception might be that that is an altruistic action on the part of Marriott, that somehow it has to do with charitable feeling and the like and I don't think anything could be further from the truth.

Clearly, Marriott has assumed a leadership position in this area because it makes good business sense for Marriott. It doesn't, in fact, cost us money to employ people with disabilities; it saves us money to employ people with disabilities. And I have been interested in some of the previous discussion of the whole accommodation issue because I think in many cases, the accommodation issue is overblown and wrongly placed as a disability issue.

Accommodation is not a disability issue. Accommodation is an employment issue, and, as such, should be seen as a cost of doing business, not as a cost of hiring people with disabilities.

Our life blood is our work force in Marriott Corporation as a service sector business, and what we have found is that it is only through accessing the widest possible diversity of individuals in that work force that we, in fact, can create the strongest work force possible.

So, in fact, in working with people with disabilities, we find that we do it as a business necessity, and not because it makes sense in terms of a charitable action.

I guess I would like to make an analogy to that situation with Marriott because, in a more general sense, I think this legislation is critical in terms of the fact that society as a whole is only as strong as the diversity that that society represents.

It is only when we can weave all the various unique experience and capability of the individuals in that society that we truly can be what we want to be as a society. And so from that standpoint, in my mind, there is no question about the importance of the legislation. There is no question about whether it ought to be enacted. I think the only real question is, what can we do to help craft the legislation in such a way that it, in fact, is as effective as possible, once enacted, to meet its overall objectives.

What I would like to do is just make two or three comments as to issues that I feel might want to be considered as that crafting process takes place.

It seems to me, number one, it is critical that if what we are going to do is provide an active and effective piece of legislation, what we want to do is create a process and a system that includes and encourages cooperation rather than confrontation in the meeting of challenges and the settling of issues.

So, I would strongly encourage a means to include all parties to the issues involved, be those employers or individuals with disabilities or managers or community agencies in the solutions that need to be developed for those problems.

In my experience, that is the way that strong solutions are reached.

I think that related to that, the whole issue of where litigation fits into the process of remedying problems and finding solutions ought to be as a last resort measure, rather than a first resort alternative.

In my sense, litigation is an issue that creates wedges between people, rather than developing inclusion among all parties; and, in fact, while it may develop solutions, doesn't typically develop the best solution.

Second, I think that it is important, as we look to employers to recognize that in some cases there are supports that are appropriate and necessary to help employers, in fact, meet the intent and the spirit of the bill.

The savings to the Federal treasury, in terms of putting people with disabilities to work, have already documented. I would strongly encourage that there be a means to translate some of those savings into the kinds of supports that might be appropriate to employers, whether those be financial supports or technical assistance, or what have you, to assure that we make it as possible and as realistic as possible that they, in fact, meet the spirit of that bill.

Thirdly, I would do everything possible within the language of the bill and within the stipulations of the bill to protect against the bill being used as a foundation for frivolous claims in terms of protection of individual rights and the like.

I think it is critical to recognize that anything that results in frivolous claims, in fact, takes away from the focus of the true intent of the bill which is to empower those individuals who need such empowerment to be contributing members and so, I think it is important to be careful about how language is crafted to avoid that wherever possible.

I would just like to reiterate again how pleased I am to be here, how important I do think this legislation is and not only as an end in itself, but, in fact, because in my view, I feel that the legislation is simply a stepping stone to a greater overall objective which is that ultimately this exact piece of legislation ought to belong in the past and we ought to be in a place where, in fact, we focus so naturally on the ability of the individual that the whole issue of disability, in fact, does become irrelevant.

Thank you very much.

[The prepared statement of Mark Donovan follows:]

TESTIMONY OF

MARK R. DONOVAN
MANAGER, COMMUNITY EMPLOYMENT AND TRAINING PROGRAMS
MARRIOTT CORPORATION

REGARDING THE
AMERICANS WITH DISABILITIES ACT (H.R. 2273)

BEFORE THE
EMPLOYMENT OPPORTUNITIES SUBCOMMITTEE
AND THE
SELECT EDUCATION SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON EDUCATION AND LABOR

SEPTEMBER 13, 1989

Mr. Chairman, I am Mark Donovan. I have worked for Marriott Corporation for more than twenty years in a wide range of positions from line management to training and human resources. Over the past four years I have been responsible for developing and implementing programming to successfully integrate people with barriers to employment into Marriott's workforce. A substantial number of those programs have involved people with disabilities.

It is with great pleasure that I appear before you to support the Americans with Disabilities Act. This historic legislation holds the promise of a day when true equality of opportunity for people with disabilities is the accepted norm, not the subject of debate.

The issue of empowering people with disabilities to be fully contributing members of the workforce is one which has been central to my efforts, and Marriott's efforts, for some time. As a result of their efforts, Marriott is recognized as a leader in the area of employment of people with disabilities. They clearly stand, with a number of other corporations, in the forefront of innovative initiatives to enhance employment opportunities for those individuals.

I raise that issue because I think it's important to note why Marriott has so aggressively assumed this position. The reason is simple: it makes good, bottom line, business sense.

As a corporation operating in the hospitality industry, our employees are our life blood. It is only to the degree to which we can find, attract, train and retain able and motivated people that we will be successful. Additionally, the strength of our workforce correlates directly to its diversity. We achieve our business potential by weaving an incredibly broad range of individuals, each with unique talents and abilities, into our corporate fabric. To shorten that range is to limit our corporate potential. From our perspective, not to draw upon the resources represented by people with disabilities would be absurd. People with disabilities in our workforce do not cost us money, they make us money.

I might add that I personally feel the same analogy can be drawn for society as a whole. Until every individual becomes a fully integrated member of that society, we won't be everything we could be.

There is no question in my mind, then, regarding the importance of the Americans with Disabilities Act, as it would seek to further that integration. The question which does remain is, "How can the Act best be crafted to assure that, when enacted, it is as effective as possible in meeting its objectives?". I would offer several thoughts in that regard.

First, to the greatest degree possible the legislation should establish processes and frameworks which promote cooperation rather than confrontation between various constituencies in the resolution of challenges. Encourage professional organizations, industry associations, public sector officials, advocacy groups, service providers and individuals affected to participate together in seeking solutions. Inclusion of all parties involved, as active participants in the problem solving process, will almost always yield the best answers, while laying the strongest foundation for implementation of those answers.

Towards this end, litigation should be established as the alternative of last recourse in conflict resolution, rather than the option of first choice. If cooperative problem solving yields the best resolution, litigation often yields the worst as it drives wedges between parties who will, ultimately, have to work together for their mutual success.

Second, address the concern voiced by a number of employers regarding the potential costs of accommodations mandated by this Bill. In our experience those costs are generally insignificant. There are, however, exceptions to that rule, and there is no question that fear of such costs is a major barrier to getting additional employer commitment to employment of people with disabilities.

The savings to Federal and State budgets inherent in facilitating the movement of the disabled into the workforce have been amply identified. Apply some of those savings to assist businesses in overcoming issues of accommodation. Applications should probably include a range of remedies, from the maintenance of organizations like the Job Accommodation Network providing technical support to employers, to the creation of a financial "safety net" to offset costs of accommodation above a certain level.

Third, language in the Bill should be written in such a way as to minimize its use as a foundation for frivolous claims against employers. My sense is that business people don't generally oppose this legislation on the basis of its furthering opportunities for people with disabilities. Concerns arise, rather, over how the law might be used as a weapon against an employer making sound and fair business decisions. Such claims, made with no regard to the real intent of the Act, serve only to clog the courts, generate expense for the employer, and undermine the credibility of the legislation.

Finally, do everything possible to define, in quantifiable ways, parameters for application of the Bills provisions. The vagueness and subjectivity of terms like "readily achievable" and "easily accomplishable" leave employers feeling uneasy about potential impact. The issues being addressed by the Americans with Disabilities Act are terribly complex, and clearly don't always lend themselves to ironclad definition. However, the provision of more specific guidelines for interpretation of language such as that cited would strengthen the Act, and help allay concern in the business community.

Again, let me emphasize how pleased I am to speak on behalf of this important legislation. The Americans with Disabilities Act can be a critical stepping stone to a more enlightened future; to a future where the focus is truly on maximizing the unique abilities each one of us brings to society, and the issue of disability is irrelevant.

Thank you.

Chairman OWENS. Thank you, Mr. Donovan. Mr. Duane Rasmussen.

Mr. RASMUSSEN. Mr. Chairman, members of the committee, my name is Duane A. Rasmussen. I am president and C.E.O. of Sell Publishing Company, a Minnesota corporation located in the small town of Forest Lake and engaged in the publishing of newspaper formatted publications.

We own two weekly newspapers, a weekly shopper, six community booklets and print upwards of 80 to 90 other publications out of the Twin Cities metropolitan area. Today I am speaking on behalf of the National Federation of Independent Business and its 570,000 small business owners.

In addition, I am a past president of the Minnesota Newspaper Association representing all of the 375 daily and weekly newspapers in Minnesota and also speak with some knowledge of their problems.

I also serve on the board of the Independent Business Association of Minnesota. My company employs 42 on its regular payroll and hires occasional help as necessary to handle the distribution of our finished products.

I am here to express my deep concerns about the Americans with Disabilities Act, H.R. 2273, in both its present form and in the substitute Senate bill marked up on August 2, 1989 by the Senate Labor and Human Resources Committee.

While I come from a family which had to deal with a handicapped person's difficulties in getting around in the public areas before the term "handicapped accessible" was even known, and while I thus must agree wholeheartedly with the ideal and goal of the legislation in this Act, I am among the majority of business persons who have a number of real problems with this Act as written.

Before I get into the specifics, I would like to speak about the general change in philosophy of the U.S. House and Senate in recent years.

Too many members of Congress have been introducing legislation to correct certain social problems which are to be paid for through specific costs to small businesses as opposed to being paid for by the general population through taxation methods already in place.

I am speaking about legislation such as Section 89, the Kennedy-type health bills and now the H.R. 2273 and S. 933 authored by Representative Steny Hoyer and Senator Tom Harkin.

The trend seems to hit business with the cost of social "advances" that rightfully belong to the obligation of the general population if the people want to pay for them. We in business clearly see the reasons for this.

Government is having difficulty selling the population on additional taxes, so, the thought is to hit a relatively small group which is perceived as having enough money to cover such changes, but in reality, most small businesses struggle to meet a weekly budget just like every family in America.

I am sorry to express these cynical thoughts, but they are arrived at only through the examples government has created.

Now, if you will put yourselves in the place of a business person, you will quickly see how impossible H.R. 2273 is. How can a business owner make physical changes in the work place even before a specific disabled person begins work?

The ADA drafters themselves envisioned some 900 types of disabilities to be covered, and the business place is to provide for the needs of all 900 plus? Having done a considerable amount of lobbying in the Minnesota legislature, I am well aware of the difficulties created by legislative language.

It is bad legislation when general terms and expressions leading to difficult and indefinite definitions are used. For example, in H.R. 2273 we find expressions such as "undue burden," "readily available," "reasonable accommodation," "readily achievable," "benefit," "full and equal enjoyment," and "essential functions."

What do those really mean? Isn't that making a lot of work for lawyers, courts and juries? Let's take, for example, publishing businesses such as mine. Many are located in older plants that were built before many of the technologically-advanced aids to the disabled were invented or perfected.

Many have no elevators or ramps, and narrow doorways and limited space are the rule, not the exception. All plants contain presses that require fairly robust workers who can lift heavy objects and work sometimes cumbersome equipment with speed and dexterity.

Hearing is an important safety tool due to the use of warning bells and buzzers for various phases of printing. Safety is extremely important so the use of an individual's full faculties are absolutely necessary in many publishing jobs.

While I have given you a brief look at the publishing business, every business in the Nation will face serious problems in complying with H.R. 2273—namely, what do we do specifically in order to avoid injunctions, lawsuits, exorbitant fines, and the like.

Do I need one ramp or ten? Does every door need to be widened or only certain ones, and if so, which ones? Which auxiliary aids do I need for the blind and the deaf in my particular plant? What sort of training do my employees need to deal with certain types of disabilities? When am I safe from the fear of legal action against my business?

We have seen the confusion created by OSHA in the work place over what is really required and who is responsible for it. There are already different requirements among Federal and state laws in conflict with ADA, so what do we follow? What do we do if we have already proceeded with one set of laws, rules and regulations?

Are chemical abusers really disabled? In our management of personnel, chemical abusers are treated as ill persons who must follow their prescribed treatment plan or be discharged. Is that unfair?

My company rents some building space to another business, as a number of small town business people do. What liabilities do business owners have who rent their facilities? If cost is a factor in compliance, at what point is the owner within legal requirements in building a new building, enlarging an existing one or remodeling?

Is it automatic discrimination if an employer hires a person without a disability if that person and a disabled person appear to have the same qualifications? Why must the very small firms in all kinds of social and geographical areas comply with the same requirements as the large ones and those located in large metro areas?

Even more importantly than all of the cost and compliance factors, why does the Act adopt a punitive approach in its philosophy which only encourages lawsuits, including those of a frivolous nature, instead of providing incentives to accomplish the retrofitting and hire the disabled?

Finally, why is there no distinction between intentional and unintentional action? This Act like so many others is impossible! When legislation puts any segment of our population at a disadvantage or forces them into real financial hardship, it can hardly be called fair.

With the ADA legislation, it appears that fairness is the goal as far as the treatment of the disabled, but does that mean that we must be unfair to those who in the end result provide the jobs for the disabled? I, for one, certainly think not!

Thank you.

[The prepared statement of Duane A. Rasmussen follows:]

NFIB
National Federation of
Independent Business

STATEMENT OF

DUANE A. RASMUSSEN
PRESIDENT & C.E.O.
SELL PUBLISHING COMPANY

Before: House Education and Labor Committee

Subject: Americans with Disabilities Act H.R. 2273

Date: September 13, 1989

My name is Duane A. Rasmussen. I am the president and C.E.O. of Sell Publishing Company, a Minnesota corporation located in the small town of Forest Lake and engaged in the publishing of newspaper formatted publications. We own two weekly newspapers, a weekly shopper, six community booklets and print upwards of 80-90 other publications out of the Twin Cities metropolitan area. Today I am speaking on behalf of the National Federation of Independent Business (NFIB) and its 570,000 business owner members. In addition, I am a past president of the Minnesota Newspaper Association representing all of the 375 daily and weekly newspapers in Minnesota and also speak with some knowledge of their problems. I also serve on the board of the Independent Business Association of Minnesota. My company employs 42 on its regular payroll and hires occasional extra help to handle the distribution of our finished products.

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The Guardian of
Small Business

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Before I get into the specifics, I would like to speak about the general change in philosophy of the U.S. House and Senate in recent years. Too many members of Congress have been introducing legislation to correct certain social problems which are to be paid for through specific costs to small businesses as opposed to being paid for by the general population through taxation methods already in place. I am speaking about legislation such as Section 89, the Kennedy-type health bills and now the H.R. 2273 and S. 933 authored by Representative Steny Hoyer and Senator Tom Harkin .

The trend seems to hit business with the cost of social "advances" that rightfully belong to the obligation of the general population if the people want to pay for them. We in business clearly see the reasons for this. Government is having difficulty selling the population on additional taxes, so, the thought is to hit a relatively small group which is perceived as having enough money to cover such changes, but in reality most small businesses struggle to meet a weekly budget just like every family in America. I am sorry to express these cynical thoughts, but they are arrived at only through the examples government has created.

Now, if you will put yourselves in the place of a business person, you will quickly see how impossible H.R. 2273 is. How can a business owner make physical changes in the work place even before a specific disabled person begins work? The ADA drafters themselves envisioned some 900 types of disabilities to be covered. And the business place is to provide for the needs of all 900 plus? Having done a considerable amount of lobbying in the Minnesota Legislature, I am well aware of the difficulties created by legislative language. It is bad legislation when general terms and expressions leading to difficult and indefinite definitions are used. For example, in H.R. 2273 we find expressions such as "undue burden," "readily available," "reasonable accommodation," "readily achievable," "benefit," "full and equal enjoyment," and "essential functions." What do those really mean? Isn't that making a lot of work for lawyers, courts and juries?

Let's take, for example, publishing businesses such as mine. Many are located in older plants that were built before many of the technologically-advanced aids to the disabled were invented or perfected. Many have no elevators or ramps, and narrow doorways and limited space are the rule, not the exception. All plants contain presses that require fairly robust workers who can lift heavy objects and work sometimes cumbersome equipment with speed and dexterity. Hearing is an important safety tool due to the use of warning bells and buzzers for various phases of printing. Safety is extremely important so the use of an individual's full faculties are absolutely necessary in many publishing jobs.

While I have given you a brief look at the publishing business, every business in the nation will face serious problems in complying with H.R. 2273 - namely, what do we do specifically in order to avoid injunctions, lawsuits, exhorbitant fines, and the like. Do I need one ramp or ten? Does every door need to be widened or only certain ones, and if so, which ones? Which auxiliary aids do I need for the blind and the deaf in my particular plant? What sort of training do my employees need to deal with certain types of disabilities? When am I safe from the fear of legal action against my business?

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Is it automatic discrimination if an employer hires a person without a disability if that person and a disabled person appear to have the same qualifications? Why must the very small firms in all kinds of social and geographical areas comply with the same requirements as the large ones and those located in large metro areas?

And even more importantly than all of the cost and compliance factors, why does the Act adopt a punitive approach in its philosophy which only encourages lawsuits, including those of a frivolous nature, instead of providing incentives to accomplish the retrofitting and hire the disabled? And, finally, why is there no distinction between intentional and unintentional action?

This Act like so many others is impossible! When legislation puts any segment of our population at a disadvantage or forces them into real financial hardship, it can hardly be called fair. With the ADA legislation, it appears that fairness is the goal as far as the treatment of the disabled, but does that mean that we must be unfair to those who in the end result provide the jobs for the disabled? I, for one, certainly think not!

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Chairman OWENS. Thank you. Mr. Paul Wharen.

Mr. WHAREN. Chairman Owens and members of the committee, I appreciate the opportunity to appear before the subcommittees on Employment Opportunities and Select Education today to testify upon a very important piece of legislation, the Americans with Disabilities Act.

I am Paul Wharen, Project Manager for Thomas P. Harkins, Inc., a general contracting firm based in Silver Spring, Maryland. Harkins has been in operation for 24 years, and today is ranked by Engineering News Record magazine as number 163 of the top 400 general contractors in the Nation.

To give you a better idea of what Harkins does, I would like to read our Mission statement:

"Thomas P. Harkins, Inc. is a construction company that provides quality services to clientele engaged in the development of multi-family housing, elderly/lifecare and commercial facilities, in order to sustain profitable operations, thereby creating growth and opportunity for our people."

Harkins is a member of the Associated Builders and Contractors' Metro-Washington Chapter. It is my pleasure to represent ABC at the hearings this morning before your subcommittees.

ABC supports Congress' goal of ending discrimination against the disabled. At Harkins, we place a great deal of pride in our progressive equal opportunity employment policy. We have people from all walks of life employed in our office and on our job sites, including people with disabilities.

Harkins is committed to assisting anyone with the potential and desire to develop a career in the construction industry. Our society needs the talents and abilities of the disabled.

I have found that people with disabilities on our staff to be among my most dedicated and loyal employees. However, the realities of the construction industry generally limit our placement of the disabled to our main office.

Construction is a dynamic but dangerous occupation, second only to coal mining in industrial accidents. Mr. Chairman, while ABC is supportive of the intent of the ADA bill, there is a great deal of concern among construction employers regarding the clarity of many of the terms and concepts contained in the bill, 2273.

Specifically, construction employers want to know exactly what will be expected of them under ADA, in making accommodations for the disabled. Therefore, I believe the terms, definitions, and concepts in this bill should be defined as clearly as possible to ensure the goals of the bill can be reached through its methods.

The first item which troubles me, and I am sure a great many employers, is the broad, vaguely defined concepts of "reasonable accommodation" and "undue hardship." The concept of reasonableness has perplexed and eluded lawyers and lawmakers ever since it was introduced.

The terms are subjective by definition. One person's reasonableness is another's undue hardship. I believe the use of these concepts broadly defined in this legislation will only perpetuate the overburdening of our already backlogged legal system.

What is needed is a common denominator; something that will allow for measurement and objectivity so that an employer and employee can tell when the balance has been reached, where the line has been crossed. For most employers and particularly in construction, cost effectiveness is a major factor in the analysis of what can reasonably be done to accommodate an employee.

Under bill 2273, it is not clear how much an employer would be expected to spend and to what lengths he or she must go in achieving the accommodation. Another factor that should be taken into consideration is the nature of the industry or the particular job and the extent of the person's disability.

As I pointed out, the construction job site is a dangerous place to work. I can tell you frankly that there are jobs which I think it is impossible to accommodate people with some disabilities, even with unlimited resources. A construction site requires unrestricted mobility to negotiate the clutter and limited access areas that are part of the project.

It is beyond my concept of reasonable accommodation to see how such a site could be made safely accessible to someone in a wheelchair, for example. However, there are positions in construction companies that can be made accessible for an employee with such a handicap.

In fact, Harkins employs a contracts manager who is wheelchaired-bound and recently required accommodation to work on a particular project. This employee, Dave, generally works out of our main office in Silver Spring.

However, the developer for a high rise project, Harkins was contracted to build, imposed a requirement that only those people working at the construction site could be paid as a cost of the project.

Therefore, Dave had to be brought into the actual site for an 18-month period. This required extensive renovation and accommodation, just to enable him to work in the trailer which serves as a temporary office on a larger construction site.

For the benefit of those who may not be familiar with the physical conditions of a construction site, there is usually little in the way of human comforts or conveniences, including parking and even bathroom facilities.

Workers often have to park in a public lot and use portable toilets. However, to accommodate one person on the site, we had to provide special parking for his van, build ramps into the trailer, widen all of the corridors in the trailer, modify his work area so that everything was the proper height, and put a bathroom in the trailer.

Bathrooms are very rare in construction job site trailers as it requires obtaining a water and sewer hookup for a temporary office. In addition, an assistant had to be assigned to help Dave get around the site, which was possible only after the structure was largely completed.

We were able to make this accommodation for Dave, primarily because we are a large, stable construction company. There are many construction employers who simply could not afford such a move. In fact, some do not even maintain a trailer on the job site that could be modified.

Clearly, what was a reasonable accommodation in our eyes would be an undue hardship in some other construction company's views.

It is my hope that language identifying and quantifying some of these factors would be included in the ADA bill's definition of "reasonable accommodation."

Perhaps the second largest concern for construction employers is how the ADA bill will impact our ability to maintain safe work sites. As project manager, a large portion of my job focuses upon job site safety.

The use of illegal drugs and alcohol on the construction site is extremely dangerous, and is often a contributing factor to work site accidents. Several years ago, ABC made prevention of substance abuse in the work place a number one priority.

We must be certain that the ADA bill does not tie employers' hands who are taking steps to stop America's drug problem.

The current language of H.R. 2273 merely states that "qualification standards" may include "requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the work place or program."

ABC strongly supports the ability of employers to maintain a work place that is drug-free, not simply monitored for those employees who pose a "direct threat," through illegal drug use.

Many construction employers conduct pre-employment drug tests on applicants for work on a construction site. This process is implemented because it has been shown to drastically reduce the number of accidents on the work site, and increase the quality of the work on projects.

The "direct-threat" language, as well as the prohibition of pre-employment drug testing, in H.R. 2273 will greatly inhibit contractors' efforts in the area of work site safety.

I strongly urge the members of the Education and Labor Committee to amend H.R. 2273 in such a way that current users of illegal drugs or those abusing alcohol would be removed from the protected disabled status.

Mr. Chairman, ABC is concerned with many other provisions in H.R. 2273. However, in the interest of time, I would like to have them inserted in the record of today's hearing as an appendix to my testimony.

Again, I thank you all for the opportunity to testify today on such a landmark legislation as the Americans with Disabilities Act, and I will be happy to answer any questions you may have regarding my testimony.

[The prepared statement of Paul D. Wharen follows:]

Statement of Associated Builders and Contractors

on

AMERICANS WITH DISABILITIES ACT, H.R. 2273

before the

SUBCOMMITTEES ON EMPLOYMENT OPPORTUNITES
AND
SELECT EDUCATION
EDUCATION AND LABOR COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1989

presented by

PAUL D. WHAREN
PROJECT MANAGER FOR THOMAS P. HARKINS, INC.

Silver Spring, Maryland

Speaking for the Merit Shop

729 15th Street, N.W.
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Chairman Martinez, Chairman Owens, and Members of the Committee:

I appreciate the opportunity to appear before the Education and Labor Subcommittees on Employment Opportunities and Select Education of the U.S. House of Representatives today to testify upon a very important piece of legislation, the Americans with Disabilities Act.

I am Paul Wharen, Project Manager for Thomas P. Harkins, Inc., a general contracting firm based in Silver Spring, Maryland. Harkins, Inc. has been in operation for 24 years, and today is ranked by ENR magazine as number 163 of the top 400 general contractors in the nation. To give you a better idea of what Harkins,Inc. does, I would like to read you our Mission Statement:

"Thomas P. Harkins, Inc. is a construction company that provides quality services to clientele engaged in the development of multi-family housing, elderly/lifecare and commercial facilities, in order to sustain profitable operations, thereby creating growth and opportunity for our people."

Harkins, Inc. is a member of Associated Builders and Contractors' Metro-Washington Chapter. Associated Builders and Contractors (ABC) is a national construction industry trade association representing 18,000 contractors, subcontractors and suppliers nationwide. The members believe in the "merit shop" philosophy of awarding construction contracts to the lowest responsible bidder. Today, more than 70% of all construction in this country is done the merit shop way. It is my pleasure to represent ABC at the hearing this morning before your subcommittees.

ABC supports Congress' goal of ending discrimination against the disabled. At Harkins, Inc., we place a great deal of pride in our progressive equal opportunity employment policy. We have people from all walks of life employed in our office and on our jobsites, including people with disabilities. Harkins is committed to assisting anyone with the potential and desire to develop a career in the construction industry.

Our society needs the talents and abilities of the disabled. I have found the people with disabilities on our staff to be among my most dedicated and loyal employees. However, the realities of the construction industry generally limit our placement of the disabled to our main office. Construction is a dynamic, but dangerous occupation--second only to coal mining in industrial accidents.

Mr. Chairmen, while ABC is supportive of the intent of the ADA bill, there is a great deal of concern among construction employers regarding the clarity of many of the terms and concepts contained in the bill, H.R. 2273. Specifically, construction employers want to know exactly what will be expected of them, under ADA, in making accommodations for the disabled. Therefore, I believe the terms,

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definitions, and concepts in this bill should be defined as clearly as possible, to ensure the goals of the bill can be reached through its methods.

The first item which troubles me, and I am sure a great many employers, is the broad, vaguely defined concepts of "reasonable accommodation" and "undue hardship." The concept of reasonableness has perplexed and eluded lawyers and lawmakers ever since it was introduced. The terms are subjective by definition; one person's reasonableness is another's undue hardship. I believe the use of these concepts, broadly defined, in this legislation will only perpetuate the overburdening of our already backlogged legal system.

What is needed is a common denominator; something that will allow for measurement and objectivity so that an employer and employee can tell when the balance has been reached or the line has been crossed. For most employers, and particularly in construction, cost effectiveness is a major factor in the analysis of what can reasonably be done to accommodate an employee. Under H.R. 2273, it is not clear how much an employer would be expected to spend, and to what lengths he or she must go in achieving accommodation.

Another factor that should be taken into consideration in determining what is reasonable is the nature of the industry or the particular job, and the extent of the person's disability. As I pointed out, the construction jobsite is a dangerous place to work, and I can tell you frankly that there are jobs for which I think it is impossible to accommodate people with some disabilities--even with unlimited resources. A construction site requires unrestricted mobility to negotiate the clutter and limited access areas that are necessarily part of the project. It is beyond my concept of reasonable accommodation to see how such a site could be made safely accessible to someone in a wheelchair, for example.

However, there are positions in construction companies that can be made accessible for an employee with such a handicap. In fact, Harkins, Inc. employs a contracts manager who is wheelchair-bound and recently required accommodation to work on a particular project. This employee generally works at our main office in Silver Spring. However, the construction user for a high-rise, luxury condominium Harkins,Inc. was contracted to build, imposed a requirement that only those people working at the construction site would be paid. Therefore, Dave had to be brought onto the actual site for an 18 month period. This required extensive renovation and accommodation, just to enable him to work in the trailer which serves as a temporary office on larger construction sites.

For the benefit of those who may not be familiar with the physical conditions of a construction site, there is usually little in the way of human comforts or conveniences, including parking and even bathroom facilities. Workers often have to park in a public lot, and use portable toilets. However, to accommodate one person on the site, we had to provide special parking for his van, build ramps into the trailer, widen all of the corridors in the trailer, modify his work area so that everything was the proper height, and put a bathroom in the trailer. This is very rare in construction worksite trailers, as it requires obtaining a water and sewer hookup for a temporary office. In addition, an assistant had to be assigned to help Dave get around the site, which was possible only after the structure was largely completed.

We were able to make this accommodation for Dave, primarily because we are a large, stable construction company. There are many construction employers who simply could not afford such a move. In fact, some do not even maintain a trailer that the worksite that could be modified. Clearly, what was a reasonable accommodation in our eyes would be an undue hardship in some other construction company's view. It is my hope that language identifying and quantifying some of these factors would be included in the ADA bill's definition of "reasonable accommodation."

Perhaps the second largest concern for construction employers is how the ADA bill will impact our ability to maintain safe worksites. As project manager, a large portion of my job focuses upon jobsite safety. The use of illegal drugs and alcohol on the construction site is extremely dangerous, and is often a contributing factor to worksite accidents. Several years ago, ABC made substance abuse in the workplace a number one priority. We must be certain that the ADA bill does not tie employers' hands who are taking steps to stop America's drug problem.

The current language of H.R. 2273 merely states that "qualification standards" may include "requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program." ABC strongly supports the ability of employers to maintain a workplace that is drug-free, not simply monitored for those employees who pose a "direct threat," through illegal drug use. Many construction employers conduct pre-employment drug tests on applicants for work on a construction site. This process is implemented because it has been shown to drastically reduce the number of accidents on the worksite, and increase the quality of work on projects. The "direct-threat" language, as well as the prohibition of pre-employment drug testing, in H.R. 2273 will greatly inhibit contractors' efforts in the area worksite safety.

In the recent Senate debate on S. 933, language was included in the ADA bill which clearly precluded current users of illegal drugs, or those abusing alcohol, from protected disabled status. I strongly urge the members of the Education and Labor Committee to amend H.R.2273 in this manner.

Mr. Chairman, ABC is concerned with many other provisions in H.R. 2273. However, in the interest of time, I would like to have them inserted in the record of today's hearing as an appendix to my testimony. Again, I thank you both for the opportunity to testify today on such landmark legislation as the Americans with Disabilities Act, and I will be happy to answer any questions you may have regarding my testimony.

APPENDIX - EMPLOYMENT PROVISIONS

The House ADA bill (H.R. 2273 - Section 205) will allow individuals to pursue a cause of action not only if they have been discriminated against, but also if they believe they "are about to be" discriminated against. Such speculative complaints and attendant litigation are not permitted in any other civil rights in employment litigation. An individual may also sue in cases not only of intentional discrimination, but also in cases of unintentional discrimination. The Senate bill (S. 933) has eliminated these issues and ABC feels the House bill should do the same.

The House bill essentially grants more rights to disabled individuals than any other protected class of people by allowing them to circumvent any and all types of administrative remedies, and move directly to a private right of action in the courts complete with injunctive relief, a jury trial and punitive and compensatory damages. This will simply lead to increased litigation in hopes of a large windfall judgement for the plaintiff and his or her attorney, rather than constructive resolutions to the problems of accessibility. We strongly recommend that this be changed to adopt the Senate bill's approach which adopts The Civil Rights Act of 1964 - Title VII procedures and remedies, which include filing charges with the EEOC, and if the EEOC does not act, then a private cause of action may be initiated for injunctive relief and back pay.

The scope of the House bill covers all employers with 15 or more employees. The Senate bill covers 25 or more employees for the first two years, and thereafter 15 or more employees. At a minimum the House should adopt the Senate language, but preferably increase the threshold number of employees. Many small businesses have more than 15 employees and the concepts in this legislation will be new and very costly to implement. Furthermore, the definition of "employer" does not specify whether the 15 employee floor is 15 or more employees per worksite, or total employees, regardless of varying geographic locations. Obviously, clarification of this definition is important to our smaller member firms who may employ 15 people, but they are dispatched in small groups of two or three to varying worksites.

The House bill [Section 101(a)(5)] would make it illegal to discriminate against an individual because of the "relationship to, or association of, that individual or entity with another individual with a disability." This is unparalleled in civil rights law and will invite frivolous lawsuits requiring employers to prove a negative, i.e., that they weren't aware of the association. This provision dramatically expands the class of people covered by this legislation. This section should be deleted or be expressly limited to certain types of associations.

The ADA House bill would hold an employer or other entity liable if the recipient of its charity or assistance discriminates on the basis of disability, whether or not there is knowledge of such discrimination. Section 101(a)(1)(E) should be amended to reflect that such act is illegal only where the provider knows of the discrimination.

The language in Title 1 creates incredible new liabilities for employers if they provide disabled persons with a benefit which is "less effective than" or "is different or separate" from that provided to others [Section 101(a)(1)(C)&(D). Group health insurance benefits, which are offered under the same terms and conditions to all employees, may still be "less effective" or "separate or different" for a person with disabilities. Employers should only be obligated to offer the same benefits package to all employees, whether or not they are disabled. To require otherwise, e.g., provide specific medical coverage or purchase medical insurance with pre-existing condition waivers, would be prohibitively expensive and result in insurance companies being unable to provide and\or underwrite group health policies. Further, there is nothing in the ADA House bill that would prohibit insurers from continuing to exclude preexisting conditions.

Chairman **Owens**. Without objection, your addendum would be inserted in the record along with your statement.

Mr. **Wharen**. Thank you.

Chairman **Owens**. Ms. Arlene Mayerson, directing attorney for Disability Rights Education and Defense Fund.

Ms. **Mayerson**. Mr. Chairman and members of the committee. My name is Arlene Mayerson and I am the directing attorney of the Disability Rights, Education and Defense Fund.

DREFF is a national disability rights organization which pursues its mission through education, legislative and law reform efforts. The ADA represents a culmination of years of work and vision by members of the disability community, many of whom are here today.

I am proud and honored to be here today to testify on the most important piece of disability, civil rights legislation of our time. I have been asked to testify on the employment sections of the bill.

In my written testimony, I have cited the numerous studies which document that employment opportunities for persons with disabilities are severely impeded by misconceptions and generalizations about disabilities, unfounded fears about increased cost and decreased productivity and outright prejudice towards disabled people.

People with disabilities face discrimination in employment in a variety of ways. Many are excluded from the outset by medical requirements that screen out all people with specific disabilities or by inflated or other job requirements that bear no relationship to the successful performance of the job.

Disabled people who are not completely excluded at the outset are often channeled into disabilities stereotyped, dead-ended jobs or denied promotion opportunities. These discriminatory practices affect persons with current disabilities, records of disabilities and people who are perceived as being disabled.

We have examples of all these types of cases in our caseload at DREFF. I wanted to take a moment to describe them to you, but I think in the interest of time, I won't. Believe me, the stories of discrimination are endless.

People with disabilities are everyday being denied job opportunities because of stereotypes, fears, and overly restrictive job requirements. I could not help but notice that these stereotypes seem to be contained in Mr. Rasmussen's description of his own employment practices.

He stated that hearing is necessary for safety in the publishing industry because of the use of warning bells and buzzers. It is ironic that historically many of the only jobs available to deaf people have been in the printing industry.

Moreover, safety concerns would likely be easily accommodated by the use of visual alerts. The ADA employment provisions adopt two fundamental principles derived from Section 504 of the 1973 Rehabilitation Act.

The first, that selection procedures evaluate the ability of an individual to perform the job and are not based on stereotypes in generalizations about the disability; and two, that persons with disabilities who are able to perform the essential functions of the job with or without reasonable accommodation are not denied employment opportunities.

Each provision of the employment title operates to support these two fundamental principles. In the committee's first hearing on the ADA, the business community circulated two working papers outlining their concerns with the ADA.

The primary concerns in the employment area address the confusion created by Title I and Title II provisions which seem to apply differently to the same situation.

The inclusion of 1981 remedies and employment, the request for a definition of undue burden, the clarification that the ADA did not conflict with drug-free work place policies, and the removal of the word "identify" from the section barring discriminatory selection criteria, every one of these concerns was dealt with in a Senate compromise.

The disability community fully supported the 1988 ADA introduced by Senator Weicker and Congressman Coelho, which was stronger in protection than the 1989 ADA before us today.

The disability community strongly supported the provisions of S9-33 as reported out of committee and H.R. 2273 as it is today. In the spirit of political compromise, we are willing to support the Senate compromise, but we are not willing to use it as a starting point to whittle down even further.

The business community has been more than reasonably accommodated. There is no more compromising to do and still maintain fundamental civil rights protection for persons with disabilities.

Let me specifically address the concerns set forth the NFIB's testimony today which I did have the opportunity to read before the hearing. As you will see, some of the concerns stem simply from misunderstandings of the bill's provision and the rest, I am afraid, from a basic unwillingness to be subject to any disability, civil rights legislation.

Mr. Rasmussen asked, "How can a business owner make physical changes to the work place even before a specific disabled person begins work?" In employment, the ADA like Section 504 requires the accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability.

Reasonable accommodation may include making existing facilities used by the disabled employee accessible. This is done on an individual basis according to the needs of the employee. This is true of all accommodations. Hence, the question posed on page four of the NFIB testimony as to which auxiliary aids are required for deaf or blind employees would again be subject to the needs of the individual and subject to the undue burden defense.

I would like to clarify the question asked by Mr. Ballenger about his plant to Mr. Kemp. I don't know if I caught exactly what the plant is, but basically, the procedure in employment is if someone in a wheelchair wants to apply to your firm, the ADA, as 504 requires that the applicant be reasonably accommodated which might mean that you make an alternative site to interview the applicant and to determine if that applicant is otherwise qualified for the job that is open in your plant.

If the applicant is otherwise qualified for the job that you have available, the question is whether there are barriers in the work site for that qualified disabled person.

Again, the requirement is of reasonable accommodation. If the work site can be made accessible without causing an undue burden to your business, then it must be made accessible.

So, again, the question is, the person has to have the right to be judged on the merits by arranging an alternative place for an interview and whatever other procedures you have to hire workers and then the worker must be reasonably accommodated if it does not cause an undue burden on your business.

The NFIB testimony then lists several items which he claims are "general, difficult and indefinite." All but one of those terms has been in use under the Section 504 regulations for over a decade and have now produce the catastrophies suggested by NFIB.

The one new term in the ADA is readily achievable which is defined in the Senate substitute at the request of the business community as "easily accomplishable and able to be carried out without much difficulty or expense," a definition which clearly reflects the concerns of the businesses.

NFIB proceeds to object to what it characterizes as the punitive approach. This is particularly hard to understand in that the business community fought and won the removable of punitive damages in the Senate compromise.

They were successful, I suppose at least partially, by their claim that punitive damages encouraged frivolous lawsuits. Now, the NFIB is still complaining about frivolous lawsuits. There is absolutely no basis for this. People with disabilities will not be made whole for the injuries they suffer, because of the discrimination under the Senate compromise.

We can only hope that lawyers will be willing to take meritorious cases with the possibility of no damages. It is trying to still be hearing complaints of frivolous lawsuits from the business community after this major compromise was made.

Finally, the NFIB asks, "Why must small firms in all kinds of social and geographical areas comply with the same requirements as the large ones and those located in large metro areas?"

I want to emphasize small employers "do not" have the same obligations as large ones under the ADA. Employers of under 15 are not even covered by the Employment Provisions of the ADA.

Those that are covered, over 15, have different requirements to provide reasonable accommodation in auxiliary aids, depending on the resources they have available under the undue burden defense.

The Senate compromise even contains a provision for small businesses in the area of new construction, exempting elevators for two floor buildings and businesses under 3,000 square feet per floor.

The ADA fully considers and accommodates the needs of small business. Not all people with disabilities live in large metro areas and those living in towns and rural areas want to work and participate in their communities as much as anyone else.

I should add I didn't have a chance to read the comments of the Association of Building and Contractors before the hearing. I do think that the Senate compromise does address all the concerns that were raised by this group as well, and I am also aware as stated by Mr. Wharen that the Senate incorporated legislative history particularly on the work site situation.

The time has come for action on the ADA. The Senate compromise represents many 100s of hours of input from concerned parties, including the business community. It has been endorsed by the Bush Administration only because these concerns were addressed.

I was extremely encouraged by Mr. Bartlett's comments today that the Senate compromise also has in large part met many of the concerns that he expressed at the first hearing and by his additional comment that any changes should not be of the sort that would in any way jeopardize the historic coalition that has been created for this bill.

We urge immediate passage of the ADA, a bill that is fair and just and gravely needed to put an end to loss potential and to open the doors of our country to everyone.

Thank you.

[The prepared statement of Arlene Mayerson follows:]

TESTIMONY

OF

ARLENE B. MAYERSON
on behalf of the

DISABILITY RIGHTS EDUCATION & DEFENSE FUND

CONCERNING THE

AMERICANS WITH DISABILITIES ACT OF 1989
H.R. 2273

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON SELECT EDUCATION
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

SEPTEMBER 13, 1989

I. INTRODUCTION

The general public does not associate the word "discrimination" with the segregation and exclusion of disabled people. Most people assume that disabled children are excluded from school or segregated from their non-disabled peers because they cannot learn or because they need special protection. Likewise, the absence of disabled co-workers is simply considered confirmation of the obvious fact that disabled people can't work. These assumptions are deeply rooted in history.

Most people are never forced to examine their assumptions or stereotypes about disabled people unless they themselves or a family member become disabled, or they have a disabled child. At that point the falseness of the stereotypes and the injustice of the policies based on those stereotypes become all too apparent.

Historically, the inferior economic and social status of disabled people was viewed as an inevitable consequence of the physical and mental limitations imposed by disability. Over the years, this assumption has been challenged by policy makers, professionals, disabled citizens, the courts and by Congress. Gradually, disability public policy has recognized that many of the problems faced by disabled people are not inevitable, but instead are the result of discriminatory policies based on unfounded, outmoded stereotypes and perceptions and deeply embedded prejudices toward disabled people. These discriminatory policies and practices affect disabled people in every aspect of their lives.

The first major challenge to the notion that being disabled meant life-long economic dependency was prompted by the return of a vast number of disabled World War I veterans and the ever increasing incidence of industrial accidents. Recognizing the social and financial benefit of returning these injured persons to work, Congress passed the original landmark federal rehabilitation legislation, the Smith Fess Act of 1920. The prevalent view of disabled people as "helpless" and "hopeless" was challenged by legislation designed to enable disabled people to become productive, contributing members of society. Most importantly, by the mid 1960's the explicit goal of rehabilitation policy was the integration of disabled people into the mainstream of American life.[1] This "integrationist" goal set the stage for an examination of the social barriers that impede the attainment of equal opportunity for disabled Americans.

From a civil rights perspective, a profound and historic shift in disability policy occurred in the 1970's.[2] Following

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[1] See H. R. Rep. No. 432, 89th Cong. 1st Sess. 2 (1965).

[2] This shift in public policy is well portrayed in a statement made by Senator Williams prior to the enactment of the 1973 Rehabilitation Act:

> For too long, we have been dealing with [the handicapped] out of charity . . . . This is medieval treatment for a very current problem . . . . Most of us see the handicapped only in terms of stereotypes that are relevant for extreme cases. This ancient attitude is in part the result of the historical separation of our handicapped population. I wish it to be said of America in the 1970's that when the attention at last returned to domestic needs, it made a strong and new commitment to equal opportunity and equal justice under law; . . . The handicapped are one part of our Nation that have been denied these fundamental rights for too long. It is time for the Congress and the Nation to

the powerful civil rights activism of the 1960's, the 1970's produced a more fundamental change in the social and legal status of disabled people than any prior era of American history. Through landmark litigation[3] and legislation,[4] disabled Americans were recognized for the first time as a legitimate minority subject to discrimination and worthy of basic civil rights protections.

This major shift in disability public policy culminated in the passage of a broad anti-discrimination provision, Section 504 of the Rehabilitation Act of 1973. Section 504 evidences Congress' recognition that while there are major physical and mental variations in different disabilities, disabled people as a

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assure that these rights are no longer denied. 118 Cong.Rec. 3321-22 (1972).

[3] Two landmark cases Pa. Assoc. for Retarded Citizens v. Commonwealth of Pa., 334 F.Supp. 1257 (E.D. Pa. 1971); and Mills v. Bd. of Education of the Dist. of Columbia, 348 F.Supp. 866 (D.D.C. 1972), held that disabled children who had previously been excluded from public education had the right to a public education appropriate to their educational needs.

[4] In addition to the 1973 Rehabilitation Act, Congress enacted several other pieces of legislation designed to promote equal opportunity and integration of disabled people into the mainstream of American life. Chronologically, these statutes included: 1968--Architectural Barriers Act, 42 U.S.C. Section 4151 *et seq.* (required federally funded or leased buildings to be accessible); 1970--Urban Mass Transportation Act, 49 U.S.C. Section 1612 (required eligible jurisdictions to provide accessibility plans for mass transportation); 1975--Education for All Handicapped Children Act, 20 U.S.C. Section 140 *et seq.* (provided that each handicapped child was entitled to a free appropriate education in the least restrictive environment); and 1975--National Housing Act Amendments, 12 U.S.C. Section 1701 *et seq.* (provided for barrier removal in federally supported housing).

group faced similar discrimination in employment, education and access to society. As with racial minorities and women, Congress recognized that legislation was necessary to ameliorate widespread institutionalized discrimination.[5]

Nothing is more central to the goal of independence than employment. As demonstrated below, disabled Americans face widespread discrimination in seeking to secure equal employment opportunities. The Rehabilitation Act covers private employers only when they receive federal funds or federal contracts. It is now time to finish the work begun in 1973--to recognize the basic civil rights of people with disabilities by providing the same protection against employment discrimination as is afforded other minorities and women. Passage of the ADA is essential to assure Americans with disabilities equal employment opportunity.

II. THE NATURE AND HISTORY OF PREJUDICE TOWARDS DISABLED PEOPLE

The roots of prejudice against and stereotypes about disabled people reach far back in history and persist today. Disabled people have throughout history been regarded as incomplete human beings--"defective." In early societies this view of disabled people resulted in persecution, neglect and death.[6] These practices gradually gave way to the more humanitarian belief that disabled people should be given care and protection. Persecution was largely replaced by pity, but the exclusion and segregation of disabled people remained unchallenged.[7] Over the years, the view of disabled people as incompetent and dependent upon charity, custodial care and protection became firmly embedded in the public consciousness. The invisibility of disabled Americans was simply taken for granted. Disabled people were out of sight and out of mind.

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[5] That Section 504 was intended to include disability within the general corpus of federal anti-discrimination law is unmistakable. As stated in the Senate Report accompanying the 1974 amendments:

> Section 504 was patterned after, and is almost identical to, the anti-discrimination language of section 601 of the Civil Rights Act of 1964 . . . and section 901 of the Education Amendments of 1972 . . . . The section therefore constitutes the establishment of a broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap. Id. at 39, reprinted in 1974 U.S. Code Cong. & Ad. News at 6390.

The discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured by the unchallenged equation of disability with incapacity and by the gloss of "good intentions." The innate biological and physical "inferiority" of disabled people is considered self-evident. This "self-evident" proposition has served to justify the exclusion and segregation of disabled people from all aspects of life. The social consequences that have attached to being disabled often bear no relationship to the physical or mental limitations imposed by the disability. For example, being paralyzed has meant far more than being unable to walk--it has meant being excluded from public school,[8] being denied employment opportunities,[9] and being deemed an "unfit" parent.[10] These injustices co-exist with an atmosphere of charity and concern for disabled people.

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[6] For an historical overview of persecution of disabled people in early societies, See Burgdorf and Burgdorf, A History of Unequal Treatment: The Qualifications of Handicapped Persons as a 'Suspect Class' Under the Equal Protection Clause, 15 Santa Clara Law. 832-36 (1975).

[7] Interestingly, a positive relationship has been established between tendencies to pity blind people on the one hand, and the tendency to espouse community segregation for the blind on the other. Lukoff & Whiteman, Attitudes Towards Blindness, 55 The New Outlook for the Blind 39, 42 (1961)

It is only within the last decade that a fundamental challenge to traditional notions about disability has been launched. Increasingly, the social science and psychological literature has explored the implications of a socio-political

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[8] "Many of the physically handicapped children do have the mental ability to attend public school but are denied that right due to architectural barriers and-or transportation problems." 117 Cong. Rec. 42293 (1971).

[9] In *Heumann v. Bd. of Education of the City of N.Y.*, 320 F.Supp. 623 (S.D. N.Y. 1970) plaintiff was denied a license to teach "on the grounds that being confined to a wheelchair as a result of polio, she was physically and medically unsuited for teaching.

[10] "Historically, child-custody suits almost always have ended with custody being awarded to the non-disabled parent, regardless of whether affectional or socio-economic advantages could have been offered by the disabled parent." I. Vash, *The Psychology of Disability* 155 (1981).

This issue was eloquently addressed in a landmark decision by the California Supreme Court, *Carney v. Carney*, 24 Cal. 3d 725, 598 P.2d 36, 157 Cal. Rptr. 383 (1979). In that case the lower court awarded custody to the mother of two boys after the father was injured and became a quadriplegic. The California Supreme Court reversed, stating that ". . .the court's preconception . . . also stereotypes William as a person deemed forever unable to be a good parent simply because he is physically handicapped. Like most stereotypes, this is both false and demeaning." *Id.* at 737, 598 P.2d at 42, 157 Cal. Rptr. at 389.

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definition of disability that recognizes the critical impact of social factors on the lives of disabled Americans.[11] There is a growing awareness of the similarities between racial prejudice and the prejudice experienced by disabled people.[12] And like women, disabled people have identified "paternalism" as a major obstacle to economic and social advancement.

III. DOCUMENTATION OF THE REALITY OF DISABILITY-BASED EMPLOYMENT DISCRIMINATION

Employers, like other members of the general public, hold stereotypes and prejudices about disabled people that impede their ability to objectively evaluate the qualifications of disabled applicants and workers. Disabled people face discrimination in employment in a variety of ways. Many disabled people are excluded from the outset by medical requirements that screen out all people with specific disabilities or by inflated physical or other job requirements that bear no relationship to the successful performance of the job. Disabled people who are not completely excluded at the outset are often channeled into disability-stereotyped dead-ended jobs or denied promotional opportunities. These discriminatory policies affect all disabled people, whether their disabilities are severe, moderate or perceived. The unemployment rate among persons with disabilities is staggering. While 88% of working-age men and 69% of working-age women are employed, only 33% of disabled working-age Americans work--only one disabled woman out of five and four disabled men out of ten have jobs.[13]

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[11] For a look at works which have utilized the socio-political definition of disability *see* Hahn, *Disability and Rehabilitation Policy: Is Paternalistic Neglect Really Benign?* (Book Review), 42 Pub. Ad. Rev. 385 (1982); Bowe, *Rehabilitating America: Barriers to Disabled People* (1978); Gliedman & Roth, *supra* p. 14; and Eisenberg, *supra* p. 12.

[12] *See* p. 11, *infra*

The presumption that these figures reflect the actual inability of disabled people to work is refuted by the many sociological, psychological and government studies that have documented that employment opportunities for disabled adults are severely impeded by misconceptions and generalizations about disabilities, unfounded fears about increased costs and decreased productivity,[14] and outright prejudice toward disabled people.

A recent report by the U.S. Advisory Commission on Intergovernmental Relations[15] stated:

> Probably the most significant barriers faced by persons with disabilities relate to the attitudes, predispositions, and behaviors of nondisabled persons. Such attitudes range from negative views of disability to discomfort in associating with people who experience some form of disability. The nature and extent of attitudes about disability have been documented through an extensive set of research studies conducted in many settings. One common finding is that nonhandicapped people tend to be preoccupied with disabling conditions and often incapable of seeing beyond these conditions to the whole person. Such predispositions lead

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[13] Jay Rocklin, President's Committee on Employment of the Handicapped, will provide additional statistical information on the participation of persons with disabilities in the workforce.

[14] The studies that address these concerns are discussed on pp. 17, 20, *infra*.

[15] *Federal and State Government Compliance with Disability Rights Mandates: Policy Issues and Performance Contrasts*, Oct. 14, 1988.

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> nondisabled persons to overlook and ignore the full range of abilities possessed by persons with disabilities.
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> Researchers have shown that negative and discriminatory attitudes extend to the employment capabilities of disabled individuals. Both potential employers and coworkers have been shown to have negative views and expectations about the productivity and reliance of workers who experience some form of mental or physical disability. As Peter Jamero has noted, "employers, more often than not, appear more inclined to judge handicapped persons on the basis of disability rather than on what they are capable of performing." The reluctance of employers to hire persons with disabilities is rooted in common myths and misunderstandings, including the notions that the employment of disabled workers will increase insurance and worker compensation costs, lead to higher absenteeism, harm efficiency and productivity, and require expensive accommodations.
>
> These attitudes, common to many employers in the United States, have persisted despite empirical evidence from several quarters that disabled workers perform at levels equal to or superior to other employees. (Footnotes omitted).

The 1973 Rehabilitation Act authorized a needs study, which was reported to Congress in 1976, Urban Institute, Report of the Comprehensive Service Needs Study (1975) (herein cited as *Needs Study*). The *Needs Study* summarized existing literature on employer attitudes as follows:

> Virtually all the studies on employer attitudes have found that large proportions of employers disfavor hiring disabled people. There are strong indications that these attitudes are in large part based on non-rational, negative feelings--prejudice, in other words. *Id*. at 324.

In keeping with the historical evolution of disability public policy, the *Needs Study* recommended:

> a major shift in research and development emphasis toward a focus on the interaction of the individual and

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> the barriers in the environment . . . . The major problems seem to be not so much with the severely handicapped, as with the severely handicapping environment. *Id*. at 818.

Hence, stereotypes and prejudices rather than handicaps themselves were viewed as the most potent barrier to equal employment opportunity.

While few people would openly admit to feelings of hostility towards disabled people, the persistence of deeply rooted prejudices has been well documented. In one study reported in the *Needs Study*, the author probed the attitudes of employers by asking them to rank various groups in terms of which ones they believed most employers would be more likely to hire. Colbert, Kalish & Chang, *Two Psychological Portals of Entry for Disadvantaged Groups*, 34:7 Rehab. Literature 194 (1973), cited in *Needs Study* at 314-15. The list included physically and mentally disabled groups, minority groups, controversial groups (student militants, prison parolees), old people and "neutral" groups (e.g. whites, Canadians). The study found that *"physical disability groups were clustered together and ranked lower than all minority groups and old people and higher than all . . . mentally disabled groups*." *Id*. at 315. Employers were more willing to hire student radicals or prison parolees than people who were either physically or mentally disabled. *Id*. This finding is consistent with a frequently cited study that found that all disabled groups were subject to prejudice and that personnel directors would prefer to hire a former prison inmate

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or mental hospital patient than an epileptic. Triandis & Patterson, *Indices of Employer Prejudice Toward Disabled Applicants*, 47 J. of Applied Psychology 52 (963).[16]

Numerous studies have been conducted that conclude that disabled people are subject to the same type of prejudices and discrimination as members of racial and ethnic minorities. The earliest work in this area, Barker, *the Social Psychology of Physical Disability*, 4:4 J. of Soc. Issues 28 (1948), concluded that "the physically handicapped person is in a position not unlike that of the Negro, the Jew and other underprivileged racial and religious minorities; he is a member of an underprivileged minority." *Id*. at 31.[17] In a later study, Barker specifically reported that persons with various disabilities were unable to find adequate employment as a result of "irrational prejudice." Barker, Wright, Meyerson & Gonich, *Adjustment to Physical Handicap and Illness: A Survey of the Social Psychology of Physique and Disability*, 55 Bull. of the Soc. Science Research Council (1953).

Often reflective of the employer's own prejudices are the fears about the "reaction of others" to a disabled worker. In a survey reported in the Needs Study, employers were found to believe that paraplegics were best suited for jobs requiring a minimum of public contact. Employers feared the negative "reactions of others to the disability." Felton & Litman, Study of Employment of 222 Men with Spinal Cord Injury, 46 Archives of Physical Med. and Rehab. 809 (1965) cited in Needs Study at 321 n.32.[18]

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[16] *See* discussion of employer bias against epileptics on p. 14 *infra*.

[17] See also Cowen, Underberg & Verillo, *The Development and Testing of an Attitudes to Blindness Scale*, 48 J. of Soc. Psychology 297 (1958); Wright, *Physical Disability—A Psychological Approach* (1960); Safilios-Rothschild, *The Sociology and Social Psychology of Disability and Rehabilitation* III (1970).

This rationale for not hiring disabled workers persists today. In a recent case a doctor with multiple sclerosis was denied admission to a psychiatric residency program because the admissions committee feared the negative reactions of patients to his disability.[19] Pushkin v. Regents of the Univ. of Col., 658 F.2d 1372 (10th Circ. 1981). The 10th Circuit found these fears to be based on general stereotypes rather than any actual information about the disabled applicant. After evaluating the evidence, the 10th Circuit affirmed the district court's order directing the admission of the plaintiff to the residency program.

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[18] This response is reminiscent of "customer preference" cases brought under Title VII. See e.g. Diaz v. Pan American World Airways Inc., 442 F.2d 385 (5th Cir. 1971).

[19] Fears of the "reactions of others" have served to justify the exclusion of disabled people from many aspects of life. In 1971 one million handicapped children were excluded entirely from public school. 117 Cong. Rec. 45974 (1971). As stated by Congressman Vanick:

> [I]n the past, the reason for excluding these children from their right to an education has never been very clear . . . In one case a court ruled that a cerebral palsied child, who was not a physical threat and was academically competitive, should be excluded from public school, because his teacher claimed his physical appearance "produced a nauseating effect" on his classmates. Id.

Similarly, in 1972, Congressman Vanick commented on an airline rule that allowed carriers to "refuse transportation to 'crippled' persons on the grounds that they make passengers uncomfortable." 118 Cong. Rec. 11363 (1972).

The study referred to above on the attitudes toward and experiences with hiring paraplegics also found that most employers believed that paraplegics were best suited for non-professional jobs. This stereotype was directly contrary to the fact that paraplegics are actually found to be employed most frequently as professionals. Felton, supra p. 20, at 321.

Often the image of what disabled people "should" do or can do has no basis in reality. Different stereotypes attach depending on the disability involved. See Himes, Measuring Social Distance in Relations with The Blind, 54 Outlook for the Blind 54 (1960). ("Each physical disability--deafness and crippleness as well as blindness--is significantly, though differently, stereotyped." Id. at 55.) Another study cited in the Needs Study indicated "that most employers would not consider people with most kinds of disabilities for production and sales jobs, but would for clerical and, to a lesser extent, managerial jobs; (and) that over 50% of the employers would never consider hiring a blind or mentally retarded person for any type of job . . ." Williams, Is Hiring the Handicapped Good Business, 38:2 J. of Rehab 30 (1972) cited in Needs Study at 312.

Discriminatory employer attitudes are manifested in a variety of ways. Most obvious is the continued use of medical standards that exclude all persons with particular disabilities from employment opportunities. The individual who has a disability that is exempted has no opportunity to prove his/her individual abilities to perform the job. Medical standards that are not formalized in writing are utilized in practice. Disabled people are rejected for employment as a result of pre-employment medical exams that merely reveal the existence of a disability without demonstrating any actual job-related limitation.

Although at least 85% of people with epilepsy have obtained control of their seizures, through medication, a significant number of employers flatly refuse to hire epileptics without any consideration of the effect the condition will have on safety and job performance.[20] Likewise, employers frequently refuse to hire persons who have cancer. A study performed in 1972 by the California Division of the American Cancer Society concluded that most corporations and governmental agencies in that state discriminated in hiring against job applicants for an average period of five years after treatment for cancer.[21] The study revealed that this discrimination by employers stemmed from concerns that applicants with cancer, or a history of cancer, might not survive long enough to justify the training, that they

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[20] See U.S. Dept. of Labor, D.O.L. Bull. No. 923, The Performance of Physically Impaired Workers in Manufacturing Industries, 116-117 (1948); Sands & Zalkind, Effects of an Educational Campaign to Change Employer Attitudes Toward Hiring Epileptics, 13 Epilepsia 87, 99 (1972).

[21] R. McKenna, Employability and Insurability of the Cancer Patient, 2-3 (Nov. 25, 1974).

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might need extended periods of sick leave, and that they would cause increases in the cost of health insurance, workers compensation, and life insurance. Some employers believed that other employees would object to employees who were cancer victims because of the mistaken belief that cancer is contagious.

All of these reasons were proven false in a study performed in 1972 by the Metropolitan Life Insurance Company of its employees who were known to have had treatments for cancer. The study indicated that their work records were good relative to employees who had never had cancer. The conclusion was that hiring persons who have been treated for cancer for jobs for which they are qualified is sound industrial practice.[22] Hence, a significant percentage of persons who have had treatment for cancer suffer unjustifiable and discriminatory loss of job opportunities.

Many employers require applicants to have back x-rays taken, and then disqualify anyone whose results are abnormal. However, studies show that there is no difference between the incidence of low back pain in groups with low back abnormalities discoverable by x-ray and groups without such abnormalities.[23] Hence, many qualified persons with abnormal back x-rays are unnecessarily precluded from working.

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[22] Wheatley, Cunnick, Wright & Van Keuren, *The Employment of Persons With a History of Treatment for Cancer*, 33 Cancer 441, 445 (1974).

[23] Rockey, Fantel, Omenn, *Discriminatory Aspects of Pre-employment Screening: Low Back X-ray Examinations in the Railroad Industry*, 5 Am. J. of Law & Med. 197, 202 (1979).

Seemingly more objective, but no less discriminatory, are job "requirements" that in fact bear no relation to the successful performance of the job. Moreover, "employers frequently underestimate the capabilities of disabled workers" to perform legitimate job functions. Nagi, *Work, Employment & the Disabled*, 31 Am.J. Econ. Soc. 21 (1972), cited in *Needs Study* at 314.[24]

The *Needs Study* cited two pioneering studies that confirm that private employers, as well as state and local governments, utilize job "requirements" that bear no relationship to the successful performance of the job. Viscardi, *The Adaptability of Disabled Workers*, 2:3 Rehab. Rec. 3 (1981), cited in *Needs Study* at 326 n.45; Greenleigh Associates, Inc., *A Study to Develop a Model for Employment Services for the Handicapped* (1969), cited in *Needs Study* at 326 n.46. Examples given are requiring employees to stand up for jobs that "can just as easily--or more easily--be performed sitting down" and requiring the "taking of written civil service tests that mentally retarded people cannot pass for jobs that they are capable of performing." Id. at 326. The Needs Study also reported a situation where "workers suffering upper limb amputations on the job were retained after a job analysis performed by the union involved discovered that, contrary to popular belief, over 80 percent of the work required on the job did not require the use of both arms." Id. at 804.

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[24] The use of stereotypes about the physical abilities of women are analogous to the stereotypes about disabled people. For example, *Weeks v. Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228 (5th Cir. 1969), involved a regulation that prohibited women from lifting over 30 pounds. The court overruled the regulation because it was based on general presumptions instead of individual ability. *See* also *LeBlanc v. Southern Bell Telephone & Telegraph Co.*, 333 F.Sup. 602 (E.D. La., 1971), *aff'd*, 460 F.D 1229 (5th Cir. 1972) *cert. denied*, 409 U.S. 990 (1972); *Rosenfeld v. Southern Pacific Co.*, 444 F.2d 1219 (9th Cir. 1971).

Outmoded stereotypes whether manifested in medical or other job "requirements" that are unrelated to the successful performance of the job, or in decisions based on the generalized perceptions of supervisors and hiring personnel, have excluded many disabled people from jobs for which they are qualified. The function of anti-discrimination laws is to assure that decisions are made based on individual merit.

Employers often attempt to justify the rejection of disabled applicants by claiming that hiring disabled workers will cause decreased productivity and safety, and increased absenteeism and costs. An examination of the literature on the actual performance of disabled workers reveals the fallacies those rationalizations contain.

According to the Needs Study, the best and most comprehensive study of the job performance of disabled workers was conducted by the Bureau of Labor Statistics, U.S. Dept. of Labor, and appears in Bull. No. 923, The Performance of Physically Impaired Workers in Manufacturing Industries (1948), cited in Needs Study at 318. In this comprehensive study Department staff examined the employment records of 11,000 disabled and 18,000 carefully matched non-disabled workers in manufacturing plants throughout the country. Data on productivity, absenteeism, nondisabling injuries, disabling injuries and quits were abstracted. Company records rather than supervisors' impressions were the data source. For each disabled worker, one to three non-disabled workers were matched, not only for sex, age, and occupation but also for plant, shift, and particular job within the same plant and shift.

As reported in the Needs Study:

> The most important finding was that differences between impaired and unimpaired workers in any of the performance categories measured were slight . . . . Impaired workers had significantly higher involuntary termination (firing) rates. The authors attribute this to postwar practice of firing disabled workers to hire returning (able-bodied) war veterans . . . . One of the conclusions that the authors draw is that the physically impaired worker is not necessarily a handicapped worker. The results of this major study are strong evidence that employers' fears of low performance rates among disabled workers are unjustified. (emphasis added) Id. at 318-19.[25]

Interestingly, the authors found that many of the manufacturing plants surveyed reinstated policies against hiring disabled workers after having relaxed such policies during the war years. See Needs Study at 296-97. The reinstatement of exclusionary policies, despite the positive employment records of disabled workers, is strong evidence that these standards are not related either to functional skill or ability required for job performance or to a concern for the safety of workers.

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[25] For example, the study specifically stated:
The data suggest that. . . an orthopedic impairment left more abilities than it took away. A man who has lost an arm was not necessarily incapable of performing jobs that required the use of two hands. Nor. . . did the survey indicate that the worker who had lost a leg necessarily had to be confined to sedentary occupations. . . . Men who had lost a hand were found engaged in machine operations or in handling materials; and workers who had lost a leg were engaged in work requiring considerable walking and moving about. Bureau of Labor Statistics, Bull. No. 923, supra p. 27, at 59.

Other government studies have also found that handicapped workers performed as well as, or better than, their non-handicapped co-workers. U.S. Bureau of Labor Standards, Dept. of Labor, Bull. No. 122, Proceedings of the National Conference on Workmen's Compensation & Rehabilitation 19 (1950). All studies on the subject support the fact that disabled workers have as good as or better safety records than non-disabled workers. U.S. Dept. of Labor, Bull. No. 122 at 8.[26] Government studies have also concluded that the employment of handicapped persons does not affect the premium rates either for non-occupational benefit plans or for workers' compensation. U.S. Bureau of Labor Standards, Dept. of Labor Bull. No. 234 at 10.[27]

Over the last twenty-five years the Dupont Corporation has conducted a number of studies on the performance of its handicapped employees. The most recent report, E. I. DuPont de

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[26] See also Pati and Gopal, Countdown on Hiring the Handicapped, 57:3 Personnel J. 144 (1978); Ellner & Bender, Hiring the Handicapped (1980); Kalaenik, Myths About Hiring the Physically Handicapped, The Ca. Governor's Comm. for Employment of the Handicapped, A Blueprint for Action (1980).

[27] See also National Institutes on Rehabilitation and Health Services, Report of the National Workshop on Rehabilitation and Workmen's Compensation 105 (1971.

Nemours & Co., Equal to the Task (1981) (DuPont Survey of Employment of the Handicapped), concluded "Dupont studies over a period of twenty-five years have shown that the performance of handicapped employees is equivalent to that of their unimpaired co-workers. In safety, job duties and attendance, the handicapped hold their own." Id. at 4.

IV. THE REHABILITATION ACT MODEL

The anti-discrimination in employment sections of the ADA are modelled after Section 504 of the 1973 Rehabilitation Act. The primary difference in the ADA and Section 504 is scope, not content. While Section 504 applies only to recipients of federal funds, the ADA would extend employment coverage to all entities covered by Title VII of the 1964 Civil Rights Act. The purpose is simple--to complete the commitment begun in 1973 to extend to Americans with disabilities the same protections against discrimination as that afforded other minorities and women.

The statutory framework is designed to ensure that persons with disabilities are treated as individuals and that employment decisions are not made on the basis of stereotypes about certain disabilities. Only those individuals who are qualified to perform the job in question are protected. Hence, employers are not required to employ an unqualified individual simply because he or she has a disability.

The ADA defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of

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the employment position that such individual holds or desires." The term "reasonable accommodation" is a term of art from the Section 504 regulations. The ADA also incorporates the Section 504 limitation on reasonable accommodation, which is that of "undue hardship." The term discrimination includes the failure to make reasonable accommodation unless the covered entity "can demonstrate that the accommodation would impose an undue hardship on the operation of its business." The Section 504 regulations establish a context for determining whether an accommodation is reasonable or poses an undue hardship. The relevant section, 45 C.F.R. §84.12, provides:

> (b) Reasonable accommodation may include (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
>
> (c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:
>
> > (1) The overall size of the recipient's program with respect to number of employee, number and type of facilities, and size of budget;
> >
> > (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce, and
> >
> > (3) The nature and cost of the accommodation needed.

Hence, reasonable accommodation is a flexible standard that balances the rights of the applicant or employee with the employer's legitimate business interests. The determination of undue hardship must therefore be made on an individual basis. As

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explained in the "Analysis of the Final Regulation," 42 Fed. Reg. 22685, 22688 (1977):

> Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a state welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

In determining whether an individual is qualified under the ADA, an employer may not use selection criteria that identify or limit persons with disabilities unless the criteria can be shown by the covered entity to be necessary and related to the ability of an individual to perform the essential functions of the particular employment position. As demonstrated earlier, persons with disabilities are often subject to disqualifying physical or mental criteria that bear no relationship to job performance.

To assure that qualified applicants are not excluded because of a physical or mental condition, it is critical that the selection procedure not included pre-employment inquires that serve solely to identify a person's disability. It has been common practice for pre-employment questionnaires to include

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sweeping questions such as: do you have any physical defect; have you ever been treated for mental illness; have you ever been hospitalized; do you ever experience seizures. These types of intrusive inquiries identify a person's disability without serving any legitimate job-related purpose. In order to insure that improper bias does not enter into the selection process, it is critical to limit employers' inquires to those that evaluate a person's ability to perform job-related functions. As explained in the Section 504 Regulations, Analysis, supra, 42 Fed. Reg. at 22689, "an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license." This type of procedure assures that subjective stereotyping about disabling conditions, which as shown above is prevalent, does not enter into the determination of whether an applicant is qualified for the job.

As in Section 504 and Title VII, the ADA's non-discrimination provisions extend to "job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions and privileges of employment.

In order to provide uniform enforcement procedures, the ADA makes the EEOC the enforcing agency. It is expected that the EEOC and other federal agencies with jurisdiction over the employment practices of private employers will work cooperatively to enforce the anti-discrimination provisions. This has been done in instances where there is over-lapping jurisdiction in

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employment discrimination cases under Title VI, Title VII, Title IX and Executive Order 11246. Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance, 28 C.F.R. 42.601-613 (January 25, 1983). Both the Office of Civil Rights and the Office of Federal Contract Compliance refer individual cases of employment discrimination to the EEOC.

Finally, under the ADA a private right of action is available and the remedies of Title VII and 42 U.S.C. section 1981 are available, as in race and national origin employment cases. Section 1981 damages are limited to cases of intentional discrimination. Punitive damages require a showing that the defendant acted "wantonly, maliciously or in bad faith." The Senate substitute limits ADA employment discrimination remedies to those available under Title VII. This was a major concession to allay the concerns of the business community, the administration and some members of Congress. It is intended that the remedies under the ADA will parallel any changes made in Title VII.

Section 605 of the ADA allows for attorney's fees to the prevailing party. This provision has long been recognized as essential to the right of protected groups, in order to fully utilize anti-discrimination statutes. As Senator Cranston stated when enacting the attorney's fees provision in the 1978 Amendments to Section 504, "a right without a remedy is no right at all."

V. The Anti-Discrimination in Employment Sections of the Rehabilitation Act Have Created Workable Standards Which Take Into Consideration the Rights of Workers With Disabilities and the Business Interests of Employers

A review of the case law prohibiting employment discrimination under the 1973 Rehabilitation Act provisions demonstrates a reasoned approach that considers both the rights of workers with disabilities and the business interests of employers. The cases also illustrate the drastic need for anti-discrimination provisions to assure that people with disabilities who are qualified to work are not forced onto the welfare rolls by employer ignorance and prejudice.

The threshold jurisdictional issue in Section 504 cases, as in the ADA, is whether a person is "handicapped" or "disabled."[28] The U.S. Supreme Court's seminal decision on this issue is School Board of Nassau County v. Arline, 107 S.Ct. 1123 (1987). In that case the court was called upon to interpret the Rehabilitation Act definition of "handicapped" person, which is identical to that contained in the ADA. The term includes an individual who (i) has a physical or mental impairment, which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

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[28] The definition of persons with disabilities in the ADA is not intended to be substantively different than the definition of "handicapped person" in Section 504. The substitution of disabilities for handicaps merely reflects a preference in terminology.

The Arline Court stated that this definition:

> . . . reflected Congress' concern with protecting the handicapped against discrimination stemming not only from simple prejudice but from 'archaic attitudes and laws' and from 'the fact that the American people are simply unfamiliar with and insensitive to the difficulties confronting individuals with handicaps.' "...[t]o combat the effects of erroneous but nevertheless prevalent perceptions about the handicapped, Congress expanded the definition of 'handicapped individual' so as to preclude discrimination against 'a person who has a record of, or is regarded as having, an impairment [but who] may at present have no actual incapacity at all.'"
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> By amending the definition of 'handicapped individual' to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.[29]

Since Arline, the Congress has adopted language that recognizes coverage of persons with contagious diseases and incorporates "direct threat to others" as a legitimate qualification standard. [See Civil Rights Restoration Act of 1987; Fair Housing Act Amendments of 1988 (not limited to contagious diseases)]. The ADA also adopts this approach:

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[29] The specific question in Arline was whether a person with a contagious disease is covered by the Act. The Court held in the affirmative stating that an exclusion for contagious diseases "would mean that those accused of being contagious would never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they are 'otherwise qualified.'" After Arline, the Solicitor General issued an opinion that persons with HIV-infection are covered by the Act. As stated above, this conclusion has been endorsed by Congress.

> The term qualification standard may include... requiring than an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.[30]

As is the true with contagious diseases, a review of the case law shows that the legitimate concerns of employers and taken into account in all types of cases. However, it is also clear that many employers utilize outmoded job criteria that screen out qualified workers. The employer always has the opportunity to show that the criteria are job related and are consistent with business necessity and the safe performance of the job. If such a showing is made, the disabled person is disqualified unless alternative criteria that do not have an adverse impact would also meet legitimate business interests. The requirement of reasonable accommodation has also resulted in the employment of qualified persons with disabilities without compromising legitimate business interests. Finally, the case law reveals that persons with disabilities are still subject to outright prejudice and ignorance based on unfounded stereotypes. Clearly, employers have no legitimate interest in failing to employ on that basis.

Pushkin v. Regents of the University of Colorado, 658 F.2d

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[30] The ADA also states that a qualification standard may include "requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property of the safety of others in the workplace. This provision was originally included in the 1978 Amendments to Section 504. This type of provision is also included in the CRRA and the FHAA (not limited to drugs or alcohol).

1372 (10th Cir. 1981), illustrates the pervasive use of stereotypes to deny qualified persons with disabilities employment opportunities. In that case a physician who had multiple sclerosis sought and was denied admission to the University's Psychiatric Residency Program. The Tenth Circuit agreed with the district court's determination that Dr. Pushkin was an otherwise qualified individual who had been rejected solely on the basis of his handicap, in violation of the Rehabilitation Act.

The evidence presented at trial indicated that the defendant had made the following assumptions about Dr. Pushkin: (1) that he was angry and emotionally upset due to his handicap, and would thus be unable to do an effective job as a psychiatrist, (2) that he had difficulties with mentation, delirium and disturbed sensorium due to the MS and steroid use, (3) that his handicap would render him unable to handle the workload, and (4) that he would miss too much time away from work.

At trial the district court found that these assumptions were rebutted by evidence of Dr. Pushkin's past competence in dealing with his condition, and by witnesses' testimony that his emotional responses were normal and that he treated patients appropriately.

The Tenth Circuit affirmed the finding that the University's reasons for rejecting Dr. Pushkin "were based on incorrect assumptions or inadequate factual grounds." Id. at 1383. The appellate court opined that handicap discrimination usually results from "invidious causative elements and often occurs under the guise of extending a helping hand or a mistaken, restrictive belief as to the limitations of handicapped person." *Id*. at 1385. In this case, the University's actions were not "predicated on any known deficiency of Dr. Pushkin himself" but based on a general knowledge of MS that did not apply to Dr. Pushkin, the individual.

Likewise in *Smith v. Fletcher*, 393 F.Supp. 1366 (S.D. Tex. 1975), *modified*, 559 F.2d 1014 (5th Cir. 1977), a paraplegic who had a Master's degree in physiology was assigned menial clerical tasks because her supervisor had made "an arbitrary and unfounded decision as to her physical capabilities." The court ordered that she be promoted from a GS-9 to a GS-13.

Strathie v. Department of Transportation, 716 F.2d 227 (3rd Cir. 1983), illustrates that strict adherence to outmoded physical requirements serves to exclude qualified disabled employees. In that case, a hearing impaired person sought a position as a public school bus driver. He was denied the necessary driver's license on the grounds that he could not meet the Department of Transportation regulation requiring a specified level of hearing without the use of a hearing aid. With a hearing aid Mr. Strathie meet the Department's standards.

The district court held that the regulation was valid and that Mr. Strathie was not therefore an "otherwise qualified" handicapped individual under the Rehabilitation Act. In support of this decision the court accepted defendant's arguments that the accommodation of a hearing aid was unreasonable because of the risks of dislodgement, mechanical failure, inability to localize sound, and the possibility that the wearer would lower the volume of the aid and thus decrease its usefulness.

The Third Circuit reversed, noting that the district court had failed to consider Mr. Strathie's proposed modifications that would reduce the risks. The modifications included frequent inspections of the aid and carrying a spare aid and batteries to minimize mechanical failures, pre-setting volume to avoid variability, and individualized assessment of ability to localize sound. With respect to the risk of dislodgement, the court noted that certain types of hearing aids are "less likely to become dislodged than are regular eyeglasses." The court emphasized that it was anomalous for the Department to allow vision standards to be met with corrective lenses, yet did not allow candidates to meet hearing requirements with the help of a hearing aid. The opinion as a whole highlighted the need to address the realities of a given individual's situation, instead of relying on overly broad general assumptions.

The need for individualized determination under Section 504 with respect to the qualifications of persons with disabilities was also emphasized by the court in Jackson v. State of Maine 544 A.2d 291 (Me. 1988). Mr. Jackson was an insulin-controlled diabetic who was prevented from taking the examination for public school bus driver on the basis of a regulation requiring him to be "free from...diabetes". Id. at 293. The Court noted that the

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denial of plaintiff's application "was automatic and based solely on his diabetes." Defendants offered no evidence that Mr. Jackson, as an individual, could not safely drive a school bus. The doctor who examined him concluded that he was "free from any condition that might affect his ability to safely operate a school bus." Moreover, at the time of the appeal Mr. Jackson was working successfully as a bus driver.

In Stutts v. Freeman, 694 F.2d 666 (11th Cir. 1983), the Eleventh Circuit found that the use of a written test as the sole criterion for a job as an equipment operator discriminated against Mr. Stutts, who had dyslexia (a learning disability).

Nelson v. Thornburgh, 567 F.Supp. 369 (E.D.Pa. 1983), illustrates the importance of reasonable accommodation to maintain qualified disabled workers and the flexible approach taken by courts when considering the burden on defendants. Thornburgh involved blind income maintenance workers who alleged that the Department of Public Welfare had unlawfully discriminated against them, failing to accommodate their disability by providing part-time readers. The employees themselves had hired readers, and with the assistance of these readers were able to perform the job as well as their sighted colleagues. The court held that inability to read did not mean that the employees were not "otherwise qualified," as this was not essential to successfully meeting the requirements of the position. Several accommodations, including brailling forms and manuals, and using technology like a Versabraille, and possible schedule changes to make the most efficient use of readers, would insure that employees were able to function on the job.

The court acknowledged that "accommodation...will impose some further dollar burden upon an already overtaxed system of delivery of welfare benefits", but noted that "the additional dollar burden is a minute fraction of the DPW/PCBA personnel budgets." Moreover, the court emphasized that the failure to accommodate in the workplace would impose very real costs on American society and the American economy, in light of the consequence of having to support these employees on government benefits if they were not allowed to contribute their productivity as members of the workforce.

Finally, Chalk v. United States District Court Central District of California, 840 F.2d 701 (9th Cir. 1988), illustrates how irrational fear of contagion can serve to deny a qualified disabled person his profession, unless court review is available. In that case Mr. Chalk, a certified teacher of hearing-impaired students, was barred from teaching after a diagnosis of AIDS. The Ninth Circuit reviewed all relevant medical literature and concluded that there was no significant risk of transmission in the classroom setting. Among the cited literature was a Surgeon General's Report that stated, "casual social contact between children and persons infected with the AIDS virus is not dangerous." The Court stated that "the basic purpose of Section 504 is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudicial attitudes or

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ignorance of others."

VI. REPORTS OF EMPLOYERS HAVE BEEN POSITIVE

Reports from employers demonstrate that many of the fears associated with passage of the Rehabilitation Act anti-discrimination provisions were unfounded. In addition to the studies that refute employers fears about productivity, absenteeism and safety,[31] a comprehensive study by the Department of Labor regarding accommodations to disabled employees by federal contractors demonstrates that accommodations that allow participation can often be done without great expense.[32] Almost one-forth of the disabled employees in the study received some type of accommodation. Over fifty percent of the accommodations in the study cost nothing; an additional thirty percent cost less than $500; only eight percent cost more than $2000. The experience of providing accommodations was positive for employers. The report stated that "accommodation is seen by firms as sensible business practice to secure a reliable worker with needed skills, akin to the provision of tools or other aids to non-disabled workers to increase their productivity".

The Wall Street Journal reported on the change in federal contractor employer practices under Section 503 as early as January, 1976. More than 275,000 companies employing more than one-third of the work force were affected at that time.[33] As a result of Section 503, companies reviewed their hiring practices. The Wall Street Journal article provides interesting anecdotal evidence of the positive effect of the non-discrimination provisions on a number of major American enterprises:

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[31] See, discussion, supra, pp. 17-20

[32] "A Study of Accommodations Provided to Handicapped Employees by Federal Contractors," Executive Summary, U.S. Department of Labor, June 1982.

> "We had a medical department that thought it was saving the company money by only hiring Greek gods," says a personnel officer for a large Midwestern manufacturing firm. "We have completely abandoned that approach." Now, he adds, "we're trying to fit a person to a particular job." The company, for example, has begun considering applications from the deaf.
>
> GTE Sylvania has changed more than its attitude toward former cancer patients. The company used to have rigid weight limits for all jobs. "We've thrown all those out the window," says John McKeith, who handles industrial relations.
>
> International Telephone & Telegraph Corp. has scraped rules that barred applicants with epilepsy, cancer and some other health problems. An epileptic has been hired as a packer for an ITT subsidiary.
>
> Bell Helicopter Co. of Fort Worth, Texas, became the target of a Section 503 complaint when it turned a man down for a position as a contract analyst. He had spinal curvature and it was corporate policy "not to hire anyone with a bad back," says Jim Kight, a Labor Department specialist in Dallas. The complaint was resolved when Bell changed corporate physicians - which, Mr. Kight says, was "the same thing as changing its policies."
>
> Written tests, too, are sometimes being modified. In Chicago, officials at Continental Illinois National Bank & Trust Co. quickly devised a braille version of its computer-programming aptitude test because they feared that a blind applicant was about to complain under the federal law. He got the job.

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[33] Unfortunately, the courts have not recognized a private cause of action under Section 503 and agency action has been hampered by back-logs and limited enforcement. Hearings before the Subcommittee on Employment Opportunities of the House Committee on Education & Labor, 95th Cong., 1st Sess., 28 (1977).

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> For some firms, the new attack on job discrimination has altered stereotypes rather than formal hiring practices. In the past, says one personnel executive, "we were tempted to say, 'This girl can't type; she's blind.' We had preconceived notions." Now, [business] concerns are starting to explore their whole range of jobs, finding ways that disabled employes [sic] might perform them with minor changes in hours or duties.
>
> Thus, Union Carbide Corp. is advertising sales-representative job openings in handicapped groups' newspapers, merely specifying that "car maneuverability" is required. U.S. Steel did recruiting last spring at the National Technical Institute for the Deaf, in Rochester, N.Y.; it was the school's first such visit in its seven-year history.
>
> And in 1974, Sears, Roebuck & Co. hired Brad Shorser as its first blind management trainee despite a few officials' misgivings about his ability to deal with customers. Now a successful assistant customer-service manager for the Hichsville, N.Y., store, 28-year-old Mr. Shorser says the federal law's existence "most definitely" helped him get the job.

Seven years later the Wall Street Journal again highlighted the advantages of employing persons with disabilities pursuant to non-discrimination provisions. The article, which appeared on November 22, 1983, noted that "[w]ork accommodations for the disabled often cost little and benefit others." It observed that a poll of 2,000 federal contractors found that "81% of changes made cost $500 or less." Moreover, modifications often helped able-bodied workers as well. For example, in addition to providing wheelchair access, "[w]idened doorways at Western Electric allow easier moves of heavy equipment. Scientific Atlanta likes its enlarged elevators for similar reasons." And the benefits are not limited to improved physical arrangements.

"when Tektronic altered an assembly line supervisor's tasks to aid a mentally retarded man, all 12 workers' output rose and errors fell."

VII. A Uniform Federal Law Is Necessary to Protect Persons With Disabilities Who Are Qualified To Work From Discrimination

While 44 states have passed laws prohibiting employment discrimination against persons with disabilities, only twelve are comparable to the Rehabilitation Act in providing protections against discriminatory practices.[34] This demonstrates how unprotected persons with disabilities are from private employment discrimination. Persons with disabilities are now the only major group that, while recognized by Congress as face widespread discrimination in employment, still has no adequate federal protection. Until the ADA is passed, Americans with disabilities will continue to be kept out of the workforce because of stereotypes and ignorance.

The state statutes provide for coverage of private employers, at least to the extent of Title VII. The majority do not limit coverage to moderate sized employers as in Title VII. Hence, restrictions on the right of private employers to exclude disabled workers is not new to the ADA. However, the state laws vary widely, and do not provide as much protection as the

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[34] Handicap Discrimination Legislation: With Such Inadequate Coverage at the Federal Level, Can State Legislation Be of Any Help? 40 Arkansas Law Review, pp. 261, [illegible]. (Five additional states prohibit state agencies and recipients of state funds from discriminating. (Only Delaware and Wyoming have passed no legislation at all.)

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Rehabilitation Act once the primary hurdle of coverage is overcome.

One major problem is the failure of many state statutes to cover mental disabilities. In addition, many state statutes have very restrictive definitions of "handicap." Many define handicap as a limitation on work. This type of definition gives rise to the anomalous result that a person whose disability was the cause of the adverse employment decision but does not affect the ability to work is not protected against employment discrimination. The same anomaly results when statutes cover only severe handicaps. Others list specific handicaps leaving all other subject to arbitrary employment practices. For example, New Hampshire excludes handicaps caused by illness and Arizona excludes handicaps that were first manifested after age 18. Many statutes require a presently disabling condition despite the fact the employers often use signs of a future disabling condition to disqualify an employee. It is estimated that between 150,000 and 1.2 million pre-employment lower back x-rays are given each year. Despite the fact that they have been totally discredited in the scientific literature, they are still widely used to screen out asymptomatic applicants.[35] Hawaii actually limits coverage to impairments which will last a lifetime without substantial improvement. Hence, a person with cancer may be excluded just because he may get better.

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[35] *Id.* at 266.

Over one-half of the states do impose a reasonable accommodation requirement. However, several define the term restrictively. In Minnesota, a $50 cap is provided. Many restrict the requirement to employers of over a certain number. This makes no sense, when the accommodation may involve simple readjustments of work space (lowering a desk). With the undue burden protection of federal law, there is no reason to exempt employers or limit the type of accommodation which can be made. Finally, nearly one-half of the states do not require any reasonable accommodation despite extensive documentation that accommodations are most often not costly.[36] Yet for many disabled people the willingness to accommodate can make the difference between fruitful employment and welfare.

Now is the time for Congress to make a national commitment to the equal employment opportunities of persons with disabilities. The federal law is too limited in coverage and state laws vary widely and are often too restrictive. The result is the sanctioning of widespread proven employer bias and the exclusion of millions of Americans from jobs that they can perform and deserve to hold.

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[36] Dupont study, *supra*, *Wall Street Journal*, Nov. 22, 1982, at 1 col. 4.

Chairman OWENS. Thank you. Let me begin by asking Mr. Rochlin, what has been the experience of employers in the implementation of Section 504, of the Rehabilitation Act? Has it proven workable or have there been insurmountable problems?

Mr. ROCHLIN. Mr. Chairman, I think Section 504 and Section 503 have both been workable; 504 pertaining to those employers that are recipients of Federal funds and 503 to those employers that are contractors of the Federal Government.

There has been enough experience under the Rehabilitation Act by employers covered by both of those sections, that we have seen that the provision of reasonable accommodation is not difficult, and that it can be done cost effectively in most cases, and solves a great many accommodations.

As I mentioned in my testimony, several studies including a recent evaluation of the accommodations that our Job Accommodation Network provides indicates that over half of accommodations provided for people with disabilities do not have any cost associated with them.

What we find more times than not is that people with disabilities are not looking for gold-plated widgets. They want to go to work and they are looking for the simplest accommodation possible. There are resources for employers. One of the best resources for employers is the individual with the disability themselves. Most often, they are not consulted when they usually hold the key to effectively providing an accommodation.

They know what they need. They are not looking for something expensive. They just want to go to work, and, if consulted, oftentimes, they will provide solutions.

I know of one corporation that some years ago in a good faith effort to make their headquarters building accessible decided to lower all of the water fountains at considerable cost, without consulting any of their employees who had disabilities, and while the work was in progress, one of their employees who used a wheelchair came along and said, "You know, you really didn't have to do this. If you would have put a cup dispenser next to each water fountain, it would have been satisfactory, because we could reach the cup and fill the cup and drink from the cup. It is just that we can't get our mouth to the spigot on the fountain."

So, there are sources and there are sources of technical assistance. I thought listening to Mr. Wharen— yes, Mr. Wharen's testimony about making the work site accessible on a construction site and what was involved with the bathroom facilities.

There are manufacturers of Port-a-Johns who manufacture accessible Port-a-Johns. They are available. I just, as a matter of fact, used a number of them on a trip to Alaska, manufactured by the same outfit that manufactured the standard Port-a-John and they are wheelchair-accessible.

So, that, I think, supports the provision in the Senate bill for technical assistance. I think that was an excellent amendment, and I think if adequate technical assistance is provided, some of the concerns, such as those raised by Mr. Wharen, could be satisfactorily and economically addressed.

Chairman OWENS. Technical assistance will be provided to the businesses?

Mr. **Rochlin**. That is correct.

Chairman **Owens**. A unit which gives technical assistance to businesses, to what degree will that be useful? Do you care to comment, Mr. Rasmussen and Mr. Wharen?

Mr. **Wharen**. It would certainly help. Anything would be—it just is beyond me to imagine. All the construction sites I have been on in 25 years, a large number could be made accessible, but then a large number can't, especially when we are building downtown, as I am sure you've seen a lot of the buildings being constructed around here.

Sometimes the trailers for the superintendents are above the catwalks on the sidewalk because it is the only available space. Where are you going to park?

You can have a lot of opportunities for handicapped people in the main office. Especially in our industry where a lot of people are getting injured, the experience these people have, it is a terrible thing to lose.

So, I think a lot of construction companies would be very receptive to making available office space, and it is very minimal cost because we build things, so it doesn't—the cost——

Chairman **Owens**. Have you had any unreasonable demands made on you? What kinds and how many people have applied for jobs in the construction industry, or your industry, who had disabilities? Because all disabilities are not physical ones?

Mr. **Wharen**. Right. We—well, first, Dave, the person I talked about, we hired him in a wheelchair. He didn't get disabled in our company; he came to us from another company. We hired him for his knowledge to be used in awarding subcontracts and estimating projects.

We have—on the project I am currently in charge of we have several other disabled people. We have a fellow missing a hand from a birth defect. Now, he is a very hard worker, but he is limited with only one hand as to what he can do, and we take that into consideration when we make assignments, but he can't do everything, but he can do a lot of work.

We have a mentally retarded gentleman that we use to install insulation, which is a simple task. He is a good worker, he stays at it all day. So we are very happy to have those types of people.

We are really concerned about what would happen—and the clause—you are not hiring somebody because of their association with somebody who is disabled. Gee whiz, how are you going to defend yourself against that?

The construction industry is really hurting for people to work, and we are always willing to hire able-bodied workers, but to go up 200 feet in the air—if somebody comes to you that can't walk well and you require him to be 200 feet above the ground, and you don't hire him because of that, what are they going to do, sue you?

You were really looking out for his welfare or her welfare, because we have a lot of women working on our site also.

Chairman **Owens**. I think you are contemplating some extreme situations that won't necessarily happen.

Mr. Rasmussen, could you elaborate on the same question? What kinds of people have applied and what unreasonable demands have been made on you to date that makes you believe that you will experience a great hardship if this bill is passed?

Mr. RASMUSSEN. Well, Mr. Chairman, I have had very limited contact with the problem of the handicapped person except in my personal reference that I made earlier in my presentation.

Chairman OWENS. You had very limited contact?

Mr. RASMUSSEN. Pardon?

Chairman OWENS. I said you have had very limited contact?

Mr. RASMUSSEN. Very limited——

Chairman OWENS. The company has had limited contact?

Mr. RASMUSSEN. I do recall that at one newspaper I worked at we hired a reporter/photographer who was spastic and who had one arm immobilized, and yet, he was probably one of the best reporters because he had the uncanny ability to handle a speed graphic camera. If you folks remember back to the speed graphic, you really needed two hands for that, but he managed it quite well.

In our particular locality, we have had no person apply with any kind of handicap, I will have to admit. On the other hand, our newspaper association has a clipping service in downtown Minneapolis that they run for all of the individuals in the state and corporations who want clippings from the various newspapers of stories about them.

Our clipping service has tried directly to hire handicapped people, wheelchair-bound people to come in and work as newspaper readers and clippers and has been unable to find anyone to even apply. So I am not sure what our problems are or what they might be down the line, but the fact that this legislation, to our interpretation, indicates that we have to be prepared for anyone who would apply is our concern——

Chairman OWENS. Your fear is not based on any experience?

Mr. RASMUSSEN. No.

Chairman OWENS. Your fear is based on your perception that the legislation will put you in a position where you must respond to——

Mr. RASMUSSEN. Well, it tells me that I have to have my building ready, for example, for any of these people before I know that any will apply. I don't mind at all making an accommodation upon hiring someone, but I think that it is a very unreal situation for a small business to have a building retrofitted or ready for anyone who comes down the line.

Chairman OWENS. Mr. Donovan, you have had experience. You have a program. You hire large numbers of people. Do you see the present legislation placing new demands on you that would be unreasonable so that your present program would become more costly?

Dr. DONOVAN. My view of it, and I have to clarify that clearly I am not a lawyer, and so I am not necessarily expert at analyzing legislation, but our experience has been, as I stated earlier, that the key to being successful in the whole endeavor is to develop a setting where you sit down and you work through the practicalities of an issue with all of the parties involved and you deal with the issues as they arise.

I guess some of the discussion that has occurred here and that I've had occur elsewhere concerns me. I have a son who loves to play the "what if" game, and I constantly have to counsel him on the fact that that is not a realistic way to view the world.

You can develop "what if" scenarios that would essentially paralyze any action that you wanted to take. I think what is important is that you leave yourself open to sitting down and working with an individual situation, and our experience has been that, generally speaking, the great majority of situations can be solved very simply and very inexpensively, and that there is not a critical problem that accrues to us as a result.

I think the key is that what we need is a bill that leads towards the mutual development of practical solutions, as opposed to prescriptive solutions that try to solve all the problems and imagine all the problems from the get go and react to them before they even need to be reacted to.

So, Marriott's experience has been that, in fact, most of the problems aren't nearly as complicated when you actually sit down and deal with practical solutions, and that clearly the benefits far, far outweigh any negatives that may accrue in terms of temporary accommodations and the like.

Chairman OWENS. Anybody else care to comment on the same question?

Mr. RASMUSSEN. Mr. Chairman, if I might go back. I think you indicated what we thought about a source for the technical advice to small businesses, and I referred to the OSHA program which had its difficulties when it started out.

But later on now in Minnesota, the Minnesota OSHA department does the inspections for the Federal Government, but they have a very reasonable approach to OSHA violations in Minnesota, where they will counsel with the business person, advise them of what should be done in the particular violation and how to correct it, and work out a time frame in which to accomplish it and a reasonable way to accomplish it.

I think that some sort of a source to go to for that kind of help is what the small business person needs, because we do not have lawyers, we do not have personnel managers, we do not have specialists of any kind available to us who have delved into this and found the answer.

Chairman OWENS. Thank you. Mr. Rochlin, do you want to make a comment?

Mr. ROCHLIN. Yes, Mr. Chairman, I would. There is one phrase in the law that I think that has not gotten its due share of attention, and that is "qualified individual with the disability."

I think what we must remember is that we are talking about people who are qualified for the jobs. There sometimes appears to be a concern that the law is going to require employers to hire all people with disabilities. That is not the case. The law is going to require that people who are qualified and have a disability be hired.

One of the things that I have found in my past experience is that the reasonable accommodation process protects the employer as much as it does the individual, if the employer follows the process as it has been currently used in 503 and I think would be used under the ADA, and that simply is that you first consider the person as an individual and focus on that person's qualifications, not on the disability.

What happens too often with employers is that they immediately focus on the disability. If they put the disability aside, except as they may have to accommodate it in the employment process, and focus first on the individual's qualifications.

If the individual does not have the qualifications to do the job for which they are applying, the employer does not have to hire them, and the decision is made on that basis.

If the person has the qualifications, then the employer is able to say to that person, "You are qualified to do this job. Now will the limitations caused by your disability create the need for any accommodation?"

Together the employer and the individual can discuss what may or may not be needed to accommodate that person in the work force. That also protects the employer relative to litigation.

If the first thing the employer focuses on is the disability and then ultimately learns that the person isn't qualified and doesn't hire them, yes, I would agree they would have a difficult time in a court of law protecting themselves against a charge of discrimination when the first thing they talked about was the individual's disability.

If they focus first on qualifications, and the person isn't qualified, and they don't hire them for that reason, and the person files a complaint saying, "They didn't hire me because I am disabled," the employer is in a position then of defending themselves on the basis of saying, "Disability had nothing to do with that. This job requires qualifications a, b, and c, and this individual did not have those qualifications." So, the reasonable accommodation process, if followed as it has been used under 503, I believe, provides protection for all individuals involved.

Chairman OWENS. Thank you. My time is up. Mr. Bartlett?

Mr. BARTLETT. Thank you, Mr. Chairman. First, Mr. Chairman, I want to say that I think that this panel has been an excellent panel at really focusing on the issues, and this hearing today, I think, has made as much or more progress than all of the hearings that have gone on in the past.

One of the changes that I note just in terms of tone and content, both with this panel and with the original witness, is that we're now, with the Senate-passed bill, we are now beginning to treat this legislation as disability legislation or access for persons with disabilities.

There had been fear of some risk in previous hearings that the legislation was being viewed as either political legislation or as civil rights legislation, with a view towards changing other civil rights laws that apply to other groups of individuals.

Those laws may or may not be changed or be needed to be changed by Congress, but I do think it is important to keep the focus of this legislation on disability legislation.

Ms. Mayerson, let me begin with you and say that I agree with several of the things that you said and disagree with one or two others.

What I agree with, and I want to be very gentle—I was about to raise the issue of the hearing-impaired in the publishing plant also because I know better, and I know Mr. Rasmussen is in the business, so I don't want to dispute someone who is actually out there publishing and printing, but that is a good example, it seems to me, of how much the world has changed and how easily, or in the words of the proposed law, "readily achievable," an accommodation can and often is to a person with a disability.

There are, amazingly enough now, incredibly bright and noticeable red lights that will go off on safety equipment to indicate a problem that are typically used in the work place to accommodate a hearing-impaired person.

Mr. Rasmussen is right, though, this bill, it seems to me, should not be interpreted, nor is it written this way, in any way that would require an employer to hire someone whose safety would be jeopardized merely because of his disability by work place on the job.

So, let me use another example that was used earlier, and, Ms. Mayerson, we may get your response or Mr. Wharen and Mr. Rasmussen. Later a question was asked, "Would a construction site, therefore, be required to hire someone for high rise-work who has a disability that may cause him to fall?"

Let me just suggest that it seems to me the way I interpret this proposed law, as I interpret currently 504, would be that, therefore, an employer would not be required to, and, indeed, should not hire a person with vertigo or with an unsteady walk that causes him to sway back and forth from the path.

But an employer would not be allowed nor should be allowed to automatically dismiss from employment or dismiss from prospective employment persons with other disabilities whose disabilities don't affect whether they would fall off the walk or not.

It seems to me to be that is the way to interpret this law as current 504. Now, Mr. Wharen or Ms. Mayerson, have I missed something in that definition? Is that the way you read it, or is there another danger here?

Ms. **Mayerson**. No, I think you are correct. As Mr. Rochlin was stating that, this law like 504, only covers qualified handicapped people for employment. You have to be qualified for the job in order to get the job.

Mr. **Bartlett**. Mr. Wharen?

Mr. **Wharen**. I agree. If we use qualified people as the main criteria for hiring, there would be no problem with that.

Mr. **Bartlett**. Mr. Rasmussen, is that what you think this bill says, or do you think it should say that, or do you think it shouldn't even be to that limit? That is to say, should a—the fundamental question is, should a private employer be prohibited from discriminating against someone because of their disability, if their disability does not affect their job performance or the business necessity?

Mr. **Rasmussen**. I agree with that essentially. Just as a point of correction of the impression I may have given in my statement. I was speaking of our operation of our rotary press. It is quite essential that the operators have their ears cleared. We don't allow radios playing. We don't allow the headsets, anything like that because they have to hear every little click that goes on in that press because it is the sounds that the press gives off that tip off the operator as to impending problems.

In that kind of an operation, even the bells and the whistles or lights, the problem has occurred often before the bell goes off, so you hope that they hear that. In many operations of putting on a newspaper, of course, there is no problem with deaf people working or other handicapped people.

I think the primary purpose of the legislation ought to be to allow everybody to be considered on an equal basis for hiring, without consideration of the handicap, except that if you reach a point where the handicap cannot be accommodated in some way, that, obviously the employer then, I think, has to have the reservation to make the decision of what should be done.

Mr. BARTLETT. And that is, it seems to me, both the intent and the result of the Senate-passed bill, likely not the result of the original House bill, but at least the result of the Senate-passed bill.

Mr. RASMUSSEN. It could be, yes.

Mr. BARTLETT. I appreciate you clarifying that. You do leave yourself open to misinterpretation by even coming before the committee and testifying on such an emotional subject, and I want to tell you I appreciate your candor and your help.

So, if it is important to the job to hear each click and whir and buzz and the whine of the machine, then one could reasonably assume that is a job qualification; but if that is not important to the job, then that wouldn't be a job qualification. Ms. Mayerson, is that the way you would read it?

Ms. MAYERSON. I would agree with that, but I would caution that oftentimes things are considered essential in a job that you really have to look very closely to examine that and often get assistance, maybe from places like the President's Committee, to see what other people in the industry are doing in the area.

Mr. BARTLETT. I think that is correct. The world is changing, and it is going to change even faster with the ADA. I walked through a fair number of both manufacturing and distribution plants in Texas and watched for these things.

Within two days this summer, I recall walking through a plant and finding in the shipping department two individuals working there, one who is profoundly deaf and had been working there for about, I don't know, ten years, and then in a similar department, not seeing anyone who was disabled in a similar company.

So, I asked each employer afterwards, I asked the person who had the shipping clerk who was profoundly deaf whether they had made any reasonable accommodation, to use the terms of the law, to hire him.

The employer looked at me with a blank stare and he said, "Well, no, not especially. He came in, he applied, he looked like he had a good work record, looked like he could understand the job, real smart, so we hired him. So, we didn't have any reasonable accommodation."

So, I pursued it and I said, "Well, how do you communicate with him?" The employer said, "Well, we write little notes. He has a note pad by his work station and his supervisor has a note pad, and he writes out a note if he has to communicate, and the supervisor has through the years learned a little bit of sign."

The other employer, I said, "Have you ever considered anyone who is deaf in your shipping department?" because it was the next day and it was on my mind. He said, "No, couldn't do that. How could we communicate with him?"

So, the concept of reasonable accommodation is emerging and much of it requires an open mind.

Now, Ms. Mayerson, I also want to say that it is also important to remember that these objections are very real, that there is a certain fear in the business community that they could be required to do things that are unreasonable.

I think it is important as we study the legislation to remember that Mr. Rasmussen, Mr. Wharen, and others who come before Congress, either individually or publicly, are not doing so out of any degree of enthusiasm. They really do have some fears, and those fears need to be listened to and accommodated and understood.

I do want to say to Mr. Rasmussen and to the NFIB, I read your testimony very carefully and listened to you. It becomes at this point extremely essential, extremely helpful and necessary for the NFIB or your business or others who have objections to give us your objections in the form of objections.

That is to say, "Here is what the Senate-passed bill says, here is why we don't like these words, and here is a suggestion to alter those words."

I am not suggesting you didn't give us good testimony, you did, but your testimony doesn't lead us anywhere. You asked questions which are all answerable, but you didn't tell us what you would have us do different, unless you just view that there shouldn't be such a law, and that is a fair view. It is a democratic society and that is a fair view.

A specific area that I would ask you and the NFIB to address is this. I have heard the words for some time that the concepts or the expressions in the proposal of "undue burden," "readily available," "reasonable accommodation," "readily achievable," "benefit," "full and equal employment" and "essential functions," to use your words that you left out of language. I have heard now for several weeks that those are vague terms.

They don't seem to me to be vague, but I am willing to explore ways to make them more specific if you have a suggestion for what words would be more specific than "undue hardship" or "undue burden." That seems to me to be a very specific set of words.

So I want you to think about how you would make this legislation more specific, if, indeed, you would. One proposal, for example, would be to put a cap on the total dollar amount of a reasonable accommodation. I resist that because caps tend to be floors in the way the government works. I am a Presbyterian. We Presbyterians have a saying, "Be careful what you pray for; you may get it."

I would be hesitant to pray for a cap if, in fact, therefore, the result of the cap is that every employer is required to make a $25,000 accommodation, regardless of whether that much is needed.

So, if you could give us specifics on how you would change those words to make them more specific, it would be helpful.

I will go on very quickly. Ms. Mayerson, I do want to clarify your testimony as regards the Senate bill and perhaps clarify what I said because it is a concept. I heard you say that you support the Senate bill, but you were worried about using it as a starting point, and I assume that on your side of the table, you have the same kind of fears and perhaps paranoia, as Mr. Rasmussen on his side of the table. I assume that is because you worry about the starting point idea, that somehow the bill is going to be made worse from your perspective, rather than better.

I guess I want to ask you first, do you think that we ought to, though, introduce the Senate bill in the House and proceed with the Senate-passed bill as the vehicle, or are you saying something different?

I have a fear that if we proceed with the House-passed bill, we will never get there, because you force members to vote on individual prescriptions of the Senate that they don't want to vote on.

The beauty the way the Senate works and also the loss of the way the Senate works, is that they all get together—not all of them, but four or five of them get together and they write up the bill in the dead of night, and no one sees it, and then they come out with a product, and then each senator can say, "Well, I didn't agree with everything in that bill, but I will vote for the product."

Now, we don't do that in the House. We take it right out here in the light of day and vote on them one at a time. So are you saying we should take the Senate bill as our House mark or not?

Ms. MAYERSON. Yes, I think that the Senate bill, as I said, reflects taking into consideration the concerns of the business community that we are addressing in the House hearing as well as in the Senate, and it is a very struggled attempt to try to reach a compromise that everyone could live with. And I think that we can proceed from there.

Mr. BARTLETT. Now that you have allayed my fears, you said that you support the Senate bill, I want to allay yours and all I can point to is my own seven years of record on this subcommittee as well as exactly what I say.

When I say, "use the Senate bill as a pointing point," I simply mean that we then legislate. I don't mean that we negotiate or reach a compromise or do all the grand strategy. All the grand strategies have been done. There is no more need for a summit. The summit was held by Governor Sununu and Senator Kennedy.

The summit is done, but now it leaves it up to poor old Bartlett and Owens, that now we have to take this product and read every line of it. There may be some agreement, there may be some disagreements, but by and large, I think that as we read particular words or sections, there may or may not be ways to change or improve that section, not in a negotiation kind of strategy, but just merely legislating.

There also may be disagreements. The Senate bill has some things in it which perhaps others on either side may disagree with, in which case. I think you just have to say the majority rules. Each side needs to be careful that we don't change anything that is going to disrupt the package, but beyond that, I think we can and ought to legislate.

Mr. Rochlin, do you also support the Senate bill as our vehicle?

Mr. ROCHLIN. That is the bill that the administration has endorsed, yes.

Mr. **Bartlett**. I would ask this for Ms. Mayerson or Mr. Rochlin. The Senate bill included language on an amendment that would specifically exclude homosexuality and a series of other similar disabilities—not disabilities, of other similar conditions as a disability.

First of all, do you think that the bill, even without that provision, includes sexual preferences as a disability? Second, do you think, to allay the fears of those who think it does and to make sure that some future court doesn't interpret it differently, do you think that we ought to include that section in here that says that homosexuality is not a disability to be covered by this legislation?

Ms. **Mayerson**. First, I think that this bill does not cover homosexuality as a disability. It was never intended to, as 504 and 503 did not cover homosexuality as a disability. I don't think for that reason that the amendment is necessary. I agree with you that the only purpose of the amendment then would be to allay fears by members of Congress or their constituents that homosexuality is covered by this Act, but it is not.

Mr. **Bartlett**. In your opinion, this proposal, this Act, does not cover homosexuality and could not be interpreted as so?

Ms. **Mayerson**. This Act does not cover homosexuality as a disability and should not be interpreted to do so. So, therefore, I believe the amendment is not necessary, but is only for the purpose that you said, to allay fears.

Mr. **Bartlett**. Is the amendment harmful in any way?

Ms. **Mayerson**. What is that?

Mr. **Bartlett**. Would the amendment be harmful in any way to put in the bill?

Ms. **Mayerson**. Clearly, on the issue of homosexuality, it would not be.

Chairman **Owens**. Would the gentleman yield?

Mr. **Bartlett**. I would be happy to yield, Mr. Chairman.

Chairman **Owens**. Do you think we should put a statement in that this Act does not cover devil worship as a mental illness?

Mr. **Bartlett**. I hadn't thought of that.

[Laughter.]

Ms. **Mayerson**. I am sorry, Mr. Owens. I didn't understand the question.

Chairman **Owens**. Should we take care of devil worship? Devil worship may be a mental illness. Should we say that this Act does not cover devil worship as a disability? You don't have to—thank you very much.

[Laughter.]

Ms. **Mayerson**. I am afraid I really don't know what that devil worship stems from in terms of disability. I mean, schizophrenia? I don't think we can go so far as to say schizophrenics are not covered by the Act. But devil worship, in particular, I am not familiar with, so I don't know. I'd reserve my answer on that one.

Chairman **Owens**. Thank you.

Mr. **Bartlett**. One other question, and then I will—two quick ones. First, do you think that the ADA should preempt enforcement under 504 and 503? The Senate bill did not address it, or do you think an employer should be liable on both laws simultaneously?

Ms. **Mayerson**. I feel very strongly that the ADA should not preempt any other remedies that are available to a disabled claimant.

Mr. **Bartlett**. Including 504 and 503?

Ms. **Mayerson**. Including 504 and 503.

Mr. **Bartlett**. Mr. Rasmussen?

Mr. **Rasmussen**. I know that has been one of the concerns of employers, and I think there was an effort in the Senate amendment to using 504 to try and bring the ADA and the Rehab Act more in line.

I think that there may be some ways of addressing this, might even be making 503 compatible with ADA, but I think that those concerns have been minimized by the amendment.

Mr. **Bartlett**. Mr. Donovan, do you have an opinion on that?

Dr. **Donovan**. I really don't have a view on that. I am not familiar enough with the amendment.

Mr. **Bartlett**. One last question, Mr. Chairman, I will just ask of each of the witnesses. Do you believe that this legislation should cover Congress for purposes of employment and accommodations and the other purposes? Should Congress be covered under this legislation?

Mr. Rochlin?

Mr. **Rochlin**. I think that this legislation should apply to all.

Mr. **Bartlett**. Ms. Mayerson?

Ms. **Mayerson**. I am happy to see Congress covered.

Mr. **Bartlett**. Mr. Donovan?

Dr. **Donovan**. I would agree.

Mr. **Bartlett**. Mr. Wharen?

Mr. **Wharen**. Yes.

Mr. **Bartlett**. Mr. Rasmussen is going to say——

Mr. **Rasmussen**. I would have happily agree.

Mr. **Bartlett**. Mr. Chairman, I would like unanimous consent to hold the record open briefly to submit some additional written questions, and also hold the record open for Mr. Rasmussen if the NFIB has additional specific suggestions that they would like to submit.

Chairman **Owens**. Let the record show the Chairman also agrees with all the panelists that Congress should be covered. Mr. Payne.

Mr. **Payne**. Thank you very much. I will be very brief. Number one, I agree with almost everything you said, Ms. Mayerson. But, I don't agree that this is a fair and just Act. I think that this Act may be the fairest and most just that we can get through Congress at this time.

Ms. **Mayerson**. I will accept that correction.

Mr. **Payne**. Second, I think that sometimes we may learn as an industry. I heard Mr. Wharen discussed the fact that Port-a-Johns were not available for construction workers, thereby, making it tough for handicapped folks. Mr. Rochlin also mentioned that they do make Port-a-Johns for handicapped. But, I think that maybe the issue is Port-a-Johns, regardless of who they are for, and maybe the construction industry ought to reconsider what it does for its nonhandicapped workers too. Maybe it is not a bad idea to have Port-a-Johns for them. It might make their situation a lot more comfortable.

I totally disagree with most of what Mr. Rasmussen said as it relates to even his industry. I was in the same industry for 15 years or so and handled many of the work place problems as a vice president in charge of personnel.

I don't know if your machines are single-operated, but most of the presses are at least doubled-operated. There is no question that with respect to the rotary, and its sound, you can tell if a tear is coming. You can tell by the sound of the machine that there is going to be a crackup as we called them. If you have an operator with normal hearing you are not disadvantaged by a deaf person because the hearing impaired worker, assists the operator. There is eye contact with the operator in addition to the work being done.

I think that many of the problems that you mentioned are not real problems at all. As a matter of fact, we had a deaf person running the forklift. There were all kinds of lights and sounds, and everybody up the block could hear the forklift, so he didn't need to hear because the workers all really knew where he was and were very alert. So, you know, you can shift things around with less difficulty than what you would really believe.

I think that many of the—ideas discussed are "what if," situations and they are the exception to the rule. It is unfortunate that many times we look at, as you mentioned, a handicapped, wheelchaired person working on a second story beam. Because you are handicapped, it doesn't mean that you're mentally ill also.

I mean, if a person wanted to work on a second story beam and was confined to a wheelchair, in my opinion, I don't think you would find too many people who would apply for something like that.

I think there are many times that we do build up a great fear out of expectation. The question was, should there be a law? Maybe that is the basic question, because there would not be a law if it was not necessary. If people did these things, then we wouldn't have this watered-down version of this ADA legislation.

I simply wanted to make just a couple of those statements because I have had personal experience, as I mentioned, and you even gave good examples.

You cited two things; one, that you have not been inundated with people with disabilities asking for positions that were impossible for them to fill; and, secondly, you gave a very good example of a one-armed photographer. Those two statements almost contradicted everything else that you said. I don't believe you are going to have tremendous numbers of people applying for positions that they know that they cannot fill.

Once again, I think there is no greater fear than fear itself. You know, little children are told to be afraid of the dark because there is something in there. There's nothing in there, Charlie, it is just that it is dark. If you are brought up to feel that in darkness there is a man that floats around, you are always going to be afraid of the dark.

I think the greatest thing that Congress can do is to try to educate business people. The reason all of those nebulous terms are in there is because without it, this bill would really go nowhere.

I mean, I would wonder what "reasonableness" meant. It is also subjective, although there are bases from 503 and 504 which I am not very familiar with because I haven't been here a long time like my colleagues, my learned colleagues on the right. I am new and I am just learning about ADA, and I am going to try to get to 503 and 504.

But I do know that we would not have those terms of "readily available," and "reasonable accommodation," and "readily achievable," if we could really have stronger language.

I believe that punitive damages are out. I think that people should be penalized for what they do wrong, and if they discriminate against someone, they should be penalized, but that is out. That, is un-American.

So it is easier now. You can discriminate. If someone takes a grievance through the court system and it is found out that you did discriminate, from what I understand, there are no punitive damages. As I understand it, the predecessor bill that went nowhere in 1988 had punitive damages in there. However, evidently, it was taken out in order to move the bill right along.

These are just basic points that I wanted to make. Specifically, Mr. Rasmussen, the equipment that we used when we had deaf persons working—I don't know if you use the same type. The old ditty-glazer, which was slower than the Schreiber, and finally the Mustang Hamilton, which is a very, very fast rotary type of equipment which makes a tremendous amount of noise were the types that we used in the business of manufacturing computer forms. This is the same process using laser printer that you use for your industry.

I do want to indicate that we had very successful deaf and handicapped persons who worked for us. I think we did a good job for safety because everyone was more alert. Many injuries are from forklifts and things of that nature, in the normal work place, and we really made sure that everyone was aware that the lift was moving around.

I don't have any specific questions, but I appreciate the opportunity to just listen. It has been very educational, especially from my senior colleagues here, and hopefully we can get this little step for mankind in.

We went to the moon; it was a big giant step for mankind. Here, we are making a small step. I hope that we can have a bill that goes further in the future, but let's try to get this one through.

Thank you, Mr. Chairman.

Chairman Owens. I want to thank all of the panelists. At this point, the hearing is adjourned.

[Whereupon, the hearing concluded at 11:40 a.m.]

[Additional material submitted for the record follows.]

STATEMENT BY
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO
THE EMPLOYMENT OPPORTUNITIES AND SELECT EDUCATION SUBCOMMITTEES
OF
THE HOUSE COMMITTEE ON EDUCATION AND LABOR

ON
H.R. 2273
THE AMERICANS WITH DISABILITIES ACT OF 1989
OCTOBER 2, 1989

AGC is:

- More than 32,500 firms, including 8,000 of America's leading general contracting firms, responsible for the employment of 3,500,000-plus employees;
- 102 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

The Associated General Contractors of America (AGC) welcomes the opportunity to comment on H.R. 2273, "The Americans with Disabilities Act of 1989." AGC supports the goals of this bill, and its Senate companion, S. 933. AGC cannot, however, lend its support to all of the specific provisions of the proposed legislation, because some provisions could have a negative impact on the construction industry's effort to stop unlawful drug use, and to ensure jobsite safety. AGC is also concerned that vague language will waste resources on litigation.

DRUG USE

First, AGC believes that it remains important to ensure that the legislation will not hinder the business community's efforts to discourage unlawful drug use. The construction industry has found that drug users not only cut productivity, but also increase accident rates.

Recent studies reveal that as many as 23% of all American workers use drugs on the job, and that drug use may account for over half of all accidents in the workplace. Some AGC members have found that 30% to 50% of their job applicants cannot pass pre-employment drug tests. One AGC member recently found that 40% of its employees tested positive for drug use after workplace accidents. Responding to its members' concern, AGC has adopted a "zero tolerance" policy that does not tolerate any level of unlawful drug use by anyone in the construction industry.

S. 933 appears to protect the employer's right to test for unlawful drug use, but H.R. 2273 does not. AGC urges the members of the subcommittee to take the Senate's approach, in order to avoid the problem that the Rehabilitation Act of 1973 has created for federal contractors and certain others. Within the last month, a federal court has held that the 1973 statute forbids the Immigration and Naturalization Service to discharge a drug-addicted attorney arrested for cocaine use and possession of narcotics paraphernalia. Nisperos v. Buck, Case No. CC-88-4039-WWS (N.D. Cal. September 12, 1989).

CONSTRUCTION JOBSITES

AGC's second concern is that the proposed legislation will compromise sound employment decisions made in the interest of jobsite safety. The unique nature of the temporary construction jobsite, with its ever-changing structure, makes it impractical, if not impossible, to guarantee the safety and health of all disabled Americans who might seek employment on construction jobsites.

The proposed definition of "disability" is extremely broad. The U.S. Supreme Court has held that elementary school teachers with contagious tuberculosis fit within the similar definition in the 1973 statute. Nassau County School Board v. Arline, 480 U.S. 273 (1987). More importantly, the courts have held that construction workers with congenital back anomalies fit within that definition, even though they risk injury from routine lifting, and other physical work required on construction jobsites. E.E. Black, Ltd. v. Marshall, 497 F.Supp. 1088 (D. Haw. 1980). The construction industry simply cannot afford to employ a helper for everyone susceptible to physical injury from lifting or other work required on construction jobsites.

Most employers have at least the opportunity to amortize the cost of accommodating a disabled individual over a long period of time, or to build the cost into their price structure. Construction employers, however, have neither of these advantages. Construction employers have to amortize the cost of making an accommodation over the short time available to complete a particular project. Construction employers cannot build the cost into their price structure because the cost is not foreseeable at the time when bids are due.

Other terms used in the proposed legislation, such as "reasonable accommodation" and "undue hardship," are simply too vague to assist construction employers in their efforts to comply with the law. These terms are subjective, and will tend to waste resources on litigation.

AGC is cognizant of the recent colloquy between Senator Hatch and Senator Harkin on "reasonable accommodation" and "undue hardship." On September 7, 1989, during the Senate debate on S. 933, Senator Hatch questioned whether that bill takes "the nature of a particular industry into account," and Senator Harkin responded that "each industry, and indeed each separate business, may be unique in the type of accommodation employers are able to provide without significant difficulty or expense." Senator Harkin later stated that "[c]onstruction is unlike manufacturing, and most other types of industries, in that an employer is usually confronted with monitoring multiple worksites at remote locations...."

AGC appreciates this effort to clarify the vague terms in the proposed legislation, but believes that the House of Representatives must do more. The statutory language still invites case-by-case determinations, on specific facts, and without objective guidance.

CONCLUSION

In closing, AGC would like to thank the subcommittee for the opportunity to express these views. AGC strongly supports the cause of the many disabled Americans who simply seek their rightful place in the American workplace. AGC believes that all citizens should be, and are committed to, equal opportunity for all in our society, and in every respect. With that said, AGC urges the subcommittee to exercise the utmost care in the drafting of this legislation to ensure that, unlike recent legislation enacted by Congress, extended debate and corrective legislation does not become necessary later to correct mistakes that maximum care can now avoid.

OPENING STATEMENT OF THE HONORABLE STEVE BARTLETT
ON THE AMERICANS WITH DISABILITIES ACT
BEFORE THE JOINT HEARING OF THE
SUBCOMMITTEES ON EMPLOYMENT OPPORTUNITIES
AND
SELECT EDUCATION
SEPTEMBER 13, 1989

Mr. Chairman, many of us witnessed the passage of the Americans with Disabilities Act in the Senate last Thursday. It was an historic moment for all of us fully committed to furthering the independence of and opportunities available to individuals with disabilities.

The Senate passed bill was the result of intense negotiations among the disability community, the civil rights community, Democrats, Republicans, the President, and business groups. These negotiations were long, were difficult -- but I believe all parties negotiated in good faith, never loosing sight of or disagreeing on the bill's intent -- full civil rights for people with disabilities.

The enthusiasm, the pride, and the expectations among our friends with disabilities are at very high levels, and justifiablely so. Now is our opportunity to demonstrate our commitment and support, in concrete, not rhetorical terms. House Democrats and Republicans should join together and introduce S.933 as passed by the Senate. Each Committee of jurisdiction should use that bill as its legislative vehicle for moving to the House floor.

Such a gesture would make substantive and procedural sense, and reduce the possibility of untimely delays during consideration of the ADA by the House. Many of the most difficult issues have been resolved to the satisfaction of all key players. Do we have the time or the right to reopen these problem areas by working from the House bill as introduced? I think not.

If we work from S.933 as passed by the Senate, it will become apparent that the remaining issues are those that require clarification or refinement, much of which can be done by example. Let me give three illustrations.

First, do we need to allow the possibility a defendant being sued under the ADA, the Rehabilitation Act, and State statutes, simultaneously or sequentially, with the same set of facts? I think not, we could add a preemption provision which makes legal sense and common sense.

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Second, to clarify the meaning of "undue hardship", should we allow it to be measured on a per site basis? I think that's reasonable.

Third, can we clarify defenses, burden of proof, and the role of good faith, so that legal sanctions can be swiftly and fairly applied? I know we can.

As we proceed this morning I urge the witnesses to use the ADA as passed by the Senate as their frame of reference. We need to know what more there is to do, not to undo.

It is now our opportunity to make a contribution to a recent historical event -- let's add to it, not detract from it by revisiting challenges that have been met and overcome.

Thank you, Mr. Chairman.

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101st CONGRESS
1st Session

H. R. 2273

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1989

Mr. Coelho (for himself, Mr. Fish, Mr. Hawkins, Mr. Conte, Mr. Owens of New York, Mr. Ackerman, Mr. Atkins, Mr. Beilenson, Mr. Bennett, Mr. Borski, Mr. Bosco, Mrs. Boxer, Mr. Campbell of California, Mr. Cardin, Mr. Clay, Mr. Crockett, Mr. de Lugo, Mr. Donnelly, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edwards of California, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Frost, Mr. Fuster, Mr. Gejdenson, Mr. Gordon, Mr. Hayes of Illinois, Mr. Hoyer, Mr. Hutto, Mr. Jacobs, Mr. Jontz, Mr. Kastenmeier, Mr. Kleczka, Mr. Levin of Michigan, Mr. Lewis of Georgia, Mr. Manton, Mr. Matsui, Mr. McCloskey, Mr. McDermott, Mr. McHugh, Mr. Mfume, Mr. Miller of California, Mr. Mineta, Mrs. Morella, Mr. Oberstar, Mr. Pallone, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Connecticut, Ms. Schneider, Mr. Shays, Mr. Smith of Vermont, Mr. Solarz, Mr. Studds, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Waxman, Mr. Weiss, Mr. Wise, Mr. Wolpe, Mr. Florio, Mr. Williams, Mr. Roybal, Mr. Morrison of Connecticut, Mr. Brown of California, Mr. Dellums, Mr. Sabo, Mr. Espy, Mr. Dixon, Mr. Miller of Washington, Mr. Young of Alaska, Mr. Foglietta, Mr. Rangel, Mr. Garcia, Mrs. Saiki, Mr. Martinez, Mr. Mavroules, Mr. Conyers, Mr. Markey, Mr. Visclosky, Mr. Kildee, and Mrs. Collins) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Energy and Commerce, Public Works and Transportation, and the Judiciary

August 29, 1989

Additional sponsors: Mr. Towns, Mrs. Kennelly, Mr. Gray, Mr. Wheat, Mr. Gephardt, Mr. Levine of California, Mr. Ford of Tennessee, Mr. Rahall, Mr. Akaka, Mr. Moakley, Mr. Lantos, Mr. Robinson, Mr. Sawyer, Mr. McNulty, Mr. Brennan, Mr. Downey, Mr. Guarini, Mr. Yates, Mr. Gilman, Mr. Lehman of Florida, Mr. Frenzel, Mrs. Unsoeld, Mr. Bryant, Mr. Boehlert, Mr. Owens of Utah, Mr. Dicks, Mr. Machtley, Mrs. Schroeder, Mr. Bonior, Mr. Carper, Mr. Kennedy, Mr. Lehman of California, Mr. Durbin, Mr. Coyne, Mr. Walgren, Mr. Horton, Mr. Kolter, Mr. Berman, Mr. Bilbray, Mr. Boucher, Mr. Gonzalez, Mr. Engel, Mr. AuCoin, Mr. Fauntroy, Mr. Mrazek, Mr.

Ford of Michigan, Mr. Stokes, Mrs. Boggs, Mr. Lipinski, Mr. Bustamante, Mr. Hall of Ohio, Mr. Dorgan of North Dakota, Mr. Volkmer, Mr. Walsh, Ms. Kaptur, Mr. Poshard, Mr. Neal of Massachusetts, Mr. Roe, Mr. Derrick, Mr. Jones of Georgia, Mr. Savage, Mr. Bates, Mr. Hertel, Mr. Torricelli, Mr. Jones of North Carolina, Mr. Panetta, Mr. Ravenel, Mr. Traficant, Ms. Oakar, Mr. DeFazio, Mr. Watkins, Mr. Fascell, Mr. Payne of New Jersey, Mr. Ridge, Mr. Sikorski, Mr. Stark, Mr. Torres, Mr. Hughes, Mrs. Byron, Mr. Smith of Florida, Mr. Hochbrueckner, Mr. Wilson, Mr. Leland, Ms. Slaughter of New York, Mr. Costello, Mr. Evans, Mr. Darden, Mr. Skaggs, Mr. Yatron, Mr. Sangmeister, Mr. Jenkins, Mr. Johnson of South Dakota, Mr. Green, Mr. Dyson, Mr. Clement, Mr. Slattery, Mr. Kostmayer, Mr. Nowak, Mr. Scheuer, Mr. Carr, Mr. Hamilton, Mr. McMillen of Maryland, Mr. Swift, Mr. Flake, Mr. Hubbard, Mr. Coleman of Texas, Mr. Chapman, Mr. Eckart, Mr. Regula, Ms. Long, Mr. Early, Mr. Rose, Mr. Tallon, Mr. Bevill, Mrs. Lowey of New York, Mr. Gibbons, Mr. Wyden, Mr. Neal of North Carolina, Mr. Sharp, Mr. Campbell of Colorado, Mr. Hoagland, Mr. Andrews, Mr. Annunzio, Mr. Aspin, Mr. Murphy, Mr. Glickman, Mr. Perkins, Mr. Skelton, Mr. Weber, Mrs. Johnson of Connecticut, Mr. Rowland of Georgia, Mr. Price, Mr. Gunderson, Mr. Staggers, and Mr. Porter

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A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
Sec. 502. Telecommunications relay services.
Sec. 503. Regulations.
Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

(A) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(B) Affording an opportunity to participate in or benefit from a service, program, activity, bene-

fit, job, or other opportunity that is not equal to that afforded others.

(C) Providing a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(D) Providing a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the individual or class of individuals with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(E) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates.

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY.—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in

the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

(C) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other

opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES.—

(1) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS.—The term "qualification standards" may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not

include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 203. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 204. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 205. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–8, and 2000e–9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

TITLE III—PUBLIC SERVICES

SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a

State or board, commission or other instrumentality of a State and political subdivision.

SEC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transporta-

tion, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered

discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29

U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary of

Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 304, concerning public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any for-

eign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) IN GENERAL.—The term "public accommodation" means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) INCLUSIONS.—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) **Public transportation.**—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) **General Rule.**—No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) **Construction.**—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, .services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations

unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403—

(A) a failure to provide a level of transportation services to individuals with disabilities, in-

cluding individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class

of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 404. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) OTHER PROVISIONS.—Not later than 240 days after the date of enactment of this Act, the Attorney General shall

issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide indi-

viduals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in car-

rying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) SEPARATE OFFENSES.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) Relationship Among Titles.—The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

SEC. 602. PROHIBITION AGAINST RETALIATION.

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 603. STATE IMMUNITY.

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 605. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 606. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

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HEARING ON H.R. 2273, AMERICANS WITH DISABILITIES ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

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HEARING ON H.R. 2273, AMERICANS WITH DISABILITIES ACT OF 1989

FRIDAY, OCTOBER 6, 1989

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Indianapolis, IN.

The subcommittee met, pursuant to notice at 2:30 p.m., in Room 137, University Place Conference Center, Indianapolis, Indiana, Hon. Major R. Owens [Chairman] presiding

Members present. Representatives Owens and Jontz

Staff present: Bob Tate, Martha Phipps, Alan Lovesee, and Randy Johnson.

Mr. Owens. The Subcommittee on Select Education of the Committee on Education and Labor is now in session.

This afternoon marks the fourth House Select Education Subcommittee hearing on the "Americans with Disabilities Act." In the past year, the subcommittee conducted field hearings on the same legislation in Boston, Massachusetts and Houston, Texas with an overwhelming support expressed for the legislation in both parts of the country.

In each instance the subcommittee was the wiser for having heard the testimony of, and having spoken to, dozens of individuals who either have a disability themselves or are concerned in some fashion with people with disabilities.

We are likewise delighted to hear this afternoon from citizens of Indiana. We have also heard from public officials of all walks of life, not only those who are responsible for programs which serve people with disabilities but those who are responsible for public transportation, for public accommodations and for employment programs.

Following passage of the bill in the Senate by a 76 to 8 vote, and this was accomplished with the support of the President, the House now seeks to take the bill up for consideration later this month.

The Speaker has indicated that he would like to have the Americans with Disabilities Act on the floor before the end of October. We hope this will be the last field hearing before this historic legislation is passed.

I would like to take this opportunity to compliment Congressman Jim Jontz, not only for the hard work that he and his staff have put forth in organizing today's hearing but also for his diligence and effective representation of the interests of people with disabilities.

The citizens of Northwest Indiana are fortunate to have such an able, industrious representative in Washington. I look forward to working closely with Jim for the final passage of the Americans With Disabilities Act in the House this fall.

I yield to Congressman Jontz for an opening statement.

Mr. JONTZ. Thank you very much, Mr. Chairman. I want to welcome everyone here this afternoon and particularly welcome you, Mr. Chairman and thank you for your willingness to bring this hearing to Indiana.

We have had some excellent field hearings previously on this subject, the American Disabilities Act, so I thought it might be a good idea to ask you to come to the midwest or a rural community to hear from the many people with disabilities in our state who have valid concerns which should be incorporated into the Act.

Now, I appreciate your leadership position in the Congress, Mr. Chairman, on this issue. As we were visiting earlier today, it was actually a Hoosier, former Congressman, John Brademas, who was the originator and I believe the first chair of the Select Education Subcommittee.

So I am delighted to have the subcommittee hearing in Indiana today and to have you here as our guest and thank you for taking the time to conduct this hearing.

I want to express my appreciation to everyone who is here today as a show of support here in Indiana for the Americans With Disabilities Act.

This Act is the most important legislation affecting the lives of people with disabilities that has been considered by the Congress for a long time.

Your presence here is representative of the strong support this legislation has here in our state and throughout the entire country.

The Americans With Disabilities Act is a comprehensive piece of legislation that will insure that people with disabilities are guaranteed the same civil rights that every other group of Americans is guaranteed.

People with disabilities are entitled to lead independent and productive lives, to make choices for themselves, and to be integrated in mainstream into society.

These are inalienable civil rights that must be guaranteed to every American regardless of race, religion, or disability.

The Americans With Disabilities Act addresses five basic areas, employment, transportation, public accommodation, public services, and communication.

Equal access to each of these areas is essential for all Americans who want to lead independent and productive lives.

The Americans With Disabilities Act will provide enforceable standards. It addresses discrimination against individuals with disabilities and insures the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

I have heard some people say that the ADA places too heavy a burden on employers and businesses because they will have to make expensive accommodations.

The fact is, in my opinion, most employers will actually benefit from the Americans With Disabilities Act. It is not excessively costly to provide reasonable accommodations.

Most employees with disabilities do not require any accommodation whatsoever and on the average, necessary accommodations have been found to cost less than $50.

In addition, employers will be able to gain valuable employees and potential consumers and customers by making it possible to consider and hire people with disabilities. Increase accessibility of business facilities will give employers increased flexibility in obtaining and retaining employees.

By making places of business accessible, business owners will be able to attract new customers who are no longer kept away by physical barriers.

By reducing or eliminating architectural, transportation, communication barriers that prevent or restrict individuals with disabilities from living independent, productive lives in the mainstream of American society, all of society will benefit.

An accessible environment will not only benefit people with disabilities but will affect nearly everyone at some point in their lives.

Among those who will benefit from increased accessibility are children, parents pushing their children's strollers, persons carrying luggage or groceries, the temporarily disabled, the elderly, and the family and friends of persons with physical disabilities.

For too long, our society has been structured in a way that many opportunities, great and small, have been denied to people with disabilities.

It is time for the needless obstacles, both physical and attitudinal, to be removed. It is time to pass the Americans With Disabilities Act.

Thank you very much again, Mr. Chairman for bringing the hearing to Indiana today. I look forward to hearing the testimony of the witnesses who will share their views on this historic legislation with our committee.

[The prepared statement of Hon. Jim Jontz follows:]

1693

NEWS FROM
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5th Congressional District, Indiana

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STATEMENT OF CONGRESSMAN JIM JONTZ AT THE
SUBCOMMITTEE ON SELECT EDUCATION FIELD HEARING
ON THE AMERICANS WITH DISABILITIES ACT OF 1989
INDIANAPOLIS, INDIANA, OCTOBER 6, 1989

Thank you Mr. Chairman and thank you to all of you who came here today to show your support of the Americans with Disabilities Act. This Act is the most important legislation affecting the lives of people with disabilities ever considered by the Congress. Your presence here is representative of the strong support this legislation has here in Indiana and throughout the entire country.

The Americans with Disabilities Act is a comprehensive piece of legislation that will ensure that people with disabilities are guaranteed the same civil rights that every other group of Americans is guaranteed. People with disabilities are entitled to lead independent and productive lives, to make choices for themselves, and to be integrated and mainstreamed into society. These are inalienable civil rights that must be guaranteed to every American, regardless of race, religion or disability.

The Americans with Disabilities Act addresses five basic areas: employment, transportation, public accommodations, public services, and communication. Equal access to each of these areas is essential for all Americans who want to lead independent and productive lives. The Americans with Disabilities Act will provide enforceable standards addressing discrimination against individuals with disabilities and ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

I have heard people say that the ADA places a heavy burden on employers and businesses because they will have to make expensive accommodations. The fact is, most employers will actually benefit from the ADA. It isn't costly to provide reasonable accommodations. Most employees with disabilities do not require any accommodation whatsoever, and, on the average, necessary accommodations have been found to cost less than $50.

In addition, employers will be able to gain valuable employees and potential consumers and customers. By making it possible to consider and hire people with disabilities, increased accessibility of business facilities will give employers increased flexibility in obtaining and retaining employees. By making places of business accessible, business owners will be able to attract new customers who are no longer kept away by physical barriers.

By reducing or eliminating the architectural, transportation, and communication barriers that prevent or restrict individuals with disabilities from living independent and productive lives in the mainstream of American society, all of society will benefit.

An accessible environment will not only benefit people with disabilities, but will affect nearly everyone at some point in their life. Among those who benefit from increased accessibility are children, parents pushing their children in strollers, persons carrying luggage or groceries, the temporarily disabled, the elderly, and the families and friends of persons with physical disabilities.

For too long our society has been structured in a way that many opportunities, great and small, have been denied to people with disabilities. It is time for the needless obstacles, both physical and attitudinal, to be removed. It is time to pass the Americans with Disabilities Act.

Thank you Mr. Chairman. I look forward to hearing the testimony of the witnesses who will share their views on this historic legislation with the Committee.

Mr. Owens. We are pleased to welcome as our first set of panelists: Mr. Greg Fehribach, Chairman of the Indiana Governor's Council on People with Disabilities; Barry Chambers, the Commissioner of the Indiana Department of Human Services; Deanna Durrett of the Commission on Mental Health; and Muriel and Chris Lee, Producer and Playwright of "Always a Chance for Change."

I do not think Muriel and Chris Lee have arrived yet but they can join the panel as soon as they arrive. I would like to note, for the sake of the panelists, that we have copies of your written testimony which will be entered into the record in its entirety.

Because we are trying to hear from a number of witnesses this afternoon, there is a limitation on time. We ask that you speak for only five minutes.

However, in the questioning period, you will have a chance to elaborate on those points that you cannot cover while you are speaking. We will begin with Mr. Fehribach.

STATEMENT OF GREG FEHRIBACH, CHAIRMAN, INDIANA GOVERNOR'S COUNCIL ON PEOPLE WITH DISABILITIES

Mr. Fehribach. Thank you, Mr. Chairman, Mr. Jontz. On behalf of Evan Bayh of the State of Indiana, we would like to thank you for coming and holding this hearing here in Indiana.

We believe that Hoosiers present a cross-section and possibly a good group of people that might be able to shed some light on the committee as far as passing the Americans With Disabilities Act.

As you noted, my name is Greg Fehribach and I wear several hats. I am an attorney practicing law with the law firm of Timmons, Endsley, Chavis, Baker, and Lewis.

And I am also the Chairman of the Governor's Council on People with Disabilities.

Moreover, I am a disabled American. My disability is one that necessitates my use of an electric wheelchair and specially equipped van. I am presently building a home in downtown Indianapolis and I enjoy various recreational activities.

My educational background is from Ball State University where I obtained a Bachelor of Science Degree and a Master of Art's Degree. I have also obtained a Juris Doctor from the University of Ohio, College of Law.

Mr. Chairman, Mr. Jontz, I submit I am one of the lucky ones. There are many citizens in this nation who would cherish the opportunity to be a taxpayer like myself.

Disabled Americans comprise the largest group of minority voters in the union today. And it is this group of voters that often burden tax roles as opposed to contribute to them.

The ADA is a necessary step in alleviating what is now a burden on an already strained budget. Passage of this bill would be an active step to eliminate discrimination against disabled Americans thereby giving the disabled American the opportunity to participate in and benefit from employment and other advantages that able bodied citizens are already afforded.

Many consider the language of this Act to be burdensome as Congressman Jontz has already noted. Yet, we must consider the burdensome costs that citizens who not able to contribute, that a citizen who is not able to contribute to his own health and well being places on society today.

Those who feel it is cheaper to institutionalize a citizen than it is to work side by side with that same citizen have a false perception.

I have worked in various jobs since I was 16 years old. Very little if any money has ever been spent by my employers to allow me the right to work.

At the age of 31, I will pay more tax per capita than 60 percent of Americans. Because I have had an opportunity, I will not cost the taxpayers on the average between $2,000 and $5,000 per month for my care and maintenance.

A.D.A. will give other disabled Americans an opportunity that I have already had. A.D.A. will allow disabled Americans the privilege of paying income tax. It will prevent them from using the welfare system for their care and maintenance.

Transportation is essential for disabled persons to maintain self-sufficiency. There is not one of us in this room today who does not need some form of transportation in order to pursue employment, to recreate, or to contribute effectively to society as a whole.

Disabled people are disabled by the present transportation system in America. But ADA will allow disabled Americans to become differently able to use transportation that necessity dictates.

The disabled user of transportation will also pay the same taxes for the privilege of transportation that all other people pay.

Thereby again, we will be contributing to the coffers as opposed to draining them.

There's a Constitutional right to travel throughout this great land. A.D.A. simply assures that disabled Americans have the right to travel and use transportation which they have not previously been able to exercise prior to this legislation.

Disabled people also have the right to fair and accommodating housing. Institutionalization is not fair nor is it accommodating.

Disabled people have historically been considered sick and in need of quasi-medical surroundings in which to live. This is a misconception. A disabled person would cherish the opportunity to pay property tax or any other tax that would result from ownership or occupancy in their own home.

One factor that anchors the concept of Americana is the premise that a man's home is his castle. As a disabled person striving for independence, I would consider the opportunity of occupying a home which promotes this independence, a true treasure.

A.D.A. will insure the Fourth and Fourteenth Amendment right that the rest of Americans take for granted. It is an assurance for the disabled that independence is a goal and privacy is a desire that often seems unattainable.

Mr. Chairman, Mr. Jontz, each night the evening news depicts citizens from all over the world striving to become free and independent. The Berlin Wall and the fences that stretch between East and West Germany have held back the migration for East Germans to West Germany are small hurdles compared to the walls of independence that the disabled persons have been unable to scale.

Additionally, the blacks in South Africa have more hope in attaining equality in the job place than does a disabled person in

America. For a black in South Africa is allowed to work. But the disabled American is encouraged to stay home.

Therefore, I encourage the Congress of the United States to, one, deliver independence to disabled Americans. Two, to relieve the able-bodied American of a financial burden that need not exist.

Three, to pass the Americans With Disabilities Act.

In closing, I would like to remember a little history. In 1776, we fought the war of independence for those truths which at that time were proclaimed to be self-evident. In 1989 the disabled American is still striving for life, liberty, and the pursuit of happiness.

Hopefully, with the passage of this bill we will be able to achieve our independence. Thank you.

[The prepared statement of Greg Fehribach follows:]

TESTIMONY FOR
THE AMERICANS WITH DISABILITIES ACT

BY:

GREGORY S. FEHRIBACH
ATTORNEY AT LAW
CHAIRMAN, GOVERNOR'S PLANNING COUNCIL
FOR PEOPLE WITH DISABILITIES

AT:

INDIANA UNIVERSITY-PURDUE UNIVERSITY
AT INDIANAPOLIS
CONFERENCE CENTER

OCTOBER 6, 1989

Mr. Chairman and Committee Members:

My name is Gregory S. Fehribach. I am an attorney practicing law with the law firm of Timmons, Endsley, Chavis, Baker & Lewis, 120 E. Market St., #777, in Indianapolis, State of Indiana, 46204. Additionally, I am Chairman of the Governor's Council for People With Disabilities, and I AM A DISABLED AMERICAN.

My disability is one that necessitates my use of an electric wheelchair and a specially equipped van. I am presently building a home in downtown Indianapolis and I enjoy various recreational activities. My educational background is from Ball State University, Muncie, Indiana, where I obtained a Bachelor of Science and a Master of Arts degree. My law degree was granted from Ohio Northern University, College of Law. Mr. Chairman, I AM ONE OF THE LUCKY ONES.

There are many citizens in this Nation who would cherish the opportunity to be a taxpayer like myself. Disabled Americans comprise the largest group of minority voters in the Union today. These voters often burden the tax roles as opposed to contributing to them. The Americans With Disabilities Act, (ADA), is a necessary step in alleviating what is now a burden to an already strained budget. Passage of this Bill will be an active step to eliminate discrimination against the Disabled American. Thereby giving the Disabled American the opportunity to participate in and benefit from employment and other advantages that able bodied citizens are afforded.

Many consider the language of this Act to be burdensome, yet we must consider the burdensome costs that a citizen who is not able to contribute to his own health and well being, places on society. Those who feel it is cheaper to institutionalize a citizen than it is to work side by side with that same citizen have a false perception. I have worked in various jobs since I was sixteen (16) years old. Very little if any money was spent by my employers to allow me the right to work. At the age of 31, I will pay more tax per capita than 60% of other Americans. Because I have had an opportunity I will not cost the taxpayers $2,000 - $5,000 per month for my care and maintenance. ADA gives other Disabled Americans an opportunity. The ADA will allow disabled people the privilege of PAYING INCOME TAX and it will prevent them from using the welfare system for their care and maintenance.

Transportation is essential for a disabled person to maintain self-sufficiency. There is not one of us in this room today who does not need some form of transportation in order to pursue employment, to recreate, or contribute effectively to society as a whole. Disabled people are disabled by the present transportation system in America today, but ADA will allow the disabled to become "differently able" to use transportation as necessity dictates. This disabled user of transportation will PAY THE SAME TAXES FOR THE PRIVILEGE OF TRANSPORTATION that all others pay. Thereby again we will be contributing to our coffers as opposed to draining them. There is a Constitutional right to travel throughout this great land. ADA simply ensures that the Disabled American has the right to travel and use transportation which they have not been able to adequately exercise prior to this legislation.

Disabled people also have a right TO FAIR AND ACCOMMODATING HOUSING. Institutionalization is not fair nor is it accommodating. Disabled people have historically been considered sick and in need of a quasi-medical surrounding in which to live. This is a misconception. The DISABLED PERSON WOULD CHERISH THE OPPORTUNITY TO PAY PROPERTY TAX OR ANY OTHER TAX that would result from ownership or occupancy in their own home. One factor that anchors the concept of Americana is the premise that a man's home is his castle. As a disabled person striving for independence, I would consider the opportunity of occupying a home which promotes this independence a true treasure. ADA ensures the 4th and 14th Amendment rights that the rest of Americans take for granted. It is an assurance for the Disabled whose INDEPENDENCE IS A GOAL AND PRIVATELY A DESIRE that often seems unattainable.

Mr. Chairman and Committee Members, each night the evening news depicts citizens from all over the world striving to become free and independent. The Berlin Wall and the fences that have held back East Germans from migrating to West Germany, are small hurdles compared to the walls of independence that the disabled people have been unable to scale. The Blacks in South Africa have more hope in achieving equality at the job place than does the disabled person in America. The Black South African is allowed to work but the disabled American is encouraged to stay at home.

Therefore I encourage the Congress of the United States:

(1) to deliver independence to the Disabled American;

(2) to relieve the able-bodied American of a financial burden that need not exist;

(3) to pass the Americans With Disabilities Act.

In 1776 we fought the war of independence for those truths which we proclaim to be self evident. In 1989 the Disabled American is still striving for life, liberty and the pursuit of happiness. Hopefully through the passage of this Bill we too will be able to achieve our INDEPENDENCE.

Respectfully submitted,

Gregory S. Fehribach

Gregory S. Fehribach

Mr. OWENS. Thank you. Mr. Barry Chambers.

STATEMENT OF BARRY CHAMBERS, COMMISSIONER, INDIANA DEPARTMENT OF HUMAN SERVICES

Mr. CHAMBERS. Thank you, Mr. Chairman, Mr. Jontz. I am the Commissioner of the Indiana Department of Human Services. We are a state agency in Indiana that provides services to more than one million needy Hoosiers.

We provide an array of services to people that are elderly, people with disabilities, children, families and people living in poverty.

It is time now though to end discrimination against people with disabilities. It is time to take this next step in the civil rights movement. It is time to pass the Americans With Disabilities Act.

Discrimination in any form is not acceptable in a country that prides itself on the belief that every person is entitled to an opportunity to be a contributing member of society.

The Americans With Disabilities Act moves equal rights for people with disabilities to a category of official compassion by guaranteeing every individual equal access in areas of employment, public transportation, accommodations, and communication.

Those of us who do not suffer from a disabling condition have a tendency to take our abilities for granted. We do not realize that some of the things that we do are not possible for all individuals.

Countless numbers of Americans get up every day to take a bus to work, to have lunch at their favorite restaurant, to stop to use a pay telephone.

But there are people that cannot do these things. They cannot get on a bus because they use a wheelchair. Is it not ironic that those who cannot walk are also unable to ride. They cannot reach a pay telephone or use a water fountain or find a hotel room that will allow them mobility to perform routine functions of daily living.

The benefits to be gained with the passage of this legislation will be felt in the workplace, in the marketplace, and in the homes of people with disabilities throughout this country.

The contribution made by people with disabilities to their communities cannot be calculated in dollars and cents. There are those that see things only in terms of costs associated with the passage of this bill.

I ask you to consider the cost of having individuals who could be gainfully employed on tax supported programs. I ask you to consider the cost of a system that does not allow people the opportunity to be responsible citizens and contributing members of society for lack of the most basic considerations.

Surely it takes no genius to see that the contributions of these individuals as wage earners and taxpayers will certainly outweigh the initial costs of providing these kinds of reasonable accommodations.

In our country, people are judged by their abilities. The cruel joke is that everybody does not have the opportunity to demonstrate those abilities.

We hear a lot about the American dream, the equality of all citizens, the pursuit of life, liberty, and happiness in one of the richest nations in the world. As we enter the decade of the 90's, American technology has shown us a world that our parents only dreamed of.

The time has come to end discrimination, to guarantee equal opportunity to 43 million Americans with disabilities. To extend the American dream to all individuals with disabilities.

I know we have the ability to make changes in our physical surroundings, to make our world accessible to all. I know that we recognize our moral obligation to end discrimination against people with disabilities.

The Federal Government must set this example. No single piece of legislation will immediately solve all of the problems facing people with disabilities. But the ADA is an essential foundation upon which to build.

This legislation will provide the vital support for disability policies and encourage people with disabilities to work productively and to live independently in their communities.

Public hearings held since this legislation was initially introduced in 1988 have provided much first-hand testimony to legislators and community leaders that demonstrates discrimination and lack of access facing individuals who want to exercise their right to be contributing members of society.

Justin Durrett, a former commissioner of the Rehabilitation Services Administration chaired a public hearing in Indianapolis last year on behalf of the Task Force on Rights and Enpowerments of Americans with Disabilities.

More than 100 people attended that hearing. One person after another related personal examples of discrimination they faced.

Mr. Durrett, speaking about the ADA said, "Thirty-seven years in the human rights movement has convinced me absolutely that we will continue to receive leftover rights, leftover jobs, and leftover resources for services until the Nation makes a firm, formal, and forceful statement to all of its citizens that people with disabilities are equal everyday, everywhere just like everyone else."

It is time for the Nation to make this statement. I ask you to remember the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the recent amendments to the Fair Housing Act. Each of these pieces of legislation was formed by the conscious of a nation.

This bill is the first step in eliminating those situations which limit an individual's potential for work and normal living. I ask your support for the Americans With Disabilities Act. Thank you.

[The prepared statement of Barry Chambers follows:]

State of Indiana • Department of Human Services
251 North Illinois St., P. O. Box 7083, Indianapolis, IN 46207-7083, 317-232-7000
1-800-545-7763
Evan Bayh, Governor

TESTIMONY ON THE AMERICANS WITH DISABILITIES ACT

PRESENTED BY
BARRY A. CHAMBERS, COMMISSIONER
INDIANA DEPARTMENT OF HUMAN SERVICES

University Place Conference Center
IUPUI
October 6, 1989

An Equal Opportunity / Affirmative Action Employer

THE TIME HAS COME TO END DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES.

....TO TAKE THE NEXT STEP IN AMERICA'S CIVIL RIGHTS MOVEMENT.

....TO PASS THE AMERICANS WITH DISABILITIES ACT.

DISCRIMINATION IN ANY FORM IS NOT ACCEPTABLE IN A COUNTRY THAT PRIDES ITSELF ON THE BELIEF THAT EVERY PERSON IS ENTITLED TO AN OPPORTUNITY TO BE A CONTRIBUTING MEMBER OF SOCIETY.

THE AMERICANS WITH DISABILITIES ACT MOVES EQUAL RIGHTS FOR PEOPLE WITH DISABILITIES FROM THE CATEGORY OF "OFFICIAL COMPASSION" BY GUARANTEEING EVERY INDIVIDUAL EQUAL ACCESS IN AREAS OF EMPLOYMENT, PUBLIC TRANSPORTATION, ACCOMODATIONS AND COMMUNICATION.

THOSE OF US WHO DO NOT SUFFER FROM A DISABLING CONDITION HAVE A TENDENCY TO TAKE OUR ABILITIES FOR GRANTED.

WE DON'T REALIZE THAT SOME OF THE THINGS WE DO ARE NOT POSSIBLE FOR ALL INDIVIDUALS.

COUNTLESS NUMBERS OF AMERICANS GET UP EVERY DAY AND TAKE A BUS TO WORK, HAVE LUNCH AT THEIR FAVORITE RESTAURANT, STOP TO USE A PAY PHONE.

BUT THERE ARE PEOPLE WHO CAN'T DO THOSE THINGS. THEY CAN'T GET ON A BUS BECAUSE THEY USE A WHEEL CHAIR.

ISN'T IT IRONIC THAT THOSE WHO CAN'T WALK ARE ALSO UNABLE TO RIDE.

THEY CAN'T REACH A PAY TELEPHONE, OR USE A WATER FOUNTAIN OR FIND A HOTEL ROOM THAT WILL ALLOW THEM THE MOBILITY TO PERFORM THE ROUTINE FUNCTIONS OF DAILY LIVING.

THE BENEFITS TO BE GAINED WITH THE PASSAGE OF THIS LEGISLATION WILL BE FELT IN THE WORKPLACE, IN THE MARKETPLACE, AND IN THE HOMES OF PEOPLE WITH DISABILITIES THROUGHOUT THE COUNTRY.

THE CONTRIBUTION MADE BY PEOPLE WITH DISABILITIES TO THEIR COMMUNITIES CAN NOT BE CALCULATED IN DOLLARS AND CENTS.

THERE ARE THOSE WHO SEE ONLY THE COSTS INVOLVED IN THE PASSAGE OF THIS BILL.

I ASK YOU TO CONSIDER THE COST OF HAVING INDIVIDUALS WHO COULD BE GAINFULLY EMPLOYED ON TAX SUPPORTED PROGRAMS.

I ASK YOU TO CONSIDER THE COST OF A SYSTEM THAT DOES NOT ALLOW PEOPLE THE OPPORTUNITY TO BE RESPONSIBLE CITIZENS AND CONTRIBUTING MEMBERS OF SOCIETY FOR LACK OF THE MOST BASIC CONSIDERATIONS.

SURELY IT TAKES NO GENIUS TO SEE THAT THE CONSTRIBUTIONS OF THESE INDIVIDUALS AS WAGE EARNERS AND TAXPAYERS WILL CERTAINLY OUTWEIGH THE INITIAL COSTS OF ACCOMODATING THEM.

IN OUR COUNTRY PEOPLE ARE JUDGED BY THEIR ABILITIES.

THE CRUEL JOKE IS THAT EVERYONE DOES NOT HAVE THE OPPORTUNITY TO DEMONSTRATE THOSE ABILITIES.

WE HEAR A LOT ABOUT THE AMERICAN DREAM, THE EQUALITY OF ALL CITIZENS, THE PURSUIT OF LIFE, LIBERTY, AND HAPPINESS IN ONE OF THE RICHEST NATIONS IN THE WORLD.

AS WE ENTER THE DECADE OF THE NINETIES AMERICAN TECHNOLOGY HAS SHOWN US A WORLD THAT OUR PARENTS ONLY DREAMED OF.

THE TIME HAS COME TO END DISCRIMINATION, TO GUARANTEE EQUAL OPPORTUNITY TO 43 MILLION PEOPLE WITH DISABILITIES.

TO EXTEND THE AMERICAN DREAM TO ALL INDIVIDUALS WITH DISABILITIES.

I KNOW THAT WE HAVE THE ABILITY TO MAKE OUR PHYSICAL SURROUNDING ACCESSABLE TO ALL.

I ALSO KNOW THAT WE RECOGNIZE OUR MORAL OBLIGATION TO END DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES.
THE FEDERAL GOVERNMENT MUST SET THE EXAMPLE.

NO SINGLE PIECE OF LEGISLATION WILL IMMEDIATELY SOLVE ALL OF THE PROBLEMS FACING PEOPLE WITH DISABILITIES.

BUT, THE AMERICANS WITH DISABILITIES ACT IS AN ESSENTIAL FOUNDATION UPON WHICH TO BUILD.

THIS LEGISLATION WILL PROVIDE VITAL SUPPORT FOR DISABILITY POLICIES THAT ENCOURAGE PEOPLE WITH DISABILITIES TO WORK PRODUCTIVELY AND TO LIVE INDEPENDENTLY IN THEIR HOME COMMUNITIES.

PUBLIC HEARINGS HELD SINCE THIS LEGISLATION WAS INITIALY INTRODUCED IN 1988, HAVE PROVIDED FIRST HAND TESTIMONY TO LEGISLATORS AND COMMUNITY LEADERS, THAT DEMONSTRATES THE DISCRIMINATION AND LACK OF ACCESS FACING INDIVIDUALS WHO WANT TO EXERCISE THEIR RIGHT TO BE CONTRIBUTING MEMBERS OF SOCIETY.

JUSTIN DART, A FORMER REHABILITATION SERVICES ADMINISTRATION COMMISSIONER, CHAIRED A PUBLIC HEARING IN INDIANAPOLIS LAST YEAR ON BEHALF OF THE TASK FORCE ON RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES.

MORE THAN 100 PEOPLE ATTENDED THE HEARING. ONE PERSON AFTER ANOTHER RELATED PERSONAL EXAMPLES OF DISCRIMINATION THEY HAVE FACED.

MR. DART, SPEAKING ABOUT THE AMERICANS WITH DISABILITIES ACT, SAID, "THIRTY-SEVEN YEARS IN THE HUMAN RIGHTS MOVEMENT HAS CONVINCED ME ABSOLUTELY THAT WE WILL CONTINUE TO RECEIVE LEFT OVER RIGHTS AND LEFT OVER JOBS AND LEFT OVER RESOURCES FOR SERVICES UNTIL THE NATION MAKES A FIRM, FORMAL AND ENFORCEABLE STATEMENT TO ALL OF ITS CITIZENS THAT PEOPLE WITH DISABILITIES ARE EQUAL EVERY DAY AND EVERY WHERE, JUST LIKE EVERYONE ELSE."

IT'S TIME FOR THE NATION TO MAKE THAT STATEMENT.

I ASK YOU TO REMEMBER THE CIVIL RIGHTS ACT OF 1964, THE REHABILITATION ACT OF 1973 AND THE RECENT AMENDMENTS TO THE FAIR HOUSING ACT.

EACH OF THESE PIECES OF LEGISLATION WAS FORMED BY THE CONSCIENCE OF A NATION.

THIS BILL IS THE FIRST STEP IN ELIMINATING THOSE SITUATIONS WHICH LIMIT AN INDIVIDUALS POTENTIAL FOR WORK AND NORMAL LIVING.

Mr. OWENS. Thank you. Deanna Durrett.

STATEMENT OF DEANNA DURRETT, FOR JOSEF REUM, INDIANA DEPARTMENT OF MENTAL HEALTH

Ms. DURRETT. Thank you, Mr. Chairman. Thank you, Mr. Jontz. I am here on behalf of the Commissioner of the Indiana Department of Mental Health, Josef Reum. And this is his testimony.

Thank you for the opportunity to submit written testimony in support of the adoption of the Americans With Disabilities Act. As Commissioner of the Indiana Department of Mental Health, I am delighted to offer whole hearted support for this landmark legislation.

It has been long in coming and will be of benefit to our entire citizenry. The number of people who experience a disability in their lives grows with each passing day.

This fact is due in part to tremendous advances in medical care and assistive technology and the aging of our nation as a whole.

The protections under S. 933 do not extend special protections or status to people with disabilities. They protect the right of each and every citizen to age, to become ill, to be rehabilitated after an injury, to continue to participate fully in the economic, civic, social, recreational, and spiritual life of our community.

People with disabilities and their families represent a major economic and potentially political force in our great nation. But we, and now I am speaking as a person who has experienced a life-long disability, have never been recognized as full citizens.

We have had to endure segregation in much the same way people of color and women who have endured discriminatory segregation until recently and sadly, even today.

But the segregation and stigmatization of people with disabilities has been even greater for people with disabilities such as mental retardation, cerebral palsy, mental illness, and now mostly certainly people with AIDS.

We have experienced the segregation which shuts away the humanity, the vulnerability we represent to society. We have been institutionalized. We have been sheltered. We have had our choices limited by those who felt more competent under provisions of substituted judgment.

This legislation sets many people free who challenge the best of our society to respect the dignity and integrity of the individual.

Provisions of the Act finally recognize our right of citizenship without the qualifier of Federal assistance. In this, the last year of the U.N. declared decade of the disabled, people ought to have the opportunity to discover the beauty, the creativity, the challenge, and the strength of their brothers and sisters who experience a disability.

In protecting the right not to be segregated, we also encourage the opportunity for integration and learning. This is a principal we embrace here in Indiana and it is a principal which must guide our nation into a new aging and medically sophisticated reality. Thank you for the opportunity to offer testimony.

[The prepared statement of Josef Reum follows:]

Josef Reum, Commissioner, Indiana Department of Mental Health

October 6, 1989

Dear Congressman Jontz, distinguished members of the panel, especially Representative Long.

Thank you for the opportunity to submit written testimony in support of the adoption of the Americans with Disabilities Act (S.933). As the Commissioner for the Indiana Department of Mental Health I am delighted to offer whole hearted support for this landmark legislation. It has been long in coming and will be of benefit to our entire citizenry. The number of people who experience a disability in their lives grows with each passing day. This fact is due in part to tremendous advances in medical care and assistive technology and the aging of our nation as a whole. The protections under (S.933) do not extend special protections or status to people with disabilities. They protect the right of each and every citizen to age, to become ill, to be rehabilitated after an injury, to continue to participate fully in the economic, civic, social, recreational and spiritual life of our community.

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Thank you for the opportunity to offer testimony.

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Mr. Owens. Thank you. Will Muriel and Chris Lee come forward, please?

STATEMENT OF MURIEL LEE, GOVERNOR'S PLANNING COUNCIL FOR PERSONS WITH DISABILITIES, AND CHRIS LEE

Ms. Lee. Thank you, Mr. Chairman and all members of your committee for this opportunity. We are pleased to be here and to have the opportunity to testify before the Subcommittee on Select Education of the House Committee on Education and Labor regarding H.R. 2273, the Americans With Disabilities Act.

I am Mrs. Ralph Lee of Nashville, Indiana. I serve on the Governor's Planning Council for Persons with Disabilities. I am an immediate past chairman of COVOH, the council, the volunteers, and organizations in Indiana.

Both of these organizations comprise a cross section of all groups representing persons with disabilities. Both of these groups fully endorse the Americans With Disabilities Act.

However, my role today is not that and what I am here to do is to assist my son, Christopher Lee in presenting his testimony.

Chris is severely disabled by cerebral palsy and requires assistance in all of his daily activities. His perspective on Americans With Disabilities Act comes directly from his own experiences as a writer, as a student at I.U., as a playwright for the Christopher Puppet Theater and as an informed and knowledgeable space enthusiast.

He accesses a computer by the click of his tongue. He has had several newspaper and magazine articles published. He was given an award this fall by the Indiana Department of Education for his video program, "Always a Chance for Change."

The video program has been shown in schools and community groups throughout Indiana, Illinois, Ohio, and Michigan.

The "Always a Chance for Change" program uses puppet characters to portray both negative and positive attitudes towards persons who are disabled.

Christopher asks that the "Always a Chance for Change" program and video program and leaders guide be included in your report for these hearings. So if I may, I will just set them there with a copy of the tape for you.

On the page that is marked, it deals with a little bit about changing attitudes and we highly recommend it.

Mr. Owens. Without objection, we will include part of the written introduction into the record. The rest of it will be available in the subcommittee office.

Ms. Lee. Thank you, Mr. Chairman. I take great pride in turning the microphone over to Christopher who would like to share with you his perspective on the bill.

Mr. Lee. I was pleased in the reading of the bill that there was a designated period of time for the promulgation of rules and regulations.

I would just like to make a recommendation——

Mr. Owens. Mrs. Lee, there is a second mike that you can use there.

Ms. Lee. Fine thank you.

Mr. LEE. [continuing] a recommendation that I think would strengthen the bill. Let me digress a little an incident I have heard just this week that illustrates my point beautifully.

I was going to a meeting on home care. Mother was my chauffeur. When we got to the place there were handicap spaces as the law provides but they were all filled with what appeared to be all non-handicapped persons' cars. So we had to park in the street.

There was a ramp entrance, again, according to law but the doorway was locked. Obviously the building's manager had complied with the letter of the law, but had no understanding of the special needs of the disabled.

This brings me to my recommendation. Use the time between the enactment of a law and the promulgation and the enforcement of the program to educate those affected by the laws. Use it for education in so that they become educated in the awareness and special needs of the disabled and not just comply to the letter of the law. Thank you, Mr. Chairman.

[The prepared statement of Christopher C. Lee follows:]

STATEMENT

Respectifully Submitted

to

TheSelect Subcommittee on Education

of the

House Committee on Education and Labor

Regarding

H.R. 2273, the Americans With Disabilities Act

Christopher C. Lee
Nashville, Indiana

October 6, 1989

I am pleased to be here and I wish to give my endorsement to this historic peice of legislation. First, let me say that in reading the bill I was pleased to see a specified period of time for the promulgation of rules and regulations, I would hope that the regulations would be issued within the designated 12 month time-frame. I say this because I feel that the period between the enactment of the law and the enforcement of the program for employers and all other aspects of the program should be used for not only the training of potential employees, but should encompass a strong component of awareness training that enables the individual to accept the person with a disability and to become aware of that person's special needs. In other words, to simply have the law does not insure acceptance nor awareness. Let me give an example.

Tuesday afternoon of this past week, an incident occured that illustrates not only the need for the law but also a need for a program of awareness. I was on my way to an important meeting regarding in-home care for the elderly and the disabled. Mother was driving my van and when we arrived at the building all of the handicapped parking spaces were taken by what appeared to be non-disabled drivers. We had to park in the ally to reach the ramped entrance. When we got to the designated handicapped entrance, it was locked. We had to wait until someone on the inside opened the door. It's obvious that those in charge of the building had complied with the letter of the law - but they had completely misunderstood the real needs of persons using a wheelchair.

Achieving a positive attitude toward persons with disabilities usually requires a change. But changing attitudes depends on each persons background and previous experience with someone who is disabled. We need to recognize that some persons begin with negative feelings while others quickly accept and soon become aware of the disabled persons special needs.

From my perspective, educational programs fostering positive attitudes towards persons with disabilities is a necessary component of the Americans With Disabilities Act in order for it to become a reality.

Thank you, Mr. Chairman and Members of the Committee for this opportunity to testify before the Select Sub-Committee on Education of the House Committee on Education and Labor regarding H.R. 2273, The Americans With Disabilities Act.

I am Mrs. Ralph Lee of Nashville, Indiana. I serve on the Governor's Planning Council for Persons with Disabilities and I am the Immediate past Chairman of COVOH, the Council of Volunteers and Organizations for the the Handicapped in Indiana. Both of these organizations comprise a cross section of all groups representing persons with disabilities. Both groups endorse the Americans With Disabilities Act. However, my role today is to assist my son, Christopher Lee, in presenting his testamony. Chris is severely disabled by cerebral palsy and requires assistance in all activities of daily living. His perspective on the Americans With Disability Act comes directly from his own experiences as a writer, a student at Indiana University, a playwrite for the Christopher Puppet Theater and as an informed and knowledgeable space enthusiast!. He accesses a computer by the click of his tongue. He has had several newspaper and magazine articles published. He was given an award this Fall by the Indiana Department of Education for his video program, "Always a Chance for Change." The video program has been shown in schools and community groups throughout Indiana, Illinois, Ohio and Michigan. The "Always a Chance for Change" program uses puppet characters to portray both negative and positive attitudes toward persons who are disabled. Christopher asks that the "Always a Chance for Change" video program be included in the report from these hearings.

I take pride in presenting my son, Christopher Lee.

A BIT ABOUT CHANGING ATTITUDES.

Attitudes appear to develop and change as a result of actual or vicarious experiences which are both positive and pleasurable. The program, ALWAYS A CHANGE FOR CHANGE, can begin this process of change. It provides an enjoyable experience that allows for sympathetic and imaginative participation.

Regardless of the stimulus - a video tape, role playing or visits with persons who are handicapped - changes in attitude appear to go through a sequence of responses:

First, the individual is exposed to a new idea, i.e.
  the new value which is or is not accepted;
Second, the individual will react impulsively or
  mechanically to the idea;
Third, the individual will voluntarily respond to the
  acceptance of the new value; and
Fourth, the individual will decide and begin to
  take positive action.

Depending upon one's present attitude, based on background and experiences, a person may move quickly or slowly through the four responses to a new idea.

Thus, it becomes important to determine the experiences of the persons viewing the program, i.e. their entry level. What do they already know about persons with disabilities? What have they experienced? What attitudes are present? What degree of change can or should be expected?

Whatever the entry level, if a positive change is to occur each person will generally experience all of the four responses . Some will move quickly through a response while others may not be ready or able to respond in a positive fashion.

Each character in the program, ALWAYS A CHANCE FOR CHANGE is at a different entry level. Each responds in a different fashion:

Honey Bunny and Mr. Mantoni represent caricatures of various negative attitudes toward persons with disabilities. Their entry levels may or may not allow them to experience all four responses to a new idea.

J.B. and Gretchen have an entry level which is positive and receptive to change.

The functional attitude desired is for each of them to become aware that persons with disabilities have talents and abilities like their own, and for each to interact positively with them.

Mr. **Owens**. Let me begin by responding to that observation and recommendation.

Number one, the fact that the Americans With Disabilities Act is a comprehensive and sweeping piece of legislation which puts an emphasis on rights is an educational process itself.

It is saying to the American people that although we have been quite generous and compassionate in the past and can be proud of some of the programs that do exist for people with disabilities, we are going one step further. We are saying that every human being has the right to be able to realize their own capabilities to the maximum.

The government, the power and the authority of the government, should be behind each individual. It does not guarantee it. A right is not a handout. A right is an opportunity.

And the individual still must go forward to implement his rights, but he has behind him the power of the law and the power of the government.

There is a debate out there, people who never thought about the problem before are being forced to think about it.

So we are going to raise the level of awareness. Hopefully it will mean that people will not park in those reserved spaces for the handicapped because their level of awareness will be raised.

The passage of the bill will be the beginning. It is not the end of the process. It is a beginning of empowerment for people with disabilities so they can fight for their own rights with the government behind them 100 percent.

And it will make it less likely that you will arrive at a building which has a ramp, but the doors are locked. You cannot get in because they don't want you to. They only want to comply with the letter of the law.

We hope that the spirit of the law, as a result of this effort to pass ADA, will be impressed upon people and they will act more in accordance with the spirit of the law.

The bill that was passed by the Senate contains a provision for technical assistance to sensitize and help those who have to comply with the law.

Of course, persons who provide public accommodations would be among the largest number given some help in complying with the law. And some of that help may not be technical assistance on how to change the physical place of business rather, technical assistance on how to change the attitudes of the custodians and the people who work at the particular facility or place of employment.

So, that type of assistance provision is in the Senate bill now and we hope to have it remain in the bill that passes.

So I am quite grateful for your observation and your recommendation. We certainly will go forward in that respect.

Now, if I may turn to the other panelists, I am pleased to note that all of you support and endorse the ADA quite enthusiastically.

I would like your opinion on some of the things that we find ourselves up against at this point. And everyday that goes by is a dangerous day in my opinion because there are more and more people who come out and find reasons for not wanting to pass it.

Perhaps some of you saw the editorial in the New York Times on September 6 which was entitled, "Blank Check for the Disabled."

Prior to that, I had seen an article by a congressman who said that the people with disabilities were trying to come under the banner of Civil Rights and create a welfare state for the disabled.

So there are a lot of attitudes that are quite negative in terms of costs. And two of you specifically addressed the matter of cost.

I do not think the American people know how much they are paying right now in terms of subsidies for people with disabilities; how we probably will decrease rather than increase the costs. But even if we do not decrease costs, we will change them around so that we will be paying to help people to become productive citizens and also become taxpayers.

So I would appreciate a comment on the idea that we are facing tremendous costs. Mr. Fehribach.

Mr. **Fehribach**. I think a big problem is a fear of the unknown by the people that are being adverse to the legislation at hand.

People have grown accustomed to want to put things that they do not want to see aside. And therefore, they are willing to pay for the fact that they put something that is not comfortable to them on a shelf.

I think that as a result, ADA is not only causing them to think well, it is more costly to have disabled person in society, but moreover, it is a situation where people do not want to have—I do not understand a disabled person in society is also a contributor.

Therefore, it is cheaper to educate somebody, get them a job, and have them paying taxes than it is to have them educated not having a job and institutionalized.

Since 1972, Mr. Chairman, we have educated and trained people with disabilities and that is good. But we have not really taken the next step forward in order to allow them to have a job or to actually pay back the state and the United States for the money that we have spent on educating and training these people.

Once again we have just used that as kind of a baby sitting type of situation. It is time that the American citizens quit paying for baby sitting and ask for the people that we have paid for to be trained and educated to go out there and do a job.

And I think that is all ADA is doing, is asking that we are allowed to do a job that we have been trained to do, and thereby contribute to America as a whole.

Mr. **Owens**. But I might note that Senator Tom Harkin pointed out in a letter answering the New York Times editorial that taxpayers are now paying about $57 billion on taking care of people with disabilities. Most taxpayers do not know that and it is important to get that fact out there.

Mr. Chambers.

Mr. **Chambers**. A Lou Harris poll told us that two-thirds of all people with disabilities are unemployed. That same poll told us that two-thirds of those people unemployed want to work.

And in large part, the reasons people are not working is because of the lack of accessibility of the workplace, the lack of accessibility of society.

Our agency also has the responsibility on behalf of social security for determining which people who apply for Social Security Disability Benefits or Supplemental Security Income Benefits in fact meet the definition of disabled.

More than 40,000 individuals each and every year apply for social security or SSI benefits. People receiving these benefits receive them for extended periods of time.

If in some small part, making our society more accessible, making the workplaces more accessible, making communication, making transportation more accessible can dent this large number of people every year going on to government benefits, we will save substantial dollars.

I do not think though that we can hold out the Americans With Disabilities Act as a dollar savings type program. It is the right thing to do to make our society accessible to this group of individuals.

It also makes sense in terms of assisting people with disabilities in becoming employed and participating in the workplace. But it also makes sense in terms of bringing these people into our society.

Mr. OWENS. Ms. Durrett, do you care to comment?

Ms. DURRETT. I would certainly underscore what Barry and Greg have both indicated. I think it is a double-headed issue here in terms of the economic issue wherein the fear of the unknown, we think something new like this is going to cost without our realizing that the costs we are already paying are certainly there.

The other part of it is the attitudinal issue. And I think that is that whole part about making our accommodations, making our society accessible to people with disabilities begins to change people's attitudes about people's disabilities because they are evident to them. They have an opportunity to see what people can do.

And I think in itself is going to make a major dent in additional programs and additional opportunities for people with disabilities.

Mr. OWENS. Thank you. Mr. Jontz?

Mr. JONTZ. Thank you, Mr. Chairman. I have no questions. I want to thank all three of the representatives from the state for their strong endorsement of the legislation and I think it reflects not only the personal commitment of the agencies and people you represent to the disabled in our state, to people with disabilities—but also our Governor for having appointed you all to these important jobs.

And I certainly want to thank Mr. Lee his testimony and his suggestion. I think that all of us in the Congress and in the public will have a responsibility to work and educate society at large about what the Americans With Disabilities Act is all about.

And I certainly want to work with my colleagues to undertake this sort of effort to change attitudes that will be necessary for the implementation of the legislation. So thank you all for your testimony this afternoon. I really appreciate your sharing these views and recommendations with us.

Mr. OWENS. Thank you very much.

Our next panel consists of Dr. Jack Lewis who is a professor of Sociology and Social Work at Anderson University in Indiana; Mr. David Reynolds, a teacher at the Indiana School for the Deaf; and Ms. Janna Shishler, a law clerk here in Indianapolis.

Each speaker will address a particular aspect of the bill. Dr. Lewis and Mr. Reynolds will talk about education, and Ms. Shishler about employment.

Dr. Lewis.

STATEMENT OF JACK LEWIS, PROFESSOR OF SOCIOLOGY AND SOCIAL WORK ANDERSON UNIVERSITY, INDIANA

Dr. LEWIS. Thank you very much, Mr. Chairman. I am Professor of Sociology and Social Work at Anderson University here in Anderson, Indiana. I am also a member of the Governor's Planning Council for People with Disabilities and a member and active in the American Council of the Blind of Indiana and have been very active in organizational work for the blind for approximately 30 years.

And I particularly am enthusiastic about the Americans With Disabilities Act for persons in education. I myself am legally blind with 10 percent vision. I do not see well enough to recognize faces but I do see well enough to tell who is sleeping.

And I am very grateful for the Rehabilitation Act of 1973 that I am employed in higher education. The Americans With Disabilities Act I think has promise to integrate many more disabled people into education and employment as that the Rehab Act failed to accomplish.

And in that regard, I did want to bring up one particular concern that I noticed that the definition of a person with a disability has been carried over from the 1973 Rehabilitation Act in Section 504 and Section 503 as well as other parts of the Rehab Act.

And it says in effect that a person with a disability is a person that has a physical or mental impairment that substantially limits one or more of its major life activities, a person who has had such an impairment, a person who has been considered as having such an impairment.

And the concern is, that just what does that mean? And the reason that I am emphasizing that is this, that I understand why the definition is so broad. Because it is an opportunity to encompass many disabled people who have been discriminated against under the Act to help them to receive equality in the American way.

But it also might be presenting problems for persons with severe disabilities.

Back in 1978, I did a series of workshops around the state of Indiana on Section 503 of the 1973 Rehabilitation Act pertaining to employment in private industry.

And a personnel director of one of the major industries says listen, "I do not have to worry about this. I am complying." He said, "I have gone through my files and I have found that approximately 25 percent of my workers fit the definition of a disabled person with lower back problems, heart problems, having had psychological counseling and so forth."

And the point that needs to be stressed for education as well as any of the other areas designed for employment for disabled persons is that unless there is some incentive to give consideration to the severely handicapped, I think that we run the risk of finding that 10 years or 15 years later, we may find people with marginal disabilities working, having benefited from the Act but yet the severely disabled people still at home, unemployed or underemployed.

And I sincerely believe that some way the definition needs to be examined in consideration of giving impetus for consideration of the severely disabled person.

Now, as far as other aspects of education is concerned, many years ago at the school for the blind where I attended in Georgia, the superintendent once said that most people's handicap is above the eyes. And this is certainly true.

And when it is above the eyes of an employer, it is certainly very undesirable and very much a detriment as far as employing disabled people.

But when the handicap is above the eyes of the disabled person too, then that certainly is a very serious barrier. And education has been designed as a means of trying to prepare persons for independence in life and for employment including disabled people.

But for disabled people, too often it has had a counter-effect in terms of building dependency. Think about it. More than once a person in a wheelchair has had to go through the humiliation of being picked up and carried upstairs to get to a particular laboratory or a particular classroom.

Visually impaired people such as myself have had to depend on readers and had to arrange our schedules for the convenience of other people.

So much of the lives of disabled people in higher education and education in general has been having to adjust their lives and their schedules for the convenience of others because of the dependent positions that they are in.

The Americans With Disabilities Act certainly would do a great deal to offset that. Requiring a reasonable accommodation is certainly justified.

There is no reason why every university library and every library in a public school should not have a voice synthesizer with their computer terminals in the library.

Right now I can go to my computer and interface with Ball State Library, search out material, read the annotations, screen my material which certainly enables me to be a lot more independent in doing my research.

And the utilization of TDD machines for the deaf should certainly be in every university and the ADA would certainly make that a possibility.

But I think what we need to keep in mind is, that the ADA will enable people to achieve greater success in life economically as well as life satisfaction.

But also it will help to assure and condition people for independence. So much of education has been a disincentive in terms of creating dependency.

But with the reasonable accommodations that are available today particularly through high technology, there is no reason why disabled people cannot come out of schools, not only with a diploma, not only with job readiness but also with a strong self-concept where they see themselves as first-class citizens and not second-class citizens.

And I believe that, that is one of the major strengths of the Americans With Disabilities Act. Thank you, Mr. Chairman.

Mr. OWENS. Thank you. Mr. Reynolds.

STATEMENT OF DAVID REYNOLDS, INDIANA SCHOOL FOR THE DEAF, VIA INTERPRETER

Mr. REYNOLDS. Good afternoon. My name is David Reynolds. I am a teacher at the Indiana School for the Deaf and I am a third-generation deaf person. My three children are fourth-generation deaf.

I attended the Illinois School for the Deaf and I attended Galludet University. As you know, where Galludet had the protest recently.

I got my Bachelor's Degree there and I got it in English. I also went to the Western Maryland College and received my Master's Degree there.

I have been very, very active in the State of Indiana in various deaf organizations. We have the Indiana School for the Deaf Alumni Association. And we have the Indiana Association of the Deaf.

And we also have many, many other organizations that I am actively involved with.

A year ago on March 1, I was very actively involved when we protested because we were not getting quality education in the State of Indiana. And I was the chair person of that committee that organized that protest.

I am currently the co-chair person of the communications curriculum committee at the Indiana School for the Deaf where we are trying to change the philosophy of the school to a more bilingual, bicultural program because we recognize that deaf children's native language is American sign language.

As you all know, at the Galludet protest there was a very deep purpose there. And that purpose is that deaf people want to be independent and take control of decision making.

We do not want to be controlled by hearing people. That has happened for more than 150 years. Hearing people have continued to try to tell us what to do and we do not want that anymore.

We must take control of our educational system. Our educational system in the United States must give children the opportunity to learn and we must lead our educational system.

And that means that we must have more deaf people in administrative positions. We must have more deaf teachers because that gives us access to our language.

And what that means is that we will have role models. And this is where we see that ADA can help us because you can help us get that access to communication.

Our language is different and that is very important. That is the issue. We do not have much access to communication.

Also when you are talking about hiring processes, currently there are a majority of hearing administrators. Currently, there are a majority of hearing teachers. Their view is very different from a deaf person's viewpoint.

But up until now, we have not been able to voice our concerns and our views. Here in the State of Indiana, we currently have tests that teachers must take and those tests are geared for English-speaking people.

Those tests do not give many opportunities for deaf people. A deaf person needs more access. They need more choices. They need maybe to use a video tape so that they can take these tests through American sign language.

So they need more access and more choices. Like the person or Dr. Lewis or someone just said on the panel talking about attitudes, attitude is very important.

We have been oppressed by hearing people for many years. We know that hearing people can work with us. We want them to work with us but their attitude has been very oppressive toward the deaf community.

We have not been allowed to have access to our communication system and our language. We do not have many devices where we need to have them. For example, we do not have a lot of TDD's and TTY's at the School for the Deaf. We do not have an emergency alarm system at the School for the Deaf. There are no flashing lights.

And it is so sarcastic. They just put in an intercom system at the School for the Deaf and how crazy is that? I mean it makes no sense to have that.

Also we do not have enough interpreters. And that is another lack of access. We do not have enough captions in the school. We need more television sets even in the school itself that are captioned.

I am very concerned myself because I am thinking of the future of deaf children in this country. I am thinking of my own deaf children, my own three deaf children at home. I want all deaf children in this country to have equal access to what they need.

I think ADA can really help us. I think that we can have less discrimination in the schools and less discrimination in the workplace.

We need to be in control of our educational system. That is very crucial. Also related to deaf offices in the State of Indiana, they are currently looking for people to run those offices and it is very important to have deaf people that are involved in the screening process and we do not have that currently.

Deaf people are very unique. We are a very unique, "handicap." It separates us from all of the people here in this room.

The only thing that is different about us is our communications. Our language is different. We are not physically impaired but our communication and our language is very important and we do not have access to that.

We need support and we need help. Thank you very much.

Mr. OWENS. Thank you. Janna Shishler.

STATEMENT OF JANNA SHISHLER, LAW CLERK, INDIANAPOLIS

Ms. SHISHLER. I am pleased to be here and unlike most of the rest of the people that have been on the panels, I have not been involved with the disability movement much at all.

I have been in school for the past eight years and just got out last year. And so I feel as though my testimony is going to be much more personal about my own experiences rather than on a more general level.

On a crisp fall evening 10 years ago I became one of the continually expanding number of Americans with disabilities.

My admission to the group took only a matter of seconds but the result has altered my life dramatically. That evening, the hay wagon upon which I was a passenger suddenly lurched off the side of the road, throwing myself and several of my companions into the air.

My subsequent impact with the ground caused two of my cervical vertebrate to sublex, thereby placing enormous pressure on my spinal cord.

Since that night I have been a quadriplegic with no muscular function below my biceps. I was a 19 year old sophomore at Indiana University.

What I believe is particularly significant for others about the circumstances surrounding my injury is the relative ease with which it occurred. It was completely unforeseen and was not accompanied by any overtly dangerous activity.

Similar opportunities for traumatic injury are present in the every day lives of most citizens of this country. Consequently, the possibility of joining the population of disabled Americans is ever present.

This fact is compounded by the greying of the American population and the accompanying physical deterioration often associated with the aging process.

While considering this bill, I hope the Congressmen voting upon it and those parties opposing its passage focus on its benefits rather than the initial expense often necessary for opening opportunities for the disabled segment of our society.

The Americans With Disabilities Act should be viewed as an investment in the future of a substantial number of American citizens, perhaps even their own future.

The years immediately following my injury were spent trying to determine the most efficient method of accomplishing every day tasks such as dressing, eating, and studying.

Activities which had formerly required no conscious thought were now an effort. I believe the two things that made the adjustment possible were the support of my family and my immediate return to school.

In the fall of 1980, I transferred my credits from Indiana University's Bloomington campus to the Indianapolis campus.

After four years of hard work, I graduated with honors in 1984. Upon the conclusion of my undergraduate work I was admitted to the Indiana University, Indianapolis School of Law.

In 1988, I completed my legal education again receiving awards for my academic performance. I am currently employed as a judicial law clerk with United States Magistrate, John Paul Godich.

Discrimination never seemed to have hindered my progress until I began seeking employment in the private sector.

While in law school, I participated in the placement program offered by the university. The procedure permitted potential employers to select those they wanted to interview initially from resumes submitted to the placement office.

I received initial interviews with several local law firms based upon my academic record since in most instances I did not inform them of my disability.

Not only did I fail to receive any offers of employment but I, unlike many of my friends with comparable resumes was not asked to participate in any second interviews.

It is difficult for me to admit or believe that I may have been the subject of intentional discrimination. I am more apt to focus on my own real or imagined shortcomings or to appreciate the hesitancy reflected in employers' attitudes as a justifiable emphasis on the bottom line.

Generally, I have been one of those who have allowed others to lead the fight for disability rights while I sit on the sidelines and enjoy the fruits of their labors.

However, having been confronted with the unequal access on a personal level, I have finally recognized the necessity of broad based participation in the movement for equal participation in the American dream.

Although the presence of Civil Rights legislation does not guarantee the elimination of discrimination, it at least may provide the impetus to changing stereotypical beliefs that the disabled are slow, disruptive, and incapable.

The only sure remedy is exposing the general public to capable disabled persons and the workplace is the perfect venue.

The existence of such laws have positively affected employment in Federal and state Government by persons with disabilities.

During summer breaks from law school, I worked in the legal division of the Indiana Department on Aging and Community Services with Barry Chambers who you met earlier and for the State Attorney General's office.

A number of my co-workers were also disabled. None of my employers had to expend additional sums merely to meet my employment needs.

The computers which are a necessary part of my work were purchased with my own funds or with the assistance of the Indiana Department of Vocational Rehabilitation.

Vocational Rehabilitation also provided the funds for a specially built desk, speaker telephone, and the mouth sticks I use for typing.

Accessible bathrooms, a one-time expense, were already in place. My current position with the Federal Government has allowed me to become a self-supporting, tax paying member of society.

I no longer receive a regular Social Security check or assistance for vocational rehabilitation. My salary is sufficient to permit me to hire and pay the personal attendant who assists me each morning.

I believe that I am not an exception to the rule. The majority of persons with disabilities do not relish the thought of sitting day after day in a bedroom or nursing home.

The expense of maintaining nursing care for the disabled may be drastically reduced by implementing job training and opening access to employment for the Americans With Disabilities Act.

The Act will allow many of the disabled who have heretofore been ostracized from society to become contributing members.

Finally, I do not believe that it is unduly burdensome to place the obligations of the Act on employers with 15 or more employees who engage in interstate commerce.

First, modifications such as ramps or accessible bathrooms are a one-time expense which may be reimbursed through the dedicated work of disabled employees and the business of new customers or clients who were previously barred from access.

Second, if it is necessary to a persons' equipment for the disabled employee, it will typically benefit the business as a whole.

Thirdly, as alluded to earlier, a disabled individual who makes the effort to seek training and performing a particular type of work will in all likelihood prove to be an excellent employment risk.

I will be returning to the job market soon myself. I look forward to the Act as promised by the passage of the Americans With Disabilities Act. Thank you for your consideration.

Mr. Owens. I want to thank all of you for your testimony and assure you that personal testimony and the process of sensitizing legislators to this particular piece of legislation is very important.

Mr. Reynolds, I want you to know that the uprising—and I call it an uprising—at Gallaudet University played a major role in accelerating the movement of this legislation.

The bill would be probably two or three years behind schedule if it had not been for that dramatic uprising, the statement that was made at Gallaudet University.

So the spirit of your testimony is very much the spirit of the Galludet movement. I have no questions. I yield to Mr. Jontz.

Mr. Jontz. Thank you, Mr. Chairman. The statements that each of you gave were very eloquent. All Americans want to accomplish with their lives what you have accomplished.

And I think that those accomplishments are testimony equally eloquent to the need for the Americans With Disabilities Act so that all citizens can make those accomplishments. I want to thank you for your statements and express my appreciation for your being with us this afternoon. Thank you, Mr. Chairman.

Mr. Owens. Thank you again. Our next panel consists of Nanette Bowling, the Staff Liaison to the Mayor's Advisory Council for Handicapped Individuals, the Office of Mayor Bob Sargent, Kokomo, Indiana; John Turney who is a member of the Mayor's Advisory Council for Handicapped Individuals; and Michael Williams, the vice president for Ancillary Services, St. Joseph's Hospital in Kokomo, also the Kokomo employer of the year.

Mr. Jontz. Mr. Chairman, while the members of the next panel are taking their seats, I want to take just a minute to welcome them. We are very proud of all of the citizens of Kokomo.

And I am very appreciative of their appearance here today. I know a number of people had a distance to come. I know the road between Kokomo and Indianapolis very well and appreciate the effort that this panel has made to be with us. I want to personally welcome them as my constituents from the Fifth Congressional District.

Mr. Owens. Again, your written statement will be entered into the record. You have five minutes for your oral testimony but will be free to elaborate during the questioning period on any points you do not feel you have time to cover. We will start with Nanette Bowling.

STATEMENT OF NANETTE BOWLING, STAFF LIAISON TO THE MAYOR'S ADVISORY COUNCIL FOR HANDICAPPED INDIVIDUALS, OFFICE OF MAYOR BOB SARGENT, KOKOMO, INDIANA

Ms. Bowling. Chairman Owens, Congressman Jontz, my name is Nanette Bowling. I am administrative assistant to Mayor Robert Sargent of Kokomo, Indiana.

I am also Mayor Sargent's staff liaison to his Advisory Council for Handicapped Individuals. In 1980, a group of concerned citizens began meeting with the city administration in an effort to direct city resources to meeting the needs of handicapped persons.

One result of those meetings was the formation of the Mayor's Advisory Council for Handicapped Individuals. John Turney, who serves on the Kokomo Council and the Governor's Planning Council will present to you some of the specific accomplishments of the Mayor's Advisory Council for Handicapped Individuals.

The Kokomo Mayor's Advisory Council for Handicapped Individuals has a mission statement which reads as follows:

"The goal of the Mayor's Advisory Council for Handicapped Individuals is to serve as an advocacy group for all physically and or mentally handicapped citizens of the City of Kokomo, Indiana and the Kokomo area to identify the needs of all handicapped citizens and to advise the Mayor of Kokomo on matters which will improve the health, education, and quality of life for these citizens."

Mayor Robert Sargent considers his advisory council for handicapped individuals one of his strongest advisory council. He has five different advisory councils.

He considers the following just to mention a few to be the benefit of the Council, that the Council provides to his administration.

To provide information on the effect of pending and inactive policies on the lives of citizens with disabilities.

To provide a mechanism by which citizens with disabilities can have their relevant concerns addressed.

The Council also increases credibility with local citizens in the area of disabilities concerns.

The Council also increases the respect of citizens and elected officials throughout the state for efforts to expand the participation of all citizens in every aspect of community life.

As the needs and concerns of citizens with disabilities becomes visible and addressed through the efforts of the Mayors' Advisory Council for Handicapped Individuals, the following are a few of the benefits Kokomo, Indiana has witnessed.

Increased revenue sources and more effective delivery of programs as more citizens with disabilities are given increased opportunity to become productive members of the community.

Increased access to activities of community life by citizens with disabilities such as employment, transportation, social, recreational, civic, and political.

And an enhanced sense of awareness and commitment to the community by all of its citizens.

Despite the successful program and progress made by the Kokomo Mayor's Advisory Council for Handicapped Individuals, the absence of comprehensive Federal legislation prohibiting discrimination against individuals with disabilities has proved to be a serious roadblock in our overall efforts.

Members of the Council have witnessed discriminatory acts against persons with disabilities. There are many examples I could cite.

Three common examples of discrimination against persons with disabilities will suffice. The Council worked with a disabled woman who was denied a parking space on the parking lot where she works.

A handicapped parking space near a ramp had been designated for her. The space was taken from her after a reorganization at her place of employment. She was offered a parking space three blocks from where she worked.

The Council advocated for an elderly wheelchair bound man who lived in Howard Country. Howard County rural transportation is not equipped with a wheelchair lift. The man's wife died. The Council members worked with city senior transportation whose funding only allows them to transport within the city limits to bend their guidelines to go into the county. Senior city transportation did go into the county and transported this man to his wife's wake and funeral.

The city senior transportation system was forced to run the risk of losing its funding by traveling outside of its designated area in order to provide this needed human service.

Several members of the Council have been affected by devastating disincentives to voting. The Council is acutely aware that in 1984 the United States Congress passed the Voting Accessibility for the Elderly and Handicapped Act, P.L. 98-435.

In order to meet the requirements of this law, some jurisdictions merely encouraged persons with disabilities to vote by absentee ballot, an approach which is merely a ruse to avoid compliance with the clear intent of the Act which is that voting places be accessible to the disabled.

It also deprives the disabled voter of an option available to other absentee voters, the right to change their vote by appearing personally at the polls on election day to cast their ballot.

Other jurisdictions create a public spectacle of the person with a disability by having a voting machine taken to the person's vehicle for him or her to vote.

These mechanisms are demeaning to the disabled person. These methods for accessibility create a loss of dignity and independence for the disabled voter.

The Mayor's Advisory Council for Handicapped Individuals has been distressed in the knowledge that in the absence of national standards, there are no means available to redress such inequities.

The Americans With Disabilities Act is much needed legislation. Protection of the civil rights of all people and I underscore the words, all people, to include people with disabilities is long overdue for our great nation.

Every mayor in every town across the United States can establish an advisory council for handicapped individuals. Those councils would and should be as diverse as the jurisdictions involved.

If national law is enacted via ADA, the physical and attitudinal barriers for persons with disabilities would soon be eliminated.

This legislation would allow our Mayor's Advisory Council for Handicapped Individuals more of an opportunity to work with all aspects of our community in the areas of accessibility, employment, public services, and public accommodations.

A great deal has been done but there is much more to be done. Representing Mayor Robert Sargent of Kokomo, Indiana, we strongly recommend the passage of the Americans With Disabilities Act of 1989 and we thank you for this opportunity to present testimony.

[The prepared statement of Nanette Bowling follows:]

CITY of KOKOMO

ROBERT SARGENT, Mayor
City Hall
Kokomo, Indiana 46901
(317) 456-7444

TO COMMITTEE CHAIR CONGRESSMAN MAJOR OWENS
AND CONGRESSMAN JIM JONTZ:

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--Increased revenue sources and more effective delivery of programs, as more citizens with disabilities are given increased opportunity to become more productive members of the community;
--Increased access to activities of community life by citizens with disabilities such as employment, transportation, social, recreational, civic and political;
--Enhanced sense of awareness and commitment to the community by all its citizens.

Despite the successful programs and progress made by the Kokomo Mayor's Advisory Council for Handicapped Individuals, the absence of comprehensive federal legislation prohibiting discrimination against individuals with disabilities has proved to be a serious roadblock in our overall efforts. Members of the Council have witnessed discriminatory acts against persons with disabilities. There are many examples I could cite. Three common examples of discrimination against persons with disabilities will suffice.

1. The Council worked with a disabled woman who was denied a parking space on the parking lot where she worked. A handicapped parking place near a ramp had been designated for her. The space was taken from her after a reorganization at her place of employment. She was offered a parking space three blocks from where she worked.

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The Kokomo Mayor's Advisory Council for Handicapped Individuals has been distressed in the knowledge that in the absence of national standards, there are no means available to redress such inequities.

The Americans with Disabilities Act is much needed legislation. Protection of the civil rights of all people, and I underscore the words all people, to include people with disabilities, is long overdue for our great nation. Every Mayor in every town across the United States can establish an Advisory Council for Handicapped Individuals. Those Councils would and should be as diverse as the jurisdictions involved. If national law is enacted via the Americans with Disabilities Act, the physical and attitudinal barriers for persons with disabilities will be eliminated. This legislation would allow our Mayor's Advisory Council for Handicapped Individuals more of an opportunity to work with aspects of our community in the areas of accessibility, employment, public services, and public accommodations. A great deal has been done, but there is so much more to be done. Representing Mayor Robert Sargent, of Kokomo, Indiana, we strongly recommend the passage of the Americans with Disabilities Act of 1989.

We thank you for the opportunity to address you.

Mr. OWENS. Thank you. Mr. John Turney.

STATEMENT OF JOHN TURNEY, MEMBER, MAYOR'S ADVISORY COUNCIL FOR HANDICAPPED INDIVIDUALS, KOKOMO, INDIANA

Mr. TURNEY. Mr. Owens, Mr. Jontz, I John Turney come before you on behalf of the Mayor's Advisory Council for Handicapped Individuals of Kokomo, Indiana and the Indiana State Commission for the Handicapped.

Being a disabled person for the last 12 years, I have become a strong advocate for the disabled community. The Mayor's Advisory Council for Handicapped Individuals in Kokomo, Indiana is expanding on the focus generated during the National and international year of disabled persons.

Its efforts to accomplish such goals as improving access to housing, building, and transportation, expanding employment opportunities, expanding participation and recreation in social and cultural activities and reduction in the evidence of disability during the decade of disabled persons.

The accomplishments of this council are numerous. The successes are obvious. And the progress is significant. Various activities have been utilized in the Council for the purpose of addressing the unmet needs of disabled persons.

Setting the goals to address these needs and encouraging a community-wide commitment to continue the pursuit of these goals is in the future.

Historically, in the January, 1988 group of concerned citizens requested that the mayor direct city resources to meet the needs of the disabled persons.

Attention was given to established the Mayor's Advisory Council for Handicapped Individuals for the purpose of identifying these needs, increasing public sensitivity to the problems of the handicapped, encouraging action to the citizens which meet these needs for the disabled persons.

Presently, the Council meets monthly with the Mayor and or an assistant. A wide variety of activities have been undertaken by the Council.

Each new project has become a part of an ongoing program to encourage awareness of the needs of disabled persons.

One of the more important functions of the committee is to accept and refer recommendations by citizens to appropriate agencies and review the ideas submitted by the community regarding needs which are not being met.

The committee provides the community with a group to approach when an organization action is needed. Networking, the members of the Council provide linkages between Council and other organizations which concern themselves with more specific needs of the handicapped.

The Advisory Council members act as representatives to and from the following related organizations. Briefly, Howard County Multiple Sclerosis, Big Brothers, Big Sisters, Bona Vista Rehabilitation, Mental Health Association, Indiana State Commission for the Handicapped.

This is only a partial list of clubs and organizations for which representatives come to the Mayor's Advisory Council for Handicapped Individuals and to which these members carry information and projects.

The outreach is extensive and varied as the interests and experience of the Council membership. The interchange of ideas and information is one of the many values a council such as this, partnerships between public and private sector have developed in a variety of capacities throughout the Council's activities.

The expansion of the Council use of existing organization has been of prime importance to the growth of the Council activity.

The exchange of information and new legislation and program development which is available through membership in the National organizations of special interests to the handicapped is a valuable tool for expanding programs and defining direction.

Representatives of the Council attend the Annual Governor's Council for the Handicapped and they regularly attend conferences and seminars which memberships arise to new developments of interest to the disabled person.

Media focus, attention is given to the need to educate the public of the interests and activities of the Council. Local newspaper, television, and radio stations are routinely notified of activities which may be of interest to the public.

Response to the media throughout the prominent coverage has been favorable.

A weekly press conference in the Mayor's office has been a forum for the announcement of many Council activities. This regularly scheduled conference is attended by representatives of local newspaper, radio, and television stations.

The relocation of meetings and local government agencies to accessible buildings was an early project supported by the Mayor and the Council.

Meetings of which held by the city and county council had been formerly in buildings which were not accessible. Such meetings are now held in accessible areas and there is a new willingness to provide additional services which may be requested by an individual desiring to attend these meetings.

An example of those services, a provision for interpreters for deaf persons attending public hearings upon request.

These earlier efforts were recognized by the U.S. Council for the International Year of the Disabled. The City of Kokomo was the first in Indiana, the second in the United States to be chosen as a flagship community.

A municipal model to which communities throughout the Nation can look for examples of integrating handicapped persons into the mainstream of the community.

The administration has been very proud of this honor and has made a very asserted effort to see this activity of the Council receive any aid which can be provided toward continuing its work.

During the calendar year of 1983, members of the Advisory Council received further recognition. Tom Jones received 1983 volunteer Indiana State Meritorious Service Award.

At the same time, Rosemary DeBaillie of Kokomo, Indiana was named handicapped of the year for 1983. Later that year, I was honored by being named to the Indiana State Commission for the Handicapped.

Employment, various local businesses and industries have agreed to be interviewed by Council members in order to describe company policies regarding the hiring of handicapped persons.

This project will assist employers in locating responsible workers and will provide direction to handicapped persons who are seeking employment.

Each year a company is honored in its efforts of hiring the handicapped at the annual awards banquet sponsored by the Council.

Nominations are accepted from the general public so that anyone may be considered for an award. Bona Vista Rehabilitation Center in Kokomo works in cooperation with Delco Electronics to locate a production operation in Bona Vista so clients can receive some actual experience in machine work. These functions are performed by the Center's clients.

Accident prevention, Operation Fire Escape is a project which serves those persons who may need special needs in the event of a fire at their home or business. A list of persons with special needs is kept at the fire department so identifing the address of any person having special needs or using oxygen may be done quickly.

This program decreases the likelihood of death or already handicapped person and will increase the evidence of further disabilities through accidents.

Recreation and social and cultural activities. Two most recently planned public parks were constructed with accessibility on a focus.

All improvements and plans for existing parks are more readily available in other facilities as well.

Accessibility to such events as the Howard County 4H Fair, the annual Haynes-Apperson Festival, Veterans Day Parade were improved with special seating and parking arrangements.

Improving accessibility, contacts have been made with local businesses in an effort to encourage the participation and ongoing programs. One such program established a city ordinance for handicapped parking. Cooperation is apparent in the increasing number of specifically marked spaces and relocation of some spaces more convenient to the access to available ramps.

Shopping area, churches, funeral homes now have identified spaces used by the persons with special needs. An ordinance establishing a fine scheduled for those cars which are illegally parked in assigned spaces in the downtown area have been passed.

In conjunction with the ordinance to raise the level of concern, a handicapped parking patrol will be formed to issue parking citations.

Volunteers have surveyed accessibility of local restaurants, apartments, and public buildings. It is the intention of the Council to rate these buildings based upon the accessibility.

Additionally, the Council sees a high priority a publication of the director rating a business based on accessibility. The survey focused on the need for better access to the public library during the 1983 calendar year. The city cooperated with the library by providing funds for electronic door operations.

In addition, a number of inaccessible polling places will now be made accessible.

Efforts have been directed to arrange a more effective transportation facility for those persons needing to ride to their place of employment.

Recently those efforts have been rewarded through the cooperation of the city administration in the Bona Vista Programs in provision of a transportation of existing citizen senior program bus system and the school.

In the extension efforts to increase the mobility of handicapped persons is a commitment by the city to upgrade accessibility wherever improvements such as sidewalk repairs are scheduled. Curb cuts and other alterations are included whenever possible in order to improve accessibility.

In summary, the Mayor's Advisory Council for Handicapped Individuals has accomplished much success and heightened public awareness of the need for the handicapped in removing obstacles impeding mobility.

Its efforts continue to enhance the quality of life for all residents of Kokomo, Indiana. The Indiana State Commission for the Handicapped was mandated by the legislation to develop a plan to coordinate and integrate local and private efforts to address the needs and concerns of disabled as well as to define and develop services not available in Indiana for persons with disabilities.

The mandate requires that the plan provide direction, formation of state policies and programs directly and delivery of services to persons with disabilities.

The overriding objective advocated by the Commission is to achieve progress towards independent, equality of opportunity, and normalization of lifestyles for persons with disabilities through law, policies, and practice within the State of Indiana.

Philosophically, the Commission believes that every person should be—of all conditions which will encourage achievement or optimized balance between the highest level of independence and social responsibility of which person is capable.

Additionally, the Commission believes that the best interests of persons with disabilities shall be served through giving emphasis on meetings, excuse me, with disabilities as served through giving emphasis on meeting the human needs they share with all citizens in the manner respecting their individual uniqueness.

The design and development of the plan has been formulated and pursued in a matter consistent with a primary objective, philosophical position and emphasis on human need.

The plan has been developed to respect the important dimension of the human experience, ecological development, and holistic individuals throughout the State of Indiana. Thank you gentlemen.

[The prepared statement of John D. Turney follows:]

Personal Background

John David Turney
167 N - 820 W
Kokomo, In. 46901

Married - Wife - Dorann M. Turney
Son - Nicholas D. Turney

Indiana Resident - 10.2 Years

Employer - Delco Electronics Corporation
Kokomo, Indiana

Ladies and Gentlemen I come before you on behalf of "The Mayor's Advisory Council for Handicapped Individuals" Kokomo, In. and The Indiana State Commission for the Handicapped.

Being a disabled person for the last twelve years I have become a strong advocate for the disabled community.

The Mayor's Advisory Council for Handicapped Individuals

Kokomo, Indiana

Expanding on the focus generated during the National and International Years of Disabled Persons, the Mayor's Advisory Council for Handicapped Individuals dedicated its efforts to accomplishing such goals as improved access to housing, buildings and transportation, expanded employment opportunities, expanded participation in recreational, social and cultural activities, and reduction in the incidence of disability during the Decade of Disabled Persons. The accomplishments of the council are numerous. The successes are obvious. The progress is significant.

Various activities have been utilized by the council for the purpose of assessing the un-met needs of disabled persons, setting goals to address those needs and encouraging a community--wide commitment to continue to pursue these goals in the future.

The Council: A History

In January, 1980, a group of concerned citizens requested that the Mayor direct city resources to meeting the needs of disabled persons. Attention was given to establishing an Advisory Council for Handicapped Individuals for the purpose of identifying those needs, increasing public sensitivity to the problems of the handicapped, and encouraging actions by citizens which will meet the needs of disabled persons.

Presently, the council meets monthly with the Mayor and/or Assistant. A wide variety of activities has been undertaken by the council. Each new project has become a part of the ongoing program to encourage awareness of the needs of disabled persons. One of the more important functions of the committee is to accept and refer recommendations by citizens to appropriate agencies and to review the ideas submitted by the community regarding needs which are not being met. The committee provides the community with a group to approach when an organized action is needed.

The Council: Networking

Members of the council provide the linkages needed between the council and other organizations which concern themselves with the more specific needs of the handicapped. Advisory council members act as representatives to and from the following related organizations:

Howard County Multiple Sclerosis Society
Radio City React (C.B. Club)
National Liaison Representative for Disabled Individuals in Kokomo and Howard County
Various churches
Big Brothers/Big Sisters of Howard County
North Central (Indiana) Health Planning Committee
Disability Rights Information Research Center
United Ostomy Association
ASC and Home Health Care of Howard County
Bona Vista Rehabilitation Center
Mental Health Association
March of Dimes Birth Defects Foundation
Kokomo Civic Theatre
Wildcat Creek Canoe Club
Altrusa Service Organization
Indiana Alligators (C.B. Club)
Indiana Paraoptometric Association
Wabash Valley Certified Dispensers Association of Indiana
Senior Citizens Advisory Council
Council of Volunteer Organizations for the Handicapped
National Organization on Disability
Indiana State Commission for the Handicapped

This is only a partial list of the clubs and organizations from which representatives come to the Mayor's Advisory Council for Handicapped Individual and to which these members carry information and projects. The outreach is extensive and as varied as the interests and experiences of the council's membership.

The interchange of ideas and information is one of the many values of a council such as this. Partnerships between the public and private sectors have developed in a variety of capacities throughout all the council's activities.

The expansion of the council's use of existing organizations has been of prime importance to the growth of the council's activities. the exchange of information on new legislation and program development which is available through membership in national organizations of special interest to the handicapped, is a valuable tool for expanding programs and defining direction. Representatives of the council attend the annual Governor's conference for the Handicapped and regularly attend conferences and seminars which keep members apprised of new developments of interest to disabled persons.

The Council: Media Focus

Attention has been given to the need to educate the public of the interests and activities of the council. Local newspapers, television and radio stations are routinely notified of any activity which may be of interest to the public. The response of the media through prominent coverage has been favorable. The weekly press conference held in the Mayor's office has been a forum for the announcement of many council activities. This regularly scheduled conference is attended by representatives of the local newspapers, radio and television stations.

The Council: Recognition

The relocation of the meetings of local government agencies to accessible buildings was an early project supported by the Mayor and the council. Meetings such as those held by the City and County Council had formerly been held in buildings which were difficult or impossible to enter with a wheelchair. Such meetings are now held in accessible areas and there is a new willingness to provide additional services which may be requested by any individual desiring to attend these meetings. An example of those services is, the provision of interpreters for deaf persons attending public hearings upon request.

These early efforts were recognized by the U.S. Council for the International Year for Disabled Persons. The City of Kokomo was the first in Indiana, the second in the nation to be chosen as a Flagship Community -- a municipal model to which communities throughout the nation can look for examples of integrating handicapped persons into the mainstream of the community. the administration has been very proud of this honor and has made every effort to see that the activities of the council receive any aid which can be provided toward continuing its work.

During 1983, members of the advisory council received further recognition on the state level. Tom Jones received a 1983 Volunteer Indiana State Meritorious Service Award from the Commission on the Handicapped. At the same time, Rosemary De Baillie was named Hoosier Handicapped Citizen of 1983 by the Commission. Later this year, John Turney was honored by being named a member of the Commission.

The Council: Employment

Various local business and industries have agreed to be interviewed by council members in order to describe company policies regarding the hiring of handicapped persons. This project will assist employers in locating responsible workers and will provide direction to handicapped persons who are seeking employment. Each year a company is honored for its efforts in hiring handicapped persons at the awards banquet sponsored by the council in January. Nominations are accepted from the general public so that anyone may be considered for an award.

Bona Vista Rehabilitation Center has worked in cooperation with Delco Electronics to locate a production operation at Bona Vista so that clients can receive some actual experience in machine work. These functions are performed by the center's clients.

The Council: Accident Prevention

Operation Fire Escape is a project which serves those persons who may need special help in the event of a fire at their home or business. A list of persons with special needs is kept at the fire department so that identifying the addresses of any persons having special needs or using oxygen may be done quickly. This program has decreased the likelihood of death of already handicapped persons and will decrease the incidence of further disability through accident.

The Council: Recreational, Social and Cultural Activities

The two most recently planned public parks were constructed with accessibility as a focus. All improvement plans for existing parks are more readily available in other facilities as well. Accessibility to special events such as the Howard County 4-H Fair, Haynes-Apperson Festival, and Veteran's Day Parade were improved with special seating and parking arrangements. When Artrain, a traveling art experience, came to Kokomo, ramps were installed and tour interpreters for the deaf were provided.

The Council: Improving Accessibility

Contacts have been made with the local business community in an effort to encourage participation in on-going programs. One such program centered on establishing a city ordinance for handicapped parking. Cooperation is apparent in the increased number of specially marked parking spaces and the relocation of some spaces to obtain more convenient access to available ramps. Shopping areas, churches, and funeral homes now have identified spaces for use by persons with special needs. An ordinance establishing a fine schedule for those cars which are illegally parked in assigned spaces downtown has been passed. In conjunction with the ordinance to raise the level of concern a handicap parking patrol will be formed to issue parking citations.

Volunteers have surveyed the accessibility of local restaurants, apartments and public buildings. It is the intention of the council to rate these buildings based on their accessibility. Additionally, the council sees as a high priority, the publication of a directory, rating these businesses based on their accessibility. The survey focused on the need for better access to the public library. During 1983, the city cooperated with the library to provide funding for electronic door openers. Construction was completed in March, 1984. In addition a number of inaccessible polling sites will now be accessible.

Efforts have been directed to arranging more effective transportation facilities for those persons needing rides to their place of employment. Recently those efforts have been rewarded through the cooperation of the city administration and Bona Vista Programs in the provision of transportation by an existing Senior Citizens Bus System and the school. As an extension if the efforts to increase mobility for handicapped persons.is the commitment by the city to upgrade accessibility wherever improvements, such as sidewalk repair, are schedules. Curb cuts and other alterations are included, wherever possible, in order to improve accessibility.

The Council: A Summary

The Mayor's Advisory Council for Handicapped Individuals has accomplished much success in heightening public awareness of the needs of the handicapped and of removing obstacles which impede mobility. It's efforts continue to enhance the quality of life for all residents of Kokomo, Indiana.

Indiana State Commission For The Handicapped

The Indiana State Commission for the Handicapped was mandated by legislation to develop a plan to coordinate and integrate State, local and private efforts to address the needs and concerns of persons with disabilities, as well as to define and develop services not available in Indiana for persons with disabilities. The mandate requires that the Plan provide direction in the formulation of State policies and programs affecting the delivery of services to persons with disabilities within the State of Indiana.

Perspective

The overriding objective advocated by the Commission is to achieve progress toward independence, equality of opportunity, and normalization of lifestyles for persons with disabilities through laws, policies, and practices of, and within, the State of Indiana. Philosophically, the Commission believes that every person should be provided with conditions which will encourage achievement of optimum balance between the highest levels of independence and social responsibility of which the person is capable. Additionally, the Commission believes that the best interests of persons with disabilities will be served through giving emphasis to meeting the human needs they share with all citizens in a manner respecting their individual uniqueness. The design and development of the Plan have been formulated and pursued in a manner consistent with this primary objective, philosophical position, and emphasis on human needs. The plan has been developed to respect three important dimensions of human experience: ecological (e.g., individual, family, community, State); development (i.e.; all development stages from conception through death); and holistic (i.e., physical, psychological, social, spiritual).

Mr. OWENS. Thank you. Mr. Michael Williams.

STATEMENT OF MICHAEL WILLIAMS, VICE PRESIDENT FOR ANCILLARY SERVICES ST. JOSEPH'S HOSPITAL, KOKOMO, INDIANA, KOKOMO EMPLOYER OF THE YEAR

Mr. WILLIAMS. Mr. Chairman, Mr. Jontz, I certainly appreciate the opportunity to address the Committee regarding such a significant and much-needed piece of legislation as the ADA.

Again, my name is Michael Williams. I have an extensive background in hospital and human resources administration and have served as assistant director of personnel at Wishard Memorial Hospital in Indianapolis and as director of personnel and later as assistant administrator at Hendricks Community Hospital in Danville, Indiana.

Since 1984, I have been employed at St. Joseph's Hospital and Health Center in Kokomo as vice president for ancillary services.

Associated with that position, I am administratively responsible for the human resources department. That department, under the director of human resources, is the coordinating body for all employment, wage and salary, benefit administration, and employee relations activities that occur within the hospital.

St. Joseph's Hospital and Health Center has a long-standing history of supporting the employment of disabled individuals.

For the most part, this history evolved from the mission of the hospital which in summary is to recognize the dignity and capability of all human beings.

Over the years, St. Joseph's Hospital has averaged a two to three percent employment rate of disabled individuals. We have found that the majority of these individuals are not only equally qualified and capable of performing their assigned responsibilities when compared to non-disabled persons, but that they are often superior to outstanding employees.

As such, they have proven to be a sound investment for our employment dollars.

We have employed individuals with varied disabilities including those with both physical difficulties such as blindness, hearing impairment, speech impairment, congenital disabilities, degenerative or debilitating diseases and so on as well as those experiencing mental or emotional problems.

St. Joseph's Hospital has taken significant steps to accommodate the work environment to the particular disability of the employee.

We have modified work schedules within certain business parameters when necessary. Some modifications include allowing part time hours, delayed start times, advanced leaving times, extended lunch and break periods, et cetera.

Additionally, we have from time to time restructured work assignments to better provide for a disabled employee's optimal performance.

Specifically, certain tasks within the context of the job have been realigned to accommodate a particular employee's disability.

It is important to note that to the best of our ability to measure any required job restructuring has not had a negative impact upon productivity or moral.

Further, it has been our practice to reassign disabled employees generally at their requests when positions come available for which they are qualified and which more readily match their capabilities.

For the most part, any reassignments made also have not had a negative impact upon productivity or moral. To my knowledge, it has not yet been necessary to purchase or modify any equipment utilized by our disabled employees in order for them to perform their jobs.

However, for those individuals with sight impairment, we have instituted a buddy system approach where fellow employees who are assigned similar break and lunch periods escort our disabled employees to the cafeteria or break area.

For those individuals with impaired hearing, we have provided from our work force, employees who sign. These people are utilized when necessary during the application and interview process as well as during the course of the hearing impaired individual's employment.

In summary, St. Joseph's Hospital and Health Center is proud of its tradition of providing employment opportunities to our disabled citizens.

We have provided for these opportunities at minimal cost to the hospital and have achieved maximum return on our investment. We will continue to provide these opportunities with or without legislation such as the Americans With Disabilities Act.

However, after reviewing a summary of the Act and carefully assessing its implications to employers such as St. Joseph's Hospital, I must heartily endorse the ADA as a positive step forward toward providing full civil rights protection to America's disabled. Thank you.

[The prepared statement of Michael L. Williams follows:]

Testimony

RE: Americans with Disabilities Act

Field Hearing, October 6, 1989

Indianapolis, Indiana

Submitted by:

Michael L. Williams, SPHR

Vice President/Ancillary Services

Saint Joseph Hospital & Health Center

Kokomo, Indiana

- Testimony -

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Over the years, Saint Joseph Hospital has averaged a 2-3% employment rate of disabled individuals. We have found that the majority of these individuals are not only equally qualified and capable of performing their assigned responsibilities when compared to non-disabled persons, but that they are often superior to outstanding employees. As such, they have proven to be a sound investment for our employment dollars.

We have employed individuals with varied disabilities, including those with both physical difficulties (i.e., blindness, hearing impairment, speech impairment, congenital deformities, degenerative or debilitating diseases, etc.) as well as those experiencing mental/emotional problems.

Saint Joseph Hospital has taken significant steps to accommodate the work environment to the particular disability of the employee. We have modified work schedules, within certain business parameters, when necessary. Some modifications include allowing part-time hours, delayed start times, advanced leaving times, extended lunch and break periods, etc. Additionally, we have from time to time restructured work assignments to better provide for a disabled employee's optimal performance. Specifically, certain tasks within the context of the job have been realigned to accommodate a particular employee's disability. It is important to note that, to the best of our ability to measure, any required job restructuring has not had a negative impact upon productivity or morale.

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In summary, Saint Joseph Hospital & Health Center is proud of its tradition of providing employment opportunities to our disabled citizens. We have provided for these opportunities at minimal cost to the hospital and have achieved maximum return on our investment. We will continue to provide these opportunities with or without legislation such as the Americans with Disabilities Act.

However, after reviewing a summary of the Act and carefully assessing its implications to employers such as Saint Joseph Hospital, I must hardily endorse the ADA as a positive step forward toward providing full civil rights protection to America's disabled.

Respectfully Submitted:

Michael L. Williams, SPHR
Vice President/Ancillary Services
Saint Joseph Hospital
& Health Center

Mr. **Owens**. Thank you.

I would like to thank all of the panelists. Mr. Turney and Ms. Bowling, I am very impressed with the Mayor's Advisory Council for Handicapped Individuals. It seems to me that it definitely is a model and could serve as a model for a lot of other municipalities. It could even provide technical assistance that you stated is needed in the implementation of the Americans With Disabilities Act.

I'm curious. How did the Council get started? Did Jim Jontz recommend it?

Mr. **Turney**. Well, it was a group of handicapped individuals that looked at Kokomo as a community and basically there was very little being done from previous city administrations that addressed the needs of the handicapped.

And you might say it went from a kitty cat to a roaring lion in an about an overnight situation.

Mr. **Owens**. You probably said it but I do not remember. How long has the Council been in existence?

Mr. **Turney**. Well, it formed in January of 1980. But there forth, it is an ongoing process. It is something that, you know, you go in there and you have a lot of walls to knock down and philosophies to overcome of previous people.

But you use a positive attitude about it and present yourself in a positive way, a lot of positive results. And I think Kokomo as a community can be very proud for what it has done for the disabled.

Mr. **Owens**. I agree with you. It can be very proud. Mr. Williams, how many employees in the category of people with disabilities do you have at the hospital?

Mr. **Williams**. Currently, we have approximately 20 to 22 individuals that are disabled on board out of a workforce of about 800.

Mr. **Owens**. Thank you. Mr. Jontz.

Mr. **Jontz**. I have no questions. I just want to thank this panel for indicating what can be done at the level of municipal government and also in the private sector. You certainly serve as good examples. I appreciate your endorsement of ADA. Thank you.

Mr. **Owens**. Our next panel consists of Rick Edwards, the Program Consultant of the Office of Vocational Rehabilitation, who will address public accommodation provisions; Jeff Myers, former Indianapolis police officer, who will also speak on public accommodations; Marchell Hunt, Chairperson of Common Concerns, the Disability Advocacy Organization, who will speak on transportation; David Scott, who will also speak about transportation; and Gay May, Commissioner of the Indiana Department of Veterans' Affairs, who will speak in general about how the Act will help all of us in society.

I want to welcome all of the panelists. We have only one interpreter and she has good reason to be quite tired. So we will take a five minute break before we begin your testimony.

[Whereupon, a short break was taken.]

Mr. **Owens**. Be seated. Let me introduce our panel again, Rick Edwards, Program Consultant, Office of Vocational Rehabilitation; Jeff Myers, Indianapolis Police Department. Marchell Hunt, Chairperson of Common Concerns, the Disability Advocacy Organization; David Scott, Indianapolis Resource Center for Individual Living; and Gary May, Indiana Department of Veterans' Affairs.

We will begin with Rick Edwards.

STATEMENT OF RICK EDWARDS, PROGRAM CONSULTANT, OFFICE OF VOCATIONAL REHABILITATION

Mr. EDWARDS. Chairman Owens, Representative Jontz, members of the Committee, and ladies and gentlemen, my name is Rick Edwards.

I appreciate the opportunity to come to you to present my views on the proposed Americans With Disabilities Act. I was involved in an automobile accident in 1970 when I was 15 years of age which damaged my spinal column at cervical six and seven. As a result I use a wheelchair.

Within a split second I went from a person who enjoyed certain inalienable rights to one of over 37 million people who it seems they are not entitled to those freedoms.

Why do I say this? I have just finished my second year at Culver Military Academy and after an education at the Rehabilitation Institute of Chicago, I went back to my hometown of Spencer to complete high school.

My father was told that I would have to be bussed to a special school 20 miles away because the two-level school at Spencer had no elevator.

Fortunately, my father who was also the school attorney made our appeal clear on that and I went to Spencer. But how many are simply sent off to a special school somewhere?

The ADA will provide the means to end this type of discrimination. Article I of the Bill of Rights says I have the National right to worship Almighty God but the church next door has no access for persons in wheelchairs.

The Twenty-sixth Amendment to the Constitution gives me the right to vote, yet until last year my polling place was inaccessible.

The Indiana Code provides for the issuance of handicapped placard yet what good are they if there are no handicapped spaces or those limited spaces are filled abusers.

The ADA—relieving these problems. Opponents to this legislation argue that the language is vague and conflicting. A September 11, 1989 Wall Street Journal article indicates that the bill does not explain what reasonable accommodation entails. I would like to help them out.

Reasonable accommodation means that is what is fair, just, sensible or wise. For example, it is not just to require individuals to pay through taxes for public transportation that they are not allowed to use.

It is not sensible to buy a telecommunications device for the deaf and not instruct the operators in its use.

It is not wise to pay more for people to stay at home on SSI than to help those who are trying to do a job.

The ADA simply put, is a reasonable piece of legislation. The same Wall Street Journal article if society is really that hostile to the disabled and needs this sort of blunt coercion.

When an OB/GYN advises my wife not to have children because I cannot be an effective father from a wheelchair I say, yes.

When I try to tell a building owner, my dentist's office and my optician's office that the building's brick columns are being place in the center of the curb cuts and he says, too bad, then I say, yes, society needs this kind of blunt coercion.

The article goes on to put forth the belief that most Americans are instinctively sympathetic to disabled problems. I am not asking for sympathy. I am asking for the opportunity to participate in life with the same protections of my civil rights that have been enjoyed by all other major minorities for 25 years.

If, as the article infers, most are indeed willing to put forth a good faith effort and that this legislation is not necessary, why then is the grade in the tunnel from 1 North Capital to our State House not even near standard?

Why are the new drinking fountains in our State House erected out of reach of persons in wheelchairs? And why were curb cuts at the Indianapolis Airport filled in with concrete?

All of these examples could have been avoided if anyone had bothered to consult someone with a disability and the cost, if any, would have been nominal.

An article in last month's Indianapolis Business Journal quotes the National Federation of Independent Businesses as saying that the ADA will require nearly every business in the Nation to make costly alterations and purchase special equipment.

This is simply not true. The Journal of American Insurance in 1986 stated that most of the myths concerning the problems of employing the handicapped originate as a result of attitudinal barriers.

Study after study shows that the majority of employed disabled persons received accommodations that cost employers much less than the employer originally anticipated. In fact, the majority were under $100 for each person.

Because society is being assaulted with the fallacy that people with disabilities are less than able and that the cost to allow us to participate is to quote the NFIB, "Beyond the reasonable bounds of common sense," the Americans With Disabilities Act is necessary.

It is necessary to provide us freedom from the bondage of discrimination. It is therefore the reason why I am here today to urge you to encourage your peers in the House to support this Act as it is without further compromising amendments. Again I thank you for the opportunity to be heard.

[The prepared statement of Ric Edwards follows:]

Statement to Representative Jim Jontz at the Public hearing for the Americans with Disabilities Act on October 6, 1989.

Representative Jontz, Representative Owens, members of the Committee, ladies and gentlemen, my name is Ric Edwards. Thank-you for the opportunity to come to you to present my views on the proposed Americans with Disabilities Act.

I was involved in an automobile accident in 1970, when I was fifteen (15) years old, which damaged my spinal cord at Cervical six and seven. As a result, I use a wheelchair .

Within a split second, I went from a person who enjoys certain inalienable rights to one of over 37 million people who, it seems, are not entitled to these freedoms. Why do I say this?

I had just finished my second year at Culver Military Academy, and after an education at the Rehabilitation Institute of Chicago, I went back to my hometown of Spencer to complete High School. At Spencer, my father was told that I would have to be bussed to a "special school" 20 miles away because the two level school had no elevator. Fortunately, my father, the school attorney, was able to clarify our position on that and I went to Spencer. But how many are simply sent off to that unnecessarily "special" school? The ADA will provide the means for ending this type of discrimination.

Article 1, Section 2 of the Bill of Rights says I have the natural right to worship Almighty God, but the church next door has no access for persons in wheelchairs. The 26th Amendment to the Constitution gives me the right to vote, yet until last year my polling place was inaccessible. Indiana Code 4-28-10-24 provides for the issuance of handicapped parking placards, yet what good is this when there are no handicapped parking spaces or they're filled with abusers of these limited spaces?

The ADA is directed toward relieving these problems.

Opponents to this legislation argue that the language is vague and conflicting. A September 11, 1989 Wall Street Journal article states that the bill doesn't explain what "reasonable accommodation" entails. They might wish to invest in a dictionary but until they do, I would like to help them out... "Reasonable" means 'what is just, fair, sensible or wise.' For example, it is not "just" to require individuals to pay, through taxes, for public transportation that they are not allowed to use. It is not "sensible" to buy a Telecommunication Device for the Deaf and not train the operators in its use. It is not "wise" to pay more for people to stay at home on SSI than to help those who are trying to work at a job.

The ADA is, simply put, a 'reasonable' piece of legislation.

The same Wall Street Journal article asks if "society is really that hostile to the disabled" and "needs this sort of blunt coercion?"

When a OB-Gyn advises my wife not to have children because I can't be an effective father from a wheelchair, I say "yes". When I try to tell a building owner (my dentist's office and my obtician's office) that the building's brick columns are being placed in the middle of the curb cuts and he says "too bad" I say "yes, society needs this sort of blunt coercion."

The article goes on to put forth the belief that "most Americans are instinctively sympathetic to the disabled's problems." I'm not asking for sympathy. I'm asking for the opportunity to participate in life with the same protection of my civil rights that have been enjoyed by all other major minorities for 25 years.

If, as the article infers, most are indeed willing to put forth a good faith effort and that this legislation is not necessary, why is the grade in the tunnel from one North Capitol to our State House not even near standard? Why are the new drinking fountains in our State House erected out of reach of persons in wheelchairs? Why were the curb cuts at the Indianapolis Airport filled in with concrete?

All of these examples could have been avoided had anyone bothered to consult someone with a disability; and the cost, if any, would have been nominal. An article in last month's Indianapolis Business Journal quotes the National Federation of Independent Business in saying that the ADA " will require nearly every business in the nation to make costly alterations and purchase special equipment..." This is simply not true. The Journal of American Insurance/First Quarter 1986, in an article "Hiring the Handicapped; Overcoming Physical and Psychological Barriers in The Job Market stated that "Most of the myths concerning the problems of employing the handicapped originate as a result of (these) attitudinal barriers." "Study after study shows that the majority of employed disabled persons received accommodations that cost employers much less than the employer originally anticipated." In fact the majority were under $100 for each person.

Because society is being assaulted with the fallacy that people with disabilities are less than able and that the cost to allow us to participate is, to quote the NFIB "beyond the reasonable bounds of common sense", the Americans with Disabilities Act IS necessary. It is necessary to provide us freedom from the bondage of discrimination.

It is, therefore, the reason why I am before you today; to urge you to encourage your peers in the House to support this Act, as it is without further compromising amendments.

Again, Thank you for the opportunity to speak.

Mr. OWENS. Thank you. Mr. Myers.

STATEMENT OF JEFF MYERS, FORMER POLICE OFFICER, INDIANAPOLIS

Mr. MYERS. Mr. Chairman, Mr. Jontz, I would like to thank you for this opportunity and I would like to give you some of my personal situations, views, and what I have observed on public accommodations over the past several years.

There are buildings what they call accessible and this ADA Bill will help them make really accessible. The guidelines, I think people need to be given to show them exactly what it takes to get in.

I called a lot of places in advance to find out, you know, if it is accessible. I am told it is. And when you get there, you have got an eight inch curb that you cannot even get up to the building.

I found a few places and ways to get up to these buildings and when I get there, there are ramps that I cannot even be pushed up even though I have a power wheelchair.

There are numerous places that follow the same guidelines that go over and over and these places need some kind of a guideline. And I feel like the ADA Bill will cover these.

There are numerous sports arenas in this city of ours that go at it at the same way. This is a big problem I have is, we are handicapped and it is like we are not expected to have family or friends and that is not the case anymore.

Now, there are a lot of family members that go along with handicapped people. We have families now. And they allow you to have one person with you at most of these places and your family members and friends, they have to go somewhere else.

I would just like to see the ADA Bill go through and get the road paved like the Civil Rights Act of '64. Thank you.

[The prepared statement of Jeff Myers follows:]

AMERICANS WITH DISABILITIES 1989

JEFF MYERS INDPLS. IN 10/6/89

THE CIVIL RIGHTS ACT OF 1964 BLAZED A PATH AND SET PRCEDENCE FOR THE BLACK MINORITIES OF THIS COUNTRY. IT'S TIME FOR ANOTHER ACT TO BLAZE A PATH FOR ANOTHER MINORITY, PEOPLE WITH DISABILITIES! IT TOOK THE PEOPLE OF THIS COUNTRY TWO CENTURIES TO ALLOW BLACK CITIZENS TO COME OUT FROM THE BACK OF THE BUS. IT IS NOW TIME TO GET PEOPLE WITH DISABILITIES OUT FROM THE BACK OF THE BUS TOO! IT IS TIME TO MAKE OUR COUNTRY, OUR STATES, OUR CITIES RURAL AND SUBURBAN ACCESSIBLE FOR PERSONS WITH DISABILITIES.

THE STORES, RESTAURANTS, THEATRES, SPORTS FACILITIES AND OFFICES NEED TO BE ACCESSIBLE FOR ALL. IF THIS IS SO IT WILL ENABLE PERSONS WITH DISABILITIES TO WORK, TO SHOP, TO EAT OUT, TO WATCH SPORTING EVENTS AND IN RETURN TO SOCIETY THIS CLASS OF PEOPLE WILL BE SPENDING MONEY, PAYING INCOME TAXES, PAYING SALES AND EXISE TAXES AND OVERALL BE A PRODUCTIVE, SELF SUPPORTING MEMBER OF SOCIETY.

PUBLIC ACCOMODATIONS MUST BE ACCESSIBLE TO ALL PERSONS. I HAVE CALLED A VARIETY OF ESTABLISHMENTS WHERE I WAS PLANNING ON GOING AND THEY STATED THAT, "YES, WE ARE HANDICAPPED ACCESSIBLE." AND WHEN I ARRIVED I FOUND OUT THAT THEY WERE IN FACT NOT ACCESSIBLE. I HAVE LEARNED THAT I WAS NOT BEING TRICKED OR LIED TO. IT'S THAT THE MAJORITY OF PEOPLE DON'T HAVE ANY IDEA OF WHAT NEEDS TO BE DONE TO BE "ACCESSIBLE". THERE NEEDS TO BE BUILDING GUIDELINES FOR CURB CUTS, DOORWAYS, RESTROOMS ETC. SO THAT THIS GAP IS FILLED WITH HELPFUL AND USEFUL AIDS FOR THE EVER INCREASING MINORITY OF PERSONS WITH DISABILITIES.

I WAS TO ATTEND A FUNCTION AT THE HOLIDAY INN'S HOLIDOME IN THEIR BANQUET ROOM, AND WHEN I ARRIVED THEIR IDEA OF ACCESSIBLITY WAS TO CARRY ME AND MY WHEELCHAIR UPSTAIRS TO THE BANQUET ROOM. I WAS ALSO TOLD OVER THE PHONE THAT ILLUSIONS RESTAURANT IN CARMEL WAS ACCESSIBLE AND WHEN I ARRIVED I COULDN'T EVEN GET UP ON THE CURB TO LOOK AT THE FRONT DOOR. I TOOK A RAMP TO GET ON THE SIDEWALK AND THEN I ATTEMPTED TO GO UP THE RAMP WITH THE MANAGER PUSHING ME AND THE RAMP WAS TO STEEP TO EVEN BE PUSHED UP. I HAVE GONE THROUGH THE KITCHEN AT THE GROUND ROUND TO GET TO A TABLE BECAUSE OF STEPS. THIS WAS DANGEROUS IN THAT A MINOR ACCIDENT COULD LEAVE MYSELF VERY SERIOUSLY INJURED AND POSSIBLY OFF OF WORK FOR A LONG PERIOD OF TIME.

IN THEIR OPINION THEY THOUGHT THEY WERE ACCESSIBLE UNTIL CONFRONTED WITH A REAL SITUATION. THIS IS WHY THERE NEEDS TO BE SPECIFIC GUIDELINES SO THAT "ACCESSIBLE" HAS A NATIONAL STANDARD MEETING.

SPORTS FACILITIES IN INDIANAPOLIS HAVE MADE A MINOR STEP IN THIS DIRECTION BUT THERE IS A NEED FOR IMPROVEMENT. A PERSON WITH A PHYSICAL DISABILITY CAN ATTEND SPORTING EVENTS HOWEVER, YOU ARE NOT EXPECTED TO HAVE A FAMILY OR MORE THAN ONE FRIEND. YOU CAN ATTEND AND SPECTATE BUT ONLY ONE PERSON IS PERMITTED TO SIT WITH YOU. THIS MENTALITY IS ERRONEOUS. PERSONS WITH DISABILITIES ARE MEMBERS OF FAMILIES, HAVE FAMILIES OF OUR OWN AND YES WE DO POSSESS MORE THAN ONE FRIEND. A SPORTING ARENA WITH A SEATING CAPACITY OF 20 TO 60 THOUSAND PEOPLE NEEDS TO HAVE INTEGRATED SEATING FOR PERSONS WITH DISABILITIES AND THEIR FAMILIES OR GROUP OF FRIENDS.

I WOULD LIKE TO THANK AND CONGRATULATE PRESIDENT BUSH AND THE MEMBERS OF CONGRESS WHO ENDORSE AND SUPPORT THIS BILL.

Mr. OWENS. Thank you. Marchell Hunt.

STATEMENT OF MARCHELL HUNT, CHAIRPERSON, COMMON CONCERNS, THE DISABILITY ADVOCACY ORGANIZATION

Ms. HUNT. Thank you. Mr. Chairman, Mr. Jontz, I am Marchell Hunt, Chairperson for Common Concerns, a disability advocacy organization in Indianapolis.

May I begin by quoting John Fitzgerald Kennedy who once said, "It is in the American tradition to stand up for ones right even if the new way to stand up for ones rights is to sit down."

Because the lack of transportation is the primary barrier to community participation, education, employment, recreation, adequate medical care, and independent living for people with disabilities, I am sitting here before you today standing up for those civil rights of disabled persons to have access to mainline public transportation.

The crippled state of accessible public transportation in Indianapolis is an embarrassment. Currently, Metro, Indianapolis' public transportation system has only six wheelchair accessible busses.

As a result, there is no flexibility in scheduling and consumers are forced to schedule their activities at least two weeks in advance.

Scheduling however does not necessarily guarantee service. The day I was released from the hospital, Metro called to say that they could not pick me up even though I had scheduled my ride three weeks in advance.

Currently, there are more than 100 persons on a waiting list to utilize this very limited form of accessible public transportation.

Metro has stated that it simply costs too much to equip new busses or if such busses were available, smooth scheduling operations would be interrupted because of the extra three to five minutes needed to board disabled passengers.

In short, it would appear that Metro's financial experts have manipulated their data by including and excluding costs of variables to advance their particular positions.

Considering that cost has become such a critical factor in the debates over accessibility, it would appear that Metro's accounting maneuvers represent yet another embarrassing blow to the disability community.

In response to these and other concerns associated with the current transportation system, Paratransit has been proposed as a possible solution.

However, if solely implemented such a system will serve only to further segregate the disabled from the non-disabled thereby speeding stereotyped public attitudes and beliefs concerning persons with disabilities.

Such stereotypes include misplaced safety concerns, notions that disabled people need to be protected and cared for, a lack of understanding as to why persons with disabilities would even want to leave their home and the personal discomfort that some may feel when coming in contact with people who are physically different.

In short, accessible mainline public transportation can help change attitudes through interaction. For attitudinal barriers can be just as difficult to overcome as those which are physical. Because segregated isolation promotes misconceptions.

Finally, it is socially implied that allowing disabled people greater community access is an act of charity and not an affirmation of civil rights.

Given this implication and periods of limited resources, it is politically acceptable to limit the level and act of charity because of budgetary constraints, traditional practice, or administrative difficulty.

However, reducing benefits may be legitimate, but violating civil rights is not. Therefore, the disabled community of Indianapolis join with other disabled communities throughout the country in rendering our plea and support for the passage of the Americans With Disabilities Act. Thank you.

[The prepared statement of Marchell Hunt follows:]

I am Marchell Hunt, Chairperson for Common Concerns, the Disability Advocacy Organization in Indianapolis.

May I begin by quoting John Fitzerald Kennedy who once said:

> "It is in the American tradition to stand up for one's rights ---even if the new way to stand up for ones's rights is to sit down."

Because the lack of transportation is the primary barrier to community participation, education, employment, recreation, adequate medical care, and independent living for people with disabilities, I am sitting here before you today, standing up for the civil right of disable persons to have access to mainline public transportation.

The crippled state of accessible public transportation in Indianapolis is an embarrassment. Currently Metro, Indianapolis' public transportation system, has only six wheelchair accessible buses. As a result, there is no flexibility in scheduling and consumers are forced to schedule their activities at lease two weeks in advance.

Scheduling, however, does not necessarily guarantee service

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In short, it would appear that Metro's financial experts have manipulated there data by including and excluding cost variables to advance their particular position. Considering that cost has become such a crucial factor in the debate over accessibility, it would appear that Metro's accounting maneuvers represent yet another embarrassing blow to the disabled community.

In response to these and other concerns associated with the current transportation system, paratransit has been proposed as a possible solution. However, if solely implemented, such a system will serve only to further segregate the disabled from the non-disabled thereby feeding stereotyped public attitudes and beliefs concerning persons with disabilities.

Such stereotypes include misplaced safety concerns, notions that disabled people need to be protected and cared for, a lack of understanding as to why persons with disabilities would even want to leave their homes, and the personal discomfort that some may feel when coming in contact with people who are physically different.

In short, accessible mainline public transportation can help change attitudes through interaction, for attitudinal barriers can be just as difficult to overcome as those which are physical, because segregated isolation promotes misconceptions.

Finally, it is socially implied that allowing disabled people greater community access is an act of charity and not an affirmation of civil rights. Given this implication, in periods of limited resources it is politically acceptable to limit benevolent acts of charity because of budgetary constraints, traditional practice, or administrative difficulty, however, reducing benefits may be legitimate, but violating civil rights is not.

Therefore, the disabled community of Indianapolis join with other disabled communities throughout the country in rendering our plea and support for the passage of the Americans With Disabilities Act.

Thank You.

Mr. Owens. Thank you. Mr. David Scott.

STATEMENT OF DAVID SCOTT, INDIANAPOLIS RESOURCE CENTER FOR INDIVIDUAL LIVING

Mr. Scott. Mr. Chairman, Mr. Jones, I also speak on transportation. To be involved in any activity outside of one's own residence an individual needs transportation whether it be for one's own vehicle or through the use of public or private means, having a sense of motility provides opportunity.

Being able to jump into a car and go whether it be to go to school or to work, to shop for one's clothes, to make appointments or take care of business, or fulfill any of one's needs let alone because one wants to are actions a large majority of our population takes for granted.

To the disabled, opportunities for everyday activity and desire for activity are often encumbered by a lack of transportation.

In the Indianapolis area, many individuals with disabilities who can neither navigate nor afford their own transportation currently use Metro Open Door, a service of the Metro Bus System that is accessible to the disabled.

Though the service is helpful, it is grossly inadequate with riders having to wait up to two weeks for a ride to be available.

Even then, the person riding in his own best interest, finds it best to schedule his ride an hour early because they may be over an hour late to the appointment.

And even after the pick up, sometimes trips take an hour and a half to get them there.

Section 504 says, "that a disable individual should have transportation to take him or her to a destination within 24 hours after requesting it."

No matter what improvements take place in the current system there is no way compliance can be achieved. With the passage of the Americans With Disabilities Act, accessible buses will be implemented and the next six to seven years of new buses and this will be a major improvement.

Two years ago, it will be two years ago, Metro proposed brokering out services to private vendors who in greater numbers would be able to meet the transportation of the disabled.

Well, this has not come to fore and it would definitely be an improvement in the present usage. I can see brokering service as an interim improvement but I do not see it as a solution.

Section 504 compliance can be reached through this. To provide adequate services, there is going to be a need for complete accessibility of public transportation.

In the most objectionable words, to have a system that operates under the premise of separate but equal, and the disabled are equal, is discrimination. Thank you.

Mr. Owens. Thank you. Mr. Gary May.

STATEMENT OF GARY MAY, COMMISSIONER, INDIANA DEPARTMENT OF VETERANS' AFFAIRS

Mr. MAY. Chairman Owens, Congressman Jontz, ladies and gentlemen, thank you for giving me the opportunity to provide testimony regarding the Americans With Disabilities Act.

This important legislation would provide strong guidance in addressing discrimination on the basis of disability.

Countless thousands of Hoosiers including over 47,000 military veterans who receive pension or compensation from the U.S. Department of Veterans' Affairs on the basis of disability would benefit from the passage of this legislation.

Persons with disabilities face many challenges unknown to the general population. The general thrust and motivation for adaptive behavior by persons with disabilities has been from the disability as liability perspective.

From this perspective, the existence of a disability is a totally negative phenomenon which must be conquered. This perspective does not fully embrace the concept of individual differences and pushes for standardization and homogenization in a society which operates from the same premise.

This process is commonly understood as fitting the square peg into the round hole. The intractability of the round hole is accepted as a given.

From this perspective the experiences of my friend and former wheelchair basketball teammate are quite acceptable and understandable.

My friend was recently nominated for an award for his achievements in finding suitable employment. His achievements in pursuit of his goal of gainful employment including departing from his home at 4:30 a.m. daily to drive many miles to a place of employment where he worked without compensation until he was able to prove that he had the requisite skills, motivation, and dependability for full time employment which he later obtained.

Such practices subvert a process which could lead to a more enlightened and accepting and accurate understanding of individual differences.

Having to prove oneself in the absence of specific personal data about assets, attributes, and liabilities is akin to assuming that membership in a certain class is inherently negative and inferior and can be overcome only by the acquisition of abundant evidence to the contrary.

We publicly abhorred this process when applied to racial, ethnic, gender, or other groups in American society. We cannot afford to tacitly condone it for persons with disabilities by failing to pass this legislation.

This legislation will benefit many persons whose mobility, access, and participation may be only temporarily diminished.

Such persons would include pregnant women, senior citizens, persons recovering from accidents, injury, medical procedures, et cetera.

Protections would extend from private and public employment, access to public and private accommodations as well as to full participation in the cultural and social life of American.

Earlier I mentioned military veterans as beneficiaries of this legislation. Many who served this country through the military have disabilities as a direct result of their service. In Indiana, they number over 37,000.

The realization that the freedoms and opportunities for which they fought and shed blood are denied to them because of artificial disability related barriers comes as a very bitter pill for many of these men and women.

The message for everyone needs to be clear, concise and consistent. Discrimination on the basis of disability will not be tolerated.

Thank you again for affording me this opportunity to testify in support of this important legislation.

[The prepared statement of Gary E. May follows:]

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GARY E. MAY, ACSW, DIRECTOR
CARMEN W. WILSON II, DEPUTY DIRECTOR

The Honorable Congressman Major R. Owens
The United States House of Representatives

House Education and Labor Subcommittee on Select Education

October 6, 1989

The Americans with Disabilities Act

Submitted by:

Gary E. May, ACSW, Director
Room 707 State Office Building
100 North Senate Avenue
Indianapolis, Indiana 46204
317/232-3910

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The general thurst and motivation for adaptive behavior by persons with disabilities has been from the "disability as liability" perspective. From this perspective, the existence of a disability is a totally negative phenomemon which must be conquered. This perspective does not fully embrace the concept of individual differences and pushes for standardization and homogenization in a society which operates from the same premise. This process is commonly understood as fitting the square peg into the round hole. The intractability of the round hole is accepted as a given.

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Mr. OWENS. Thank you.

Since I would like to make a closing statement I will have Mr. Jontz go first in terms of questions.

Mr. JONTZ. Mr. Chairman, I do not have any questions of this panel but I might note that the completion of Gary May's testimony, I think it is unanimous in favor of the Americans With Disabilities Act.

And I want to thank everybody who has testified today for the helpful statements. We certainly want to return to Washington to do everything we can within the Congress to get the bill passed quickly without any compromising amendments and perhaps with a couple of small improvements which have been recommended here today.

And I want to also thank the staff, the committee staff and my personal staff for their assistance and the others who were responsible for helping us to put the hearing together today. And thank everyone who has come here today.

I would like the record to show that the room has been full for most of the afternoon. We have lost a few here as the evening hours draw close.

But I think this indication of support for the legislation is indicative of how important the Americans With Disabilities Act is to people of this community and our state.

And again, Mr. Chairman, I thank you for bringing the hearing here today.

Mr. OWENS. I also want to thank the members of the audience and the panelists. I had mentioned before that throughout the country we have had hearings and have gotten very moving testimony from people who either have disabilities themselves or have members of their families with disabilities.

We have also gotten some moving testimony from other people. I would like to close out by sharing with you the testimony of one who sat on the other side.

Transportation has been mentioned several times here as a major problem. Transportation always looms as the biggest problem in terms of cost.

And right now the major effort being launched against the passage of this legislation is being launched by the president of Greyhound. I mention him specifically because he is not bashful at all about coming forth, testifying, and influencing a number of other people in an attempt to stop the forward movement of this legislation.

But there are many other transportation authorities—not private but public—across the country that are also resisting.

There is one gentleman in Texas that resisted for years any efforts to have the transit in Houston, Texas changed to accommodate people with disabilities.

And, he testified at one of our hearings. Houston has a reputation for a fortress effort in terms of resistance for a long time. Mr. Robert C. Lanier is a hard-boiled businessman. He is the chairman of Landar Corporation, and when it comes to making the arguments about the dollars and cents that will be needed to make the buses accessible, he was one of the outstanding proponents against outfitting the buses.

But two things changed Mr. Lanier's outlook, his attitude, and his opinion. One was the death of Mickey Leland, the Congressman from Houston, Texas. The other was the Americans With Disabilities Act and the phrasing and the presentation of the concept in terms of basic rights and the fact that rights are there to guarantee people opportunities.

So, this hard-boiled businessman came in and was really expected to testify on the other side. But he came in with the following testimony. It is not very long, so I am going to read it all. He did elaborate on it, but you will get some idea of what an about face this was.

Mr. Lanier stated: "the board of directors of the Metropolitan Transit Authority of Harris County, Texas which is Houston Metro, formally voted to outfit its new buses, vans, and mini-buses with wheelchair lifts commencing with the first purchases of 300 full-sized buses, 60 per year for five years, 51 mini-buses and 35 micro-buses. This board action supplements a door to door pickup service which is presently funded with $5,894,000 of annual expenditure. And incidentally, that is well above the level of most other comparable cities.

The wheelchair lifts were added not because we believed them to be the most cost effective, but because we believe them to be right. The consoling issue as I see it is an attempt to afford all of our citizens the right to fully participate in the economic and political process.

The analogy that comes to mind is the old contention that minorities should be segregated under the separate but equal doctrine. I do not subscribe to that but subscribe to the notion that, as best we can, we should afford all of our citizens the right of full participation.

Houston Metro's decision is a small step in that direction, a step we are comfortable with because it is soundly based in American values and overall economic health.

Many argue that allowing full participation takes people off of the welfare rolls and makes them into tax paying citizens. That is all true. But I think there is a larger value. Had U.S. Congressman, Mickey Leland lived earlier in my lifetime, he would never have been permitted his full participation.

But as society became more inclusive, it is not just he, but us all who benefited from his larger than life contributions. Who knows what outstanding contribution lies dormant within some handicapped person. That contribution teetering on the brink of whether he or she is allowed full participation in our society?

The mobility provided by a wheelchair-equipped bus fleet is an important element of full participation in our society."

And, he closed by quoting excerpts from Gray's Elegy Written in a Country Churchyard. "Full many a flower is born to blush unseen, and waste its sweetness on the desert air. Some mute inglorious Milton here may rest, some Cromwell, guiltless of his country's blood. Here rests his head upon the lap of earth a youth, to fortune and to fame unknown."

Mr. Lanier was quite moved by his own conversion and he moved everybody in the audience. But I close with this to say that the obstacle is not the cost. The obstacle is the attitude. The obstacle is the vision and compassion and overall understanding of the people in charge in terms of what is necessary to guarantee full opportunity to every American.

Thank you very much for being with us today.

[Whereupon, at 5:00 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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RICHARD L. BUTLER, ESQ.
Executive Director

Testimony Regarding the Americans With Disabilites Act

Presented to:

The House Education and Labor Subcommittee
on Select Education
Indianapolis, Indiana
October 6, 1989

by

Steve Beebe
Deputy Director for Government Relations
Indiana Health Care Association

on behalf of the

American Health Care Association

(42)

TESTIMONY

Mr. Chairman, members of the Committee, my name is Steve Beebe and I am the Deputy Director of Government Relations for the Indiana Health Care Association (IHCA). IHCA is the trade association representing approximately 460 proprietary, not-for-profit, and hospital based long term care facilities throughout the state of Indiana. However, I am presenting this testimony today on behalf of the American Health Care Association which is the national long term care trade association representing nearly 10,000 nursing facilities and 1.5 million residents nationwide.

The objectives of the Americans with Disabilities Act are laudable, and we support them. Certainly, no otherwise qualified person should be denied employment opportunities because of a disability. The cost to our economy of that lost productivity is far too high to be tolerated.

We and other businesses do, however, have several specific concerns that need to be addressed before the House finally passes this legislation. Some of these concerns are shared by industry generally, while others are unique to the health care industry. I would like to focus my remarks on this latter area.

The first area of special concern to our industry is Title One's overall scope. We, as an industry, firmly believe that qualified handicapped individuals should be hired on a non-discriminatory basis. However, we ask that Congress seriously take into account the unique circumstances of the health care industry. Our residents, our customers, if you will, are - by definition - handicapped. They are either the frail elderly (20 percent of our patients are over the age of 80), the victims of strokes, severe arthritis, diabetes or other disorders which make them either wheel chair bound or in need of other assistance in walking, feeding and bathing themselves or they are suffering from Alzheimer's disease. In some cases, they may have a combination of disabilities.

These factors require that facilities have particularly high standards when they decide whom to hire as a nurse, or nurses' aides. Therefore, accommodations that might be reasonable in other employment contexts, such as in a department store or restaurant, may well pose unacceptable risks to the health and safety of our residents.

We do not feel that the current language in the Senate passed version of this bill will provide sufficient protection for health care providers or our residents. (see attached suggested amendments) There should be a statutory presumption that job requirements imposed by such employers are job related. Because we already, by definition, provide services to those who are disabled, there should be a presumption that we, as the providers, have acted in good faith in setting employment standards. The burden of proof should, therefore, be squarely placed on those who would challenge those standards, and not on the facility that chose them.

Secondly, the health care industry is unique among American business in that we are the only industry in which our costs are mandated, but in which we are not permitted to raise our prices to cover those costs.

Typically two-thirds, or more, of the residents in a nursing facility are covered by either Medicaid or Medicare. Only one-third (or fewer) of our patients are private pay. Therefore, if a facility is required to make major structural modifications that increase its costs above that state's Medicaid cap, that facility will probably be unable to recover those costs. Unlike other business who are able to raise their prices, a facility may not charge a Medicaid or Medicare patient a price that exceeds the maximum allowed under state law.

Thus, it is necessary that health care providers have significant assurances, one way or another, that these additional costs can be recovered, or that such modifications will be delayed, until such time that those costs will be covered.

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One possible approach would be to require that before any facility is required to make any structural modification, that a court must give substantial consideration to the question of whether, and to what extent, a facility will be able to recover those costs under that state's Medicaid program.

Another possible approach would be for Congress to authorise the Small Business Administration to make low interest loans to businesses which are required to undertake these modifications.

A third approach would be to put a cap on the amount of money that a facility would have to spend in making such renovations. This cap might be either a set dollar figure or a percentage of the original or current value of the affected entity.

We are seeking one or more of these specific protections because we do not believe that the undue burden defense, found in Titles I and III, is specific enough, nor are we willing to trust our financial survival to regulations that Congress will not review and which will not be issued until a year or more after the bill is enacted. We will have only limited input into the writing of these regulations, and we feel that additional statutory protection is essential.

In this regard, I should point out that most long term care facilities, probably more than 80 percent nationwide, are small businesses with annual revenues of less than 3 million dollars, and profit margins under 3 percent. Thus, any significant increase in a facility's cost of doing business imposed without a guarantee of off-setting increased revenue, could spell financial disaster for many facilities.

Also, in the context of determining what financial burden should properly be placed on a facility to comply with the provisions of this bill, we ask that each nursing facility, even if it is part of a chain, be considered as though it were an independent entity.

Facilities operate in 50 different states. They are faced with 50 different reimbursement and regulatory systems. Therefore, they should be regarded as separate entities for purposes of this legislation.

One final concern is the relationship between this proposed legislation and Section 504(a) of the Civil Rights Act. Certainly, the current law applies to all health care facilities. We suggest that the proposed statute needs to be clarified to indicate that facilities in compliance with Section 504 are then deemed to be in compliance with the proposed law.

Again, we commend Congress for its consideration of this legislation. Approval of the kinds of amendments that we have suggested will enable health care facilities to continue to provide, as we have done for decades past, the highest quality health care service, on a non-discriminatory basis, without endangering either the quality of that care or the financial integrity of the facilities that are providing it.

Amendments

1. **Limiting the Requirements That A Facility Be Modified To Accommodate A Handicapped Employee**

Insert on page 9, after line 17 a new subsection 101 (8) (C), as follows:

(C) Notwithstanding the foregoing requirement, a covered entity shall not be required to physically modify any non-public work area unless an otherwise qualified and disabled applicant has been hired for that position.

Justification
The modification of a facility is expensive and the cost of so doing may not always be recoverable. Therefore, a facility should not be required to undertake such modifications unless it is essential that it do so.

2. **Additional Criteria for Establishing An Undue Hardship Defense (Title I)**

Insert in Section 101 (9) (B), on Page 10, Line 10 a new subsection (v) as follows:

(v) In the case of health care providers, the court shall give substantial weight to the ability of the facility to obtain full reimbursement for the expenses incurred from that states Medicaid program, and in the case of an entity that operates more than one facility in a state, each facility shall be treated as a separate entity for purposes of determining the financial or other burden it shall be required to incur in complying with this title.

Justification

In many states facilities will be unable to recover the cost of compliance with this act, or will only be able to capitalize these expenses over the depreciable life of the property. This may require a facility to incur significant up-front costs, with reimbursement spread out over 15 or 20 years.

3. **Additional Criteria to be Used In Establishing the Undue Hardship Defense (Title III)**

Insert in Section 301 (5) (B), on Page 33, line 2, a new Subsection (B) (iv) as follows:

Use the same language that was used for Amendment #2.

Page 8

4. Availability of the Undue Burden Defense

Insert in Sections 302(b) (1) (A) (i), and 302(b) (1) (A) (ii) the following:

a. On page 33, line 22, after the word "entity", the following:

> "A covered entity shall be entitled to raise the defense that the denial of the opportunity to participate in or benefit from these goods, services, privileges or accommodations offered was due to the undue burden created, or the lack of any readily achievable means of providing the goods, services or accommodations in a reasonable manner".

b. On page 34, line 8, after the word "individuals" insert the following:

> "A covered entity shall be entitled to raise the defense that the denial of the opportunity to participate in or benefit from these goods, services, privileges or accommodations offered was due to the undue burden created, or the lack of any readily achievable means of providing the goods, services or accommodations in a reasonable manner."

5. **Amendment Relating to the Case of Resident's With Communicable Diseases**

Insert in Section 302(b) (1) (B), on page 35, line 2, the following:

(ii) Notwithstanding the foregoing a provider of health care services shall be entitled to assign individuals with communicable or contagious diseases to specified portions of a facility, or to specified facilities.

6. Right to Relocate A Resident or Patient to Another Room

Insert at the end of Section 302(b) (2) (A) a new Subsection 302(b) (2) (B), and renumber the succeeding subsections accordingly. Insert on page 39, line 10 the following:

(B) Notwithstanding the foregoing, a provider of health care services shall have the right to relocate a resident or patient to another room in a facility, in lieu of making any structural or other modifications in the facility.

Page 9

7. **Prohibition Against Lawsuits Until Implementing Regulations Are Final**

Insert on Page 60, after line 17, a new section 506, as follows:

Section 506 - Enforcement Litigation

No action to enforce any provision of this Act shall be commenced, either by the United States, by any agency thereof, or by any private party, until one year after the applicable regulations have taken effect.

Justification

Covered entities should have a reasonable period of time to modify their programs, criteria, and physical plant to meet the statutory and regulatory requirements of this Act. This amendment will specifically prevent the filing of enforcement litigation prematurely.

8. **No Double Jeopardy**

Insert, on page 49 after line 20 a new Section 308(b) (2) (D), as follows:

(D) A fine for a repeat violation shall only be imposed if the violation is the deliberate failure of the defendant to correct a previously cited violation.

Page 10

9. Cost Justification As A Defense

Insert on Page 10, after line 10 a new subsection 101(9) (B) (iv), as follows:

(iv) In determining the ability of any health care provider to bear the cost of making any structural modification each facility shall be considered a separate entity and the opportunity for the facility to obtain reimbursement for those costs under the applicable state's Medicaid plan shall be significant factor in determining if a proposed accommodation creates an undue burden.

Justification

Each facility is subject to vastly different state reimbursement policies and regulations. These policies and regulations will determine if, and to what extent, a facility will receive reimbursement for the cost of complying with the act.

Secondly, unlike other covered entities, nursing facilities cannot pass on the cost of compliance by raising their prices. Medicaid law prohibits facilities from charging Medicaid patients fees in excess of that state's Medicaid reimbursement rate, and the rates differ markedly from one state to another.

Third, in some states, because of the specific reimbursement methodology used, a facility may not legally be able to seek an adjustment in its rate that will allow it to recover all of its costs. Moreover, again depending upon the state, those costs may only be recoverable over a period of many years.

10. Amendment Relating To Handicapped Persons Employed In Health Care Facilities

Insert on Page 10, after line 10 a new subsection IV.

(IV) In the case of health care facilities, there shall be a presumption that a facility's determination that a disabled employee or applicant's disability may endanger the health or safety of a resident shall be controlling, unless there is clear and convincing evidence on the record to rebut that presumption, and the burden of proof shall be on the employee or applicant to rebut that presumption.

Justification

Facility employees care for residents who are frail, infirm and suffering from numerous illnesses. Their safety should not be jeopardized, to any degree, by a facility being required to hire, or retain, an employee with a disability that might endanger a resident's health. Therefore, the facility management's views should receive special consideration.

11. Deleting the "Business Necessity" Requirement From Section 102(b) (1) (G)

On page 12, lines 18-19 delete the phrase, "and is consistent with business necessity".

Justification

Section 102(b) (1) (G) requires that any employment test or criteria that tends to screen out a disabled person must meet 2 standards in order to survive a Court (or administrative) challenge. The employer must provide that 1) the standard is "job- related"; and 2) that there is "a business necessity" for it.

An employer should not have to meet this dual burden. It should be sufficient that the employer proves that the standard is "job-related".

Secondly, the "business necessity" standard is vague. What does "necessity" mean? Must an employer prove that a requirement is "absolutely essential", that it is "reasonably necessary" or only that there is "some business justification" for its use?

12. Deleting the "Most Effective Manner" Requirement from Section 102(b) (1) (H)

Delete from page 12 lines 21-22 the phrase "in the most effective manner".

Justification

The phrase "most effective manner" is an invitation to endless litigation because this criteria is completely subjective. There are no standards for determining what is "the most effective" and its use will likely result in a demand for mandatory hiring quotas as the only readily available method for an employee to prove that he/she had complied with the Act.

13. Immunity from Suit for Using Statutorily Mandated Tests

Subsection 102(b) (1) (H) is amended by renumbering paragraph (H) as paragraph (H) (i) and inserting on page 13 line 7 a new subparagraph (H) (ii), as follows:

(ii) A covered entity shall be immune from suit under subsection (H) if any test or standard used to select or promote employees has been designed or mandated by any federal or state law or agency. In such cases, any suit filed to enforce any right granted by this subsection shall be filed only against the agency that required or authorised the test or criteria, and not against the facility or facility staff using it.

Justification

Statutes such as OBRA have mandated that facilities test nurse aides for skills competency. These tests will ultimately be approved by various governmental agencies. Facilities will have no alternative but to use them. Therefore, it would be manifestly unfair to impose any legal liability on the facility under these circumstances. The liability, if any, should fall on the government.

14. Deleting the Business Necessity Requirement from Section 102(c) (4) (A)

a. Delete from page 15, line 9 the phrase, "and consistent with business necessity."

b. Delete from page 15, line 20 the phrase, "and consistent with business necessity."

Justification

It should be sufficient that a medical examination or inquiry is "job-related" in order for it to be lawfully required. It should not be necessary for an employer to meet a second burden of that of proving that there is a "business necessity" for its use. The "business necessity" standard is vague. Is "necessity" equated with "essential", or is an employer only required to prove that there is some need for the medical examination. The use of this dual standard will only stimulate additional, and unjustified, litigation.

15. Establishing a Standard and Burden of Proof for Section 103

Redesignate Section 103(a) as Section 103(a) (1). Insert, after page 15 line 22 a new section 103(a) (2), as follows:

(a) (2) An employer shall meet his/her burden of proof by demonstrating by a fair preponderance of the evidence that any standard, criteria, or test is job-related. An employee (or applicant) who thereafter asserts that the job-related defense is pretextual shall have the burden of proving that assertion by clear and convincing evidence.

Justification

An employer shall be entitled to a presumption that he/she has been acting in good faith when he/she establishes employment standards or tests. The assertion that a standard or test was selected in bad faith should be sustained only if there is more than minimal evidence to sustain it.

16. Provision to Facilities Providing TDY Services

Renumber Sections 307 through 309 as Sections 308 through 310 and insert on Page 47 line 6 a new Section 306, as follows:

(B) Section 306

Notwithstanding any other provision of Titles I, II or III an entity shall not be required to install TDY equipment unless it is fully compensated the cost of purchasing such equipment, either by the person(s) who use it or by reimbursement from either a State or the federal government.

Justification

TDY equipment is very specialized and costly equipment. It is unfair to impose the financial burden of purchasing this equipment, which will be used only by profoundly deaf individuals, on a facility.

NATIONAL MULTIPLE SCLEROSIS SOCIETY
Indiana Chapter
915 North Alabama Street, Room 319 [illegible], Indiana 46204 317) 634-8796
— Northern Region —
1884 [illegible] Street [illegible], Indiana 46[illegible] 219) [illegible]

As Chapter Services and Equipment Coordinator for the Indiana State Chapter, I serve over 3,500 Hoosiers who have multiple sclerosis - a chronic, often disabling disease of the central nervous system. Multiple sclerosis affects young adults most commonly between the ages of 20 and 40 - just as they are starting to live.

The lifetime costs of multiple sclerosis to society - including medical expenses, benefits and lost productivity for people with MS and their families - are estimated by the National Multiple Sclerosis Society at $21 billion.

Because it addresses in a comprehensive and far-sighted manner the issue of discrimination based on physical handicaps, The Americans with Disabilities Act will significantly reduce the economic impact of multiple sclerosis on society. It will allow persons with multiple sclerosis and other handicaps access to jobs that are presently denied them.

The Americans with Disabilities Act is of particular importance to handicapped residents of Indiana because there is at present no Indiana Statute requiring an employer to make reasonable accommodations for a handicapped employee. Although Indiana Code, Section 22-9-1-1 et seq.* addresses discrimination based on handicap, the statute does not, in fact, compel an employer to make any concessions at all for a physically challenged employee.

The accommodations required by the Americans with Disabilities Act are important to the clients I serve. They will impact persons such as Tom, a diesel mechanic who returned to the work place after a two month absence due to a job related injury. During the resulting hospitalization, Tom was tested for multiple sclerosis. The tests proved inconclusive. Tom's employer somehow learned that the doctors suspected he had MS. When Tom later returned to work - with a signed doctor's release - he was given an ultimatum. He was told that he either must agree to transfer his employment to a temporary employment service that the company worked with, or he would lose his job. The company's objective was to avoid carrying Tom on their group health insurance policy. They in effect were denying him job security and benefits because he was suspected of having multiple sclerosis.

* Exact text of Indiana Code is attached.

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In another case, a bright young woman was interviewed for a position with a financial institution and was told that she could give notice to her present employer. The woman who interviewed her was to call Tricia with a starting date. Tricia decided to disclose that she had MS. Although Tricia was initially told that it made no difference, the woman who interviewed her failed to call with a starting date. When Tricia called to find out what had happened, she was told that someone else would be hired for the position. The lady who interviewed Tricia admitted that she had been denied the job because she had multiple sclerosis.

Persons who are disabled want and deserve to be productive members of America's work force. The Americans with Disabilities Act removes major barriers that might prevent persons like Tom and Tricia from working. I urge the Congress to pass this most important civil rights legislation.

Submitted by: JoAnn L. Shanks
Chapter Services &
Equipment Coordinator
Indiana State Chapter
National Multiple Sclerosis
Society

Indiana Civil Rights Law- Section 22-9-1-13

Employment of handicapped persons; discrimination; promotion or transfer; physical accommodations

Sec. 13. (a) The prohibition against discrimination in employment because of handicap does not apply to failure of an employer to employ or to retain as an employee any person who because of a handicap is physically or otherwise unable to efficiently and safely perform, at the standards set by the employer, the duties required in that job.

(b) After a handicapped individual is employed, the employer shall not be required under this chapter to promote or transfer such handicapped person to another job or occupation, unless, prior to such transfer, such handicapped person by training or experience is qualified for such job or occupation.

(c) This section shall not be construed to require any employer to modify any physical accommodations or administrative procedures to accommodate a handicapped person.

October 16, 1989

My name is Tricia Smitha. I was diagnosed as having Multiple Sclerosis in 1986, when I was 19 years old. I have been employed by the City-County Government for the past four years in accounting positions. I have been in remission from my M.S. since March 1989.

On Tuesday, May 30th, 1989, I interviewed for a job with a local Credit Union. The person who interviewed me, Jan, was very enthusiastic and said that as long as my references were okay, that I had a job with her company.

At that point, I told her about my having M.S., because in 1986 I was off of work for six weeks due to surgery and an excaberation of M.S. I explained to her the situation, and gave her some information about Multiple Sclerosis. She said that she was really glad I was honest with her, but that it did not affect her opinion about my abilities.

The next day, I called her secretary, who told me to go ahead and give notice at my current job. She said that I would be hearing from them for a confirmed start date, which would be sometime around the first of August. I called the first week of July, since I had not heard from them. I was told that Jan was not in, but that she would return my call.

On July 13th, I called back, since Jan had still not called. The secretary informed me that Jan had changed her mind. I asked why, and she said because of "your illness." I asked her what illness and she said, "You know, your M.S." Jan had talked to a friend of hers who has a friend who has M.S. She went on to say that the disease frightened Jan, and that "anything could happen."

I have no disability which would prevent me from performing a job. I have not missed a day of work due to Multiple Sclerosis since 1986, excluding partial days off due to Doctors' appointments. I am a perfectly normal human being who has a right to be employed just like any one else.

I am very lucky that my current employer agreed to let me withdraw my resignation. Other people may not be so lucky, and then have to deal with "disease discrimination" when looking for another employment opportunity.

United Cerebral Palsy of Indiana, Inc. • 446 North Pennsylvania Street • Indianapolis, IN 46204 • (317) 634-7134

TESTIMONY - AMERICANS with DISABILITIES ACT

October 6, 1989 - Indianapolis, Indiana

Honorable Congressmen Major Owens
and Jim Jontz:

United Cerebral Palsy of Indiana (UCPI) is privileged to have the opportunity to speak to you personally at this hearing concerning the Americans with Disabilities Act, recently passed by the U.S. Senate and soon to be considered on the floor in the U.S. House of Representatives.

UCPI heartily endorses this legislation extending equal, civil rights and ending discrimination for our special population of people with disabilities, in the areas of employment, public accomondations, new construction, renovation and transportation.

Further, we would urge that each Committee Member and each Congressman in the House consider carefully any and all changes suggested by pressure groups, before making decisions that would tend to weaken or compromise the bill in any way.

Thank you for the opportunity to express our concerns.

Julian Coleman, President
United Cerebral Palsy of Indiana

A not-for-profit organization dedicated to improving the quality of life for persons with cerebral palsy and other disabilities

TO THE HONORABLE JIM JONTZ, MEMBER OF CONGRESS:

My name is Jimmy L. Deckard, Sr., a victim of cerebral palsy since birth, I've experienced many instances that will be protected by The Americans with Disabilities Act (ADA).

I attended a special school for the handicapped, James E. Roberts School during my grade and high school years. With the movement of a spactic cerebral palsy, the use of my upper extermities were very limited. I was not permitted to write my assignments as my penmanship was not legible. I did everything from English to Geometry on the typewriter.

After my high school years, I attended a Business College and became a bookkeeper and a tax preparer. Upon graduating from the Business College, it became very difficult for me to find employment. After a six month search, I received a call on Christmas Eve afternoon to come for an interview for a printing company. I received employment and worked there for the next two years. I had surgery, the company got behind on my job, and called me back to work early. When I got the job up-to-date, I was fired for being too slow. I then work for several small companies, doing bookkeeping at a comparable low salary.

In 1974, I began employment with the State of Indiana as an account clerk. My state agency, Indiana Rehabilitation Services, which later became the Indiana Department of Human Services, employed me as an account clerk level V and later advanced me to level IV, of which I remain.

In 1983, I was attacted by an assailant, and stabbed five times in the right lung, and three times in the head. The three weeks I spent in Intensive Care was nothing but dreams. I was on a ventalator and respirator and kept paralized for my right lung to heal. The stabbing took place on October 23, 1983 and I returned home to recover on Saturday before Thanksgiving of 1983. With everything going as good as it was, I returned to work January 2, 1984. This was a mistake, I found my strength to be weak and I was very slow doing my job. My ability to work grew worse by the day and I took a year's leave without pay to recover. When the year was expired, I took a disability retirement from the State of Indiana.

During 1987, my condition improved to the extent that I wanted to return to work. When I contacted Indiana Department of Human Services to ask if I could return to work, I was told I must re-enter the rehabilitation process to prove my ability to work. After eleven months of evaluation and work adjustment, I became eligible for employment May 1, 1988. I then returned to Indiana Department of Human Services, October 31, 1988.

I am presently working in the Supported Employment Division of the Indiana Department of Human Services. Working with my own computer system, furnished as a job modification by the Vocational Rehabilitation Division of the Indiana Department of Human Services.

Thank you for your time.

Respectfully,

Jimmy L Deckard, Sr.

Jimmy L. Deckard, Sr.

Rebecca Kaye Jewett
4000 Jennie Lee Dr.
Lafayette, In. 47905
October [illegible]th 1989

Jim Jontz, Rep
Sub-committee to the Committee on Hiring the Disabled

Dear Sir's,

My name is Rebecca Jewett, I would like to communicate my experinces. When I was 29 years old I had a cerebral vascular accident (1980). I have had significant and persistent disorganization of motor function in two extremities (right upper extremity and right lower extremity) resulting in sustained disturbance of gross and dexterous movements (right upper extremity virtually useless and difficulty walking due to motor loss in right lower extremity, requiring use of brace.

After my stroke Voc. Rehab. paid for sending me back to college in library science since I could not return to teach at my choosen profession. However, the state closed the library science dept. at Purdue before I could complete the degree. I have enought hours to direct a small library in the state. There was an opening in Otterbein for a library director, I was living in Otterbein at the time next to a library board member. I applied and was hired - note resume.

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In February of 1987 I had a reacurrence of Hodgkins disease, I informed my board of this, I would be taking chimotherapy, the doctor would allow me to work only twenty hours during this time. In July at a board meeting before the public one of my board members got up and ask me if I would not be better off on disability.

That previous year I did the paper work necessary to appeal the library budget. I was ask to present my case in Indy before the state board of accounts at that hearing my appeal was one of the few granted.

In October my board hired another person without any experience to work, at this meeting we were told to sign a written contract for three months at the end of this time, we would be evaluated. Previous to this time I had been working without a written contract. I signed and at the Nov meeting I informed my board. I would be resigning I would be resigning at the Dec. meeting. My board president Ronald Wolford ask the board to give me a recommendation and the board refused. So he wrote a recommendation himself for me. Find enclosed History of Job Search - note June 1988.

p. 3.

Jennifer Corns, Job Placement Specialist told me of bad recommendation note in file at Purdue. I was given a bad recomonendation from someone, I believe may have been on the board of the Otterbein Public Library.

Due to the fact I had no insurance and had been at Otterbein for five years, I thought I could better myself I decided to leave. Being a former employee of Purdue U., who has benefits I naturally thought of returning.

Sincerely,

Rebecca Jewett

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REBECCA KAYE JEWETT

450 South Main
Otterbein, IN 47970
Ph: 317-583-2054

RESUME CAPSULE

I have 5 years of experience in public library; am skilled in cataloging, reference work, and storytelling; particularly enjoy children's and young people's literature.

EDUCATION

Purdue University: Library Science Certification, 1982
Indiana State University: B.S. Art Education, 1971
Additional Coursework: 12 hours credit towards M.S. degree

WORK EXPERIENCE

Library Director: Otterbein Public Library

- Managed all aspects of the library
- Prepared complete library budget for each fiscal year
- Was appointed to special education committee to update and evaluate library materials
- Wrote newspaper column for local paper
- Attended state meetings and workshops
- Supervised summer work student

ACHIEVEMENTS

- Converted library card catalog to Dewey system
- Started story hour for preschool children
- Reorganized summer reading program
- Developed short story program for Otterbein Care Center

Otterbein, Indiana: 1982-1987

Bibliographical Searcher: Purdue University Libraries - HSSE
West Lafayette, Indiana: 1977-1978

Credit Associate: Loebs Department Store

- Kept itemized monthly records of credit transactions
- Was responsible for transmitting all receipts to comptroller
- Assisted credit customers

Lafayette, Indiana: 1974-1977

Additional Experience: Art teacher, Warren Community Schools; Substitute teacher, Lafayette School System and Benton Community Schools; Sales Associate, Grants Dept.Store: 1971-73

MEMBERSHIP Indiana Library Association, Division 3
Children's and Young People's Literature

LIST OF REFERENCES ATTACHED

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HISTORY OF JOB SEARCH

REBECCA KAYE JEWETT
450 South Main
Otterbein, IN 47970

February 1988

-Applied at Purdue for professional and clerical positions. Was put on automatic referral, but was never contacted for an interview, although several positions became available

-Applied and sent resumes to
  -St. Elizabeth Hospital: Library Assistant
  -Purdue University: Library Professional
                      Library Assistant
  -Tippecanoe Co. Library: Library Assistant
  -West Lafayette Library: " "
  -Home Hospital: Library Assistant
  -Oxford Library: Librarian

March 1988

-Called about possible positions at Purdue; no interview opportunities resulted.
-Called St. Elizabeth Hospital (follow-up)

-Made follow-up calls to Tippecanoe Co. Library and West Lafayette Public Library

April 1988

-Sent resume to Flora Library: Librarian position
-Called: Purdue University
         West Lafayette Library
         Tippecanoe County Library

April & May 1988

-Took a job seeking skills class

May 1988

-Took course given by Vocational Rehabilitation Division

-Called: Purdue University
         West Lafayette Library
         Tippecanoe County Library

-Talked to MarK Davis, Greater Lafayette Progress Inc. He is involved in bringing new business to Lafayette area. Discussed possibility of my starting a business; I also asked if Mr. Davis knew of companies that needed a librarian and would be willing to hire the handicapped.

-Called Subaru Isuzu: no plans for a library.
-Talked to Carol Lyons, ~~Librarian~~

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May 1988

-Jennifer Corns, Job Placement Specialist, called Otterbein Public Library about their job opening, asking if they would hire me back. Although they had agreed (during an unemployment hearing) that they would hire me, they told Ms. Corns that they would not, and gave her no reason.

June 1988

-Called: Purdue University
Tippecanoe Co. Library
West Lafayette Public Library

-Made additional inquiries at:
Coral Ford
Great Lakes Chemical

-Jennifer Corns, Job Placement Specialist, told me of bad recommendation note in file at Purdue. I asked to see Purdue file.

July 1988

-Interviewed at Purdue with Creative Arts Dept
-Called: West Lafayette Public Library
Tippecanoe County Library

-Attended Purdue conference to check out possibility of starting my own business. Was informed by Vocational Rehabilitation that the state would not fund a small business.

-Inquired at Arnett Clinic
-Applied for opening in medical library at St. Elizabeth Hospital.
-Inquired at Great Lakes Chemical
-Inquired at Dunn and Hargitt

August 1988

Made inquires:
-Tippecanoe County Library
-Kirby Risk
-Arnett Clinic
-Home Hospital
-Tippecanoe School Corporation
-Lafayette School Corporation
-West Lafayette School Corporation
-Purdue University

REBECCA KAYE JEWETT: HISTORY OF JOB SEARCH
Page 3.

August 19, 1988	Hired at Tippecanoe Library, part time--computer work. September 7, 1988: Peggy Hadey ~~told~~ the vocational rehabilitation job specialist that I was doing satisfactory work. I was dismissed from my job without warning for not working fast enough: Sept. 10, 1988.
July, August, and Sept 1988	-Talked with people at affirmative action office several times, both by myself and accompanied by father and Margaret. (Was later told that note had been removed from file.)
September 1988	-Inquiries: -Purdue University -West Lafayette Public Library -Tippecanoe County Library -Enrolled in writing course at Purdue: Writing for Publication -Talked to Vickie Lojek of Encore about writing children's books -Talked with Donald Schneck of West Lafayette Small Business Development Center about operating a children's bookstore. -Visited Jack & Jill Bookstore in Indianapolis. Had conference with owner about starting a children's bookstore. -Visited children's bookstore: Indianapolis -Visited children's bookstore (third one) in Indianapolis.
Sept, Oct, Nov, Dec, 1988	-Continued to contact all libraries again regarding employment opportunities.
December 1988	-Talked to Dr. Huey at Purdue about improving Battery Test booklet. (I had scored low on Battery Tests because of time restrictions.)

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REBECCA KAYE JEWETT: HISTORY OF JOB SEARCH
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REBECCA KAYE JEWETT: HISTORY OF JOB SEARCH
Page 4.

January, February, March, April, May 1989	-Visited Purdue's job board regularly -Regularly called all libraries to whom I had given resumes. In addition, I sent resumes to •Folletts Book Store •Logos Book Store •University Book Store
June 28, 1989	-Dr. Huey said I would not be required to pass Purdue's typing test; however, the Placement Center knew nothing about this, and did not lift the requirement.
July 1989	-After contacting my State Representative, I was finally allowed to bypass Purdue's typing test. -Inquired at Technical Information Service, Purdue, after learning of an opening there. However, I was told that there was no opening at that time, nor would there be in the near future.
August-September 1989	-Continued to check job board and call libraries about possible job openings.

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Sandy [illegible]
[illegible]
Col. City, Ind. 46725

OCT [illegible]

Dear. Mr. Coats

I have a child with down syndrome she is one year old as of Oct 11, 1989. When I gave birth to this special baby I didn't know how I would care for her. The doctor was unable to give me any information on where to go or how I could help her. For the first month my husband and I were [illegible] and [illegible] just crying our hearts out feeling so burden and helpless. After the tears we knew we had to do what ever it took to help her and ourselfs. We looked into our community to see what they had to offer. We found therapist sposored by the government. We found out about S.S.I. That allowed me to stay home with her, to make sure she got the best care possible. I feel very fortunate that my baby has been well cared for. But then I wonder how many people that have special children out there and are not looking into these programs and are neglecting their children. Doctors should notify agencies so they can notify the family to know whats available to them. Because I've notice some familys are embarrasst to ask questions. And

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in the long run these special children are ignored and abused. There should be a law that the government make sure these silent children have the best our country can offer. If it weren't for these programs my child would be a living vegtable, but now she has a chance of a some what normal life, thanks to her theorpist and I being able to stay home with her.

Please help these babies be able to grow and be the best they can be. I often wonder what would happen to her when I was gone. But that fear is slowly fading. I will teach her to be independant with the help of these programs. Thank You! Mr. Jim Jontz keep up the good work these people need the support of everyone.

Sincerely,
Sandy Hillesheim

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[COMMITTEE PRINT]

LEGISLATIVE HISTORY
OF
Public Law 101-336
THE AMERICANS WITH DISABILITIES ACT

VOLUME 3 OF 3

PREPARED FOR THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS
SECOND SESSION

DECEMBER 1990

Serial No. 102-C

Printed for the use of the Committee on Education and Labor
AUGUSTUS F. HAWKINS, *Chairman*

[COMMITTEE PRINT]

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OF

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AMERICANS WITH DISABILITIES ACT OF 1989

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 2273

AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 3, OCTOBER 11 AND 12, 1989

Serial No. 58

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AMERICANS WITH DISABILITIES ACT OF 1989

THURSDAY, AUGUST 3, 1989

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, William E. Dannemeyer, and Craig T. James.

Also present: Representative Steny H. Hoyer.

Staff present: Stuart J. Ishimaru and Ivy L. Davis, assistant counsels; Jancelyn Brower, secretary; and Colleen Kiko, minority counsel.

Mr. **Edwards**. The subcommittee will come to order.

Mr. Dannemeyer.

Mr. **Dannemeyer**. Mr. Chairman, I ask unanimous consent for the subcommittee to permit the coverage of these hearings in full or in part by television broadcast, still photography, or by radio broadcast, in accordance with committee rule 5.

Mr. **Edwards**. Without objection, it is so ordered.

OPENING STATEMENT OF CHAIRMAN EDWARDS

This morning the subcommittee begins hearings on H.R. 2273, the Americans with Disabilities Act [ADA]. The ADA represents a major effort to provide comprehensive antidiscrimination protections for persons with disabilities. The bill was introduced first by our colleague, the former majority whip, Mr. Coelho, and is now managed by Mr. Hoyer. The bill has broad bipartisan support, with 200 cosponsors.

[The bill, H.R. 2273, follows:]

101st CONGRESS
1st Session

H. R. 2273

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1989

Mr. Coelho (for himself, Mr. Fish, Mr. Hawkins, Mr. Conte, Mr. Owens of New York, Mr. Ackerman, Mr. Atkins, Mr. Beilenson, Mr. Bennett, Mr. Borski, Mr. Bosco, Mrs. Boxer, Mr. Campbell of California, Mr. Cardin, Mr. Clay, Mr. Crockett, Mr. de Lugo, Mr. Donnelly, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edwards of California, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Frost, Mr. Fuster, Mr. Gejdenson, Mr. Gordon, Mr. Hayes of Illinois, Mr. Hoyer, Mr. Hutto, Mr. Jacobs, Mr. Jontz, Mr. Kastenmeier, Mr. Kleczka, Mr. Levin of Michigan, Mr. Lewis of Georgia, Mr. Manton, Mr. Matsui, Mr. McCloskey, Mr. McDermott, Mr. McHugh, Mr. Mfume, Mr. Miller of California, Mr. Mineta, Mrs. Morella, Mr. Oberstar, Mr. Pallone, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Connecticut, Ms. Schneider, Mr. Shays, Mr. Smith of Vermont, Mr. Solarz, Mr. Studds, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Waxman, Mr. Weiss, Mr. Wise, Mr. Wolpe, Mr. Florio, Mr. Williams, Mr. Roybal, Mr. Morrison of Connecticut, Mr. Brown of California, Mr. Dellums, Mr. Sabo, Mr. Espy, Mr. Dixon, Mr. Miller of Washington, Mr. Young of Alaska, Mr. Foglietta, Mr. Rangel, Mr. Garcia, Mrs. Saiki, Mr. Martinez, Mr. Mavroules, Mr. Conyers, Mr. Markey, Mr. Visclosky, Mr. Kildee, and Mrs. Collins) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Energy and Commerce, Public Works and Transportation, and the Judiciary

August 29, 1989

Additional sponsors: Mr. Towns, Mrs. Kennelly, Mr. Gray, Mr. Wheat, Mr. Gephardt, Mr. Levine of California, Mr. Ford of Tennessee, Mr. Rahall, Mr. Akaka, Mr. Moakley, Mr. Lantos, Mr. Robinson, Mr. Sawyer, Mr. McNulty, Mr. Brennan, Mr. Downey, Mr. Guarini, Mr. Yates, Mr. Gilman, Mr. Lehman of Florida, Mr. Frenzel, Mrs. Unsoeld, Mr. Bryant, Mr. Boehlert, Mr. Owens of Utah, Mr. Dicks, Mr. Machtley, Mrs. Schroeder, Mr. Bonior, Mr. Carper, Mr. Kennedy, Mr. Lehman of California, Mr. Durbin, Mr. Coyne, Mr. Walgren, Mr. Horton, Mr. Kolter, Mr. Berman, Mr. Bilbray, Mr. Boucher, Mr.

Gonzalez, Mr. Engel, Mr. AuCoin, Mr. Fauntroy, Mr. Mrazek, Mr. Ford of Michigan, Mr. Stokes, Mrs. Boggs, Mr. Lipinski, Mr. Bustamante, Mr. Hall of Ohio, Mr. Dorgan of North Dakota, Mr. Volkmer, Mr. Walsh, Ms. Kaptur, Mr. Poshard, Mr. Neal of Massachusetts, Mr. Roe, Mr. Derrick, Mr. Jones of Georgia, Mr. Savage, Mr. Bates, Mr. Hertel, Mr. Torricelli, Mr. Jones of North Carolina, Mr. Panetta, Mr. Ravenel, Mr. Traficant, Ms. Oakar, Mr. DeFazio, Mr. Watkins, Mr. Fascell, Mr. Payne of New Jersey, Mr. Ridge, Mr. Sikorski, Mr. Stark, Mr. Torres, Mr. Hughes, Mrs. Byron, Mr. Smith of Florida, Mr. Hochbrueckner, Mr. Wilson, Mr. Leland, Ms. Slaughter of New York, Mr. Costello, Mr. Evans, Mr. Darden, Mr. Skaggs, Mr. Yatron, Mr. Sangmeister, Mr. Jenkins, Mr. Johnson of South Dakota, Mr. Green, Mr. Dyson, Mr. Clement, Mr. Slattery, Mr. Kostmayer, Mr. Nowak, Mr. Scheuer, Mr. Carr, Mr. Hamilton, Mr. McMillen of Maryland, Mr. Swift, Mr. Flake, Mr. Hubbard, Mr. Coleman of Texas, Mr. Chapman, Mr. Eckart, Mr. Regula, Ms. Long, Mr. Early, Mr. Rose, Mr. Tallon, Mr. Bevill, Mrs. Lowey of New York, Mr. Gibbons, Mr. Wyden, Mr. Neal of North Carolina, Mr. Sharp, Mr. Campbell of Colorado, Mr. Hoagland, Mr. Andrews, Mr. Annunzio, Mr. Aspin, Mr. Murphy, Mr. Glickman, Mr. Perkins, Mr. Skelton, Mr. Weber, Mrs. Johnson of Connecticut, Mr. Rowland of Georgia, Mr. Price, Mr. Gunderson, Mr. Staggers, and Mr. Porter

October 3, 1989

Additional sponsors: Mr. Leach of Iowa, Mr. Leath of Texas, Mr. Anderson, Mr. Nagle, Mr. Mollohan, Mr. Pickle, Mr. Davis, Mr. Nelson of Florida, Mr. Spratt, Mr. Bruce, and Mr. Hyde

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
Sec. 502. Telecommunications relay services.
Sec. 503. Regulations.
Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation,

and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United

State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

(A) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(B) Affording an opportunity to participate in or benefit from a service, program, activity, bene-

fit, job, or other opportunity that is not equal to that afforded others.

(C) Providing a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(D) Providing a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the individual or class of individuals with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(E) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates.

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY.—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in

the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

(C) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other

opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) **Defenses.**—

(1) **In general.**—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) **Qualification standards.**—The term "qualification standards" may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not

include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 203. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 204. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 205. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–8, and 2000e–9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

TITLE III—PUBLIC SERVICES

SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a

State or board, commission or other instrumentality of a State and political subdivision.

SEC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transporta-

tion, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered

discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29

U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) Attorney General.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) Secretary of Transportation.—

(1) In general.—Not later than 240 days after the date of enactment of this Act, the Secretary of

Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 304, concerning public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any for-

eign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) IN GENERAL.—The term "public accommodation" means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) INCLUSIONS.—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

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(3) Public transportation.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General Rule.—No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) Construction.—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations

unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403—

(A) a failure to provide a level of transportation services to individuals with disabilities, in-

cluding individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) Construction.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class

of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 404. REGULATIONS.

(a) Accessibility Standards.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) Other Provisions.—Not later than 240 days after the date of enactment of this Act, the Attorney General shall

issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide indi-

viduals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in car-

rying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) SEPARATE OFFENSES.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) RELATIONSHIP AMONG TITLES.—The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

SEC. 602. PROHIBITION AGAINST RETALIATION.

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 603. STATE IMMUNITY.

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 605. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 606. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

Mr. Edwards. Yesterday, the Senate Labor and Human Resources Committee marked up the Senate companion bill, S. 933, and unanimously adopted a substitute by its key sponsors, Senators Harkin and Kennedy. I believe the ADA must contain both comprehensive antidiscrimination protection and an effective enforcement mechanism. The compromise worked out between the Senate and the Bush administration will be carefully analyzed by the subcommittee to determine whether it meets these goals. We are pleased, of course, that President Bush has joined us and has endorsed the ADA.

The Rehabilitation Act of 1973 was our first attempt to provide some degree of antidiscrimination protections for persons with disabilities. We continued this progress last year with the enactment of one of the major accomplishments of the subcommittee, as well as the last Congress, the Fair Housing Amendments Act of 1988. The Fair Housing Act now prohibits discrimination against persons with disabilities and requires new, multifamily construction to be accessible and adaptable for the handicapped.

The ADA prohibits discrimination against persons with disabilities specifically in employment, public services, public accommodations, and communications. Because of its scope, the bill has been referred to four committees and numerous subcommittees. This subcommittee's primary interest and jurisdiction falls in the public accommodation title, and this title will be explored in hearings after the August recess.

Does the gentleman from California have an opening statement?

Mr. Dannemeyer. No, Mr. Chairman.

Mr. Edwards. Very good.

Our first witness this morning, who we are really honored to have with us, is James S. Brady, the vice chairman of the National Organization on Disability. Mr. Brady served as an assistant to the President and Press Secretary to President Reagan. Jim Brady is well known and respected by both Democrats and Republicans for his courage, his political insight and his sharp wit. With Mr. Brady is Mark Lewis, director of communications for the National Organization on Disability.

We welcome both of you. You may proceed.

STATEMENT OF JAMES S. BRADY, VICE CHAIRMAN, NATIONAL ORGANIZATION ON DISABILITY, ACCOMPANIED BY MARK LEWIS, DIRECTOR OF COMMUNICATIONS

Mr. Brady. May I say at the start that I never thought I would be in the disability community. As you know, I joined it in an instant 8 years ago, somewhat against my wish.

Ever since I took a bullet in the head, I have had to relearn a lot. I have had to learn to read again, to talk again, and to walk again. I have also learned what it's like to be one of the 37 million people in America with some form of disability. I have come to know the daily problems, frustrations and needs involved. I'm the real article now.

I come before you today as a fiscal conservative, as a Republican, and as a man in his forties with a disability.

If I sound slightly partisan for the next few moments, forgive me. While some of my best friends are Democrats, I am especially proud that the Americans with Disabilities Act was developed by 15 Republicans appointed to the National Council on Disability by my former boss, President Reagan.

Many years earlier, in the fifties, another Republican President, Dwight Eisenhower, alerted this Nation to the staggering costs to society of Federal Government disability programs and benefits. Eisenhower warned us that such programs increase the dependency of disabled people. He urged instead that it would be far better if people with disabilities became taxpayers and consumers and thus reduce the terrible costs to society. That conservative point of view is embodied in the purposes of the Americans with Disabilities Act today.

Still another Republican, George Bush, back in 1983 when he was Vice President, identified new economic forces and the changing nature of our economy which, he said, require changes in attitudes toward disabled people. "We only have to expand our consciousness to be prepared to accept this expansive new world, and the only real stumbling block is prejudice," Mr. Bush declared.

I salute Mr. Bush. He clearly knows more than most nondisabled people about what it's like to be a disabled person. In June 1988, for example, he said that "Although handicapped children and adults have made many gains in the last decade, the stark fact remains that unnecessary segregation and exclusion of handicapped people continues, and as a result disabled adults and families with disabled children suffer from stress, depression and isolation."

Last summer Mr. Bush called for programs and policies that promote independence, freedom of choice, and productive involvement in the mainstream. That means meaningful access to all aspects of society.

In August of last year, in his acceptance speech at the Republican National Convention in New Orleans, Mr. Bush made a pledge: "I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out any more." Then, as President Bush, he underlined his sensitivity before a joint session of Congress on February 9 of this year: "Disabled Americans," he said, "must become full partners in America's opportunity society."

When the Americans with Disabilities Act was first introduced, President Bush publicly identified the single main purpose of his legislation by saying, "Disabled people do not have the same civil rights protections as women and minorities."

While I am proud as a Republican that conservatives and Republicans have been in the forefront of this significant movement to prohibit discrimination on the basis of disability, I hasten to add this observation.

Disability knows no party lines. There is nothing partisan about disability because no one is immune. Disability knows no distinctions. Anyone can join the ranks tonight. If we are not born with a disability, any of us could find ourselves in a wheelchair or without sight or without hearing, if we live long enough. People don't like to think about this, but disability is a fact of life, the same as being white or black or Hispanic.

This is why the Americans with Disabilities Act is good for society as a whole and warrants bipartisan support. Indeed, Democrats in Congress have played a significant role in shaping, sponsoring and advancing this bill. This bill should be welcomed by nondisabled people, Republicans and Democrats alike, because the number of Americans with disabilities is increasing. As our population ages and medical technology prolongs life, most of us eventually will be in the disability community. Once you're in the disability community, you will want the same civil rights protections that women and other minority groups have. That is why for the past few years I have had a motto: "Get those barriers down."

When barriers come down in stores of every kind, more disabled people can shop and use professional services, and that means more consumers and increased sales of products. In short, getting the barriers down in privately operated establishments, especially stores, is good for business and good for our Nation's economy.

When barriers in public transportation come down, it enables people to be employed and to participate more fully in daily activities. Right now, I can't even think about taking a bus to work because of the uncertainties of wheelchair-accessible buses.

After 8 years of rehabilitation, I am now in a new stage. As vice chairman of the National Organization on Disability, I am voluntarily involved in disability work not only because I happen to be a member of the disability community, but because I believe in the principle that everyone has a part to play in American life and I have faith that Americans will live up to its basic democratic principles.

Therefore, since March of this year, I have been leading a nationwide educational and public affairs campaign on behalf of our organization. The name of this campaign is "Calling on America." My campaign and the Americans with Disabilities Act have the same focus.

A Federal law such as the Americans with Disabilities Act would significantly advance the efforts of our community network because a Federal law would establish and maintain the minimum or basic structure of what accessibility must mean. Experience has shown that no civil right has ever worked without legislation.

The conservative columnist George Will has written that "we are barely at the beginning of the last great inclusion in American life—the inclusion of people with disabilities." I believe that passage of the ADA will bring about the fundamental and necessary changes in the paternalistic way our country has traditionally looked down at disability.

Mr. Chairman, the winds of change are blowing. More disabled people are identifying with common goals and more of us are beginning to identify the external impediments in society that prevent or limit us from enjoying opportunity and full participation.

As you consider this bill, I am reminded of the commercial that said, "You've come a long way, baby." I would add, "But there's still a long way to go, miles to go, because democracy is always unfinished business." I am optimistic that your approval of this vital legislation will expand our democracy. Then all America will gain.

I am delighted that yesterday the President of the United States endorsed the Americans with Disabilities Act and that the Senate

Committee on Labor and Human Resources unanimously voted to recommend the bill to the full Senate.

Thank you.

Mr. EDWARDS. Thank you, Mr. Brady. You've come a long way and we're very proud of you. That's a splendid statement. It gets us off to a wonderful start on this important set of hearings.

[The prepared statement of Mr. Brady follows:]

PREPARED STATEMENT OF JAMES S. BRADY, VICE CHAIRMAN, NATIONAL ORGANIZATION ON DISABILITY

My name is Jim Brady. I am the Vice Chairman of the National Organization on Disability, a private organization.

May I say at the start that I never thought I would be in the disability community. As you know, I joined it in an instant eight years ago--somewhat against my wish.

Ever since I took a bullet in the head, I have had to relearn a lot. I had to learn to read again, to talk again and to walk again.

I have also learned what it is like to be one of the 37 million people in America with some form of disability. I have come to know the daily problems, frustrations and needs involved. I'm the real article now.

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Still another Republican, George Bush, back in 1983 when he was Vice President, identified new economic forces and the changing nature of our economy which, he said, require changes in attitudes toward disabled people. "We only have to expand our consciousness to be prepared to accept this expansive new world, and the only real stumbling block is prejudice," Mr. Bush declared.

I salute Mr. Bush; he clearly knows more than most non-disabled people about what it's like to be a disabled person. In June 1988, for example, he said that "Although handicapped children and adults have made many gains in the last decade, the stark fact remains that unnecessary segregation and exclusion of handicapped people continues, and as a result disabled adults and families with disabled children suffer from stress, depression and isolation." Last summer Mr. Bush also called for "programs and policies that promote independence, freedom of choice and productive involvement in the mainstream. That means, in other words, meaningful access to all aspects of society." In August last year, in his acceptance speech at the Republican National Convention in New Orleans, Vice President Bush made a pledge: " I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore." Then, as President Bush, he underlined his sensitivity before a joint session of Congress on February 9 this year: "Disabled Americans", he said, "must become full partners in America's opportunity society." When the Americans with Disabilities Act was first introduced, President Bush publicly identified the single main purpose of this legislation by saying: "Disabled people do not have the same civil rights protections as women and minorities."

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And this is why the Americans with Disabilities Act is good for society as a whole and warrants bipartisan support. Indeed, Democrats in Congress have played leading roles in shaping, sponsoring and advancing this bill. This bill should be welcomed by non-disabled people, Republicans and Democrats alike, because the number of Americans with disabilities is increasing. As our population ages and medical technology prolongs life, most of us eventually will be in the disability community. Once you're in the disability community, you will want the same civil rights protections that women and other minority groups have. That is why for the past few years I have had a motto: "Get those barriers down."

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Therefore, since March of this year, I have been leading a nationwide educational and public affairs campaign on behalf of our organization. The name of the campaign is Calling on America. My campaign and the Americans with Disabilities Act have the same focus.

In my public appearances, media interviews, meetings and correspondence, I am calling on America to meet a great challenge. The challenge is to increase the acceptance, dignity and participation of America's citizens with disabilities. I am calling on national, state and local leaders; business and labor; educators, religious leaders and the media. I am calling on all to join the National Organization on Disability and me in this effort.

My message is simple: Help mainstream people with disabilities. We do not want pity or sympathy. We want opportunity and fairness. We want acceptance, and we want to participate and be included and contribute to our nation, just like everybody else.

I am also calling on disabled people themselves to speak out forcefully about our rights as citizens and our desire to help enrich America anew.

The mission of our organization -- to have non-disabled and disabled people participating equally in everyday life -- is carried out at the local level where volunteers develop projects that expand the participation of disabled people and benefit the wide community. While communities in Florida, California and Wisconsin, for example, are doing wonderful work, progress around the county is uneven; voluntarism is important, but there are barriers that good-will cannot overcome.

A Federal law such as the Americans with Disabilities Act would significantly advance the efforts of our community network because a Federal law would establish and maintain the minimum or basic structure of what accessibility must mean. Experience has shown that no civil right has ever worked without legislation.

The conservative columnist George Will has written that "We are barely at the beginning of the last great inclusion in American life - the inclusion of people with disabilities." I believe that passage of the ADA will bring about the fundamental and necessary changes in the parternalistic way our country has traditionally looked at disability.

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I am delighted that yesterday the President of the United States endorsed the Americans with Disabilities Act and that the Senate Committee on Labor and Human Resources unamimously voted to recommend this bill to the full Senate.

Thank you.

Mr. **Edwards**. You know, when I was growing up, I never dreamed that my family would be connected with disabilities. You just don't think in those terms, and I'm sure you didn't think in those terms at all. As you say, it happened in an instant.

Now I have found that, of my four grandchildren, two have serious disabilities, and one of my sons has a serious disability. Let me tell you, Mr. Brady, there is a lot of discrimination that goes on.

Mr. **Brady**. I know.

Mr. **Edwards**. My son, who has a disability, is a fine lawyer, with a fine mind, and has a dickens of a time getting any law firm to take him seriously, to even have him fill out an application. It's just shocking, really. I wouldn't have thought in those terms if we hadn't had these personal experiences.

Now, you have to leave at what time, Mr. Brady?

Mr. **Brady**. Right now.

Mr. **Edwards**. OK. You've got to go to the doctor.

Mr. **Brady**. I have to see the physical "terrorist."

[Laughter.]

Mr. **Edwards**. Thank you very much.

Mr. Dannemeyer, I'm sorry I took all the time.

Mr. **Dannemeyer**. That's all right, Mr. Chairman. I want to thank Mr. Brady for his contribution.

Mr. **Brady**. Thank you.

Mr. **Dannemeyer**. Good luck with your "terrorist."

Mr. **Edwards**. We also have with us Mr. James from Florida. I'm sure that all the members of the committee will read your statement with great appreciation. Thank you and goodbye.

Mr. **James**. Thank you so much for your testimony.

Mr. **Edwards**. That, indeed, was a treat, when you think that it wasn't so long ago that Mr. Brady was lying on the sidewalk in front of the hotel and we all thought he was dead. It was announced he had been killed on television, and here he is just doing fine. A real brave, intelligent, and wonderful man.

Our next witness is Peter Addesso of the Paralyzed Veterans of America [PVA]. Mr. Addesso served with the U.S. Marine Corps in Vietnam. He was wounded during the Tet offensive. Mr. Addesso, we welcome you. We have worked with PVA before and appreciate the help PVA has given us in the past. We're delighted to have you here.

STATEMENT OF PETER ADDESSO, PARALYZED VETERANS OF AMERICA

Mr. **Addesso**. Thank you.

My name is Peter Addesso. I live in Harriman, NY, with my wife and two daughters. I speak today as a disabled veteran, representing thousands of brave Americans who willingly fought for their country in faraway wars. I speak on behalf of men who lost limbs while fighting for freedom, only to return home to find that they had lost virtually all the freedoms that every American takes for granted—like taking a bus to work, going to the bank, taking your children to the movies, or just going out to dinner.

As a young man, I dreamed of a career in the Marine Corps. I believed in the importance of serving my country and was proud to fight for freedom—the highest American ideal. When I was 17, I enlisted, and after 2 years I was shipped off to Vietnam. Five months after I arrived in Vietnam, my hopes for officers candidate school were destroyed and my life changed forever. I was only 19 at the time.

During the 1968 Tet offensive, I was a squad leader, fighting to hold our position at the Girl's University in Hue City. On the second day, I took a direct hit from a rifle grenade and I became a paraplegic.

Six weeks later I was back in the States at St. Alban's Naval Hospital. I spent the next several months at the Bronx Veterans Hospital going through long hours of rehabilitation to learn how to use a wheelchair and to take care of my personal needs. When I left the hospital, I moved into my mother's house in Lynbrook, a small community on Long Island.

Despite this setback, I was still looking forward to getting on with my life. I was totally unprepared for the barriers and outright discrimination I encountered. My doctor at the veterans hospital had recommended swimming as the best therapy for me. The only public pool was in Valley Stream, a few miles away. I didn't need any special equipment and the mayor even wrote me a letter of permission. But the park commissioner who controlled the pool wouldn't let me in. I will never forget his words. He said to me, "It's not my fault you went to Vietnam and got crippled." I was shocked at this. But I soon learned that his attitude wasn't unique.

I fought with that commissioner and he reluctantly allowed me into the kiddie pool, which wasn't deep enough for me to swim. After another long fight, I was finally led into the adult pool. That was almost 20 years ago. Things haven't changed much in 20 years. I still read stories about disabled people who have been turned away from that pool.

My community is still fraught with all the physical barriers that exist in most cities and towns across America—the bus I could never ride, the drycleaner, grocery store, theater and bank that I can't get into. Sometimes, even when a place is accessible, discriminatory attitudes, often based on people's unfounded fears about disability, shut me out. For example, I was once thrown out of a Howard Johnson's restaurant because I was considered a "fire hazard."

I now serve as a hospital liaison officer at the Eastern Paralyzed Veterans Association in New York. I visit 16 VA hospitals to work with spinal cord injury patients. Probably the hardest part of my job is working with people who have just been injured and who are going through initial rehabilitation. I never know how to prepare them for their new second-class citizenship status. I can never prepare them for the discrimination they will face, the barriers that will shut them out, and the doors of employment that will never open to them.

I know that my experiences are not unique. All other disabled veterans as well as millions of Americans with disabilities face barriers which limit their full and equal partnership in everyday life. A day does not go by in which some form of subtle discrimination occurs that affects my life or another person's life who has a disability. And some discrimination is not so subtle.

All of us know first hand what it is like to be denied access to theaters or stores, restaurants, office buildings and other places of business simply because a doorway is too narrow or an entrance has steps, or someone doesn't like the way we look.

Enactment of the Americans with Disabilities Act will finally send a message to all Americans, that discrimination against persons with disabilities, no matter whether it is subtle or overt, will no longer be tolerated. I truly believe that this legislation will enable me and my fellow disabled Americans to finally enjoy the freedoms for which we fought and sacrificed so much for.

When I returned home from Vietnam, I received a Purple Heart, a Combat Action Award, and the Vietnamese Cross of Gallantry. Although I am very proud of these honors, they are no substitute for the freedoms I lost to achieve them. On behalf of all veterans who have fought so hard and sacrificed so much for this great Nation, I urge you and your colleagues to act quickly and enact the Americans with Disabilities Act of 1989.

Thank you.

Mr. Edwards. Thank you very much, Mr. Addesso. That's excellent and helpful testimony.

[The prepared statement of Mr. Addesso follows:]

PREPARED STATEMENT OF PETER ADDESSO, PARALYZED VETERANS OF AMERICA

My name is Peter Addesso. I live in Harriman, New York with my wife and two daughters. I speak today as a disabled veteran, representing thousands of brave Americans who willingly fought for their country in faraway wars. I speak on behalf of men who lost limbs while fighting for freedom, only to return home to find that they had lost virtually all the freedoms that every American takes for granted - like taking a bus to work, going to the bank, taking your children to the movies or out to dinner.

As a young man I dreamed of a career in the Marine Corps. I believed in the importance of serving my country and was proud to fight for freedom - the highest American ideal. When I was 17, I enlisted, and after two years, was shipped to Viet Nam. Five months after I arrived in Viet Nam, my hopes for Officers Candidate School were destroyed and my life changed forever. I was nineteen.

During the Tet Offensive, I was a squad leader, fighting to hold our position at the Girl's University in Hue City. On the second day, I took a direct hit from a rifle grenade and I became a paraplegic.

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Hospital had recommended swimming as the best therapy for me. The only public pool was in Valley Stream, a few miles away. I didn't need any special equipment and the mayor even wrote me a letter of permission, but the Park Commissioner, who controlled the pool, wouldn't let me in. I will never forget his words: "It's not my fault that you went to Viet Nam and got crippled." I was shocked, but I soon learned that his attitude wasn't unique.

I fought with that Commissioner and he reluctantly allowed into the kiddie pool, which wasn't deep enough for me to swim. After another long fight, I was finally let into the adult pool. That was almost twenty years ago. Things haven't changed much in twenty years. I still read stories about disabled people who have been turned away from that pool.

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Mr. **Edwards**. Mr. Dannemeyer, do you have any questions?

Mr. **Dannemeyer**. Yes, I do, Mr. Chairman.

Mr. **Edwards**. The gentleman is recognized.

Mr. **Dannemeyer**. I want to thank you for what you have given to us today in coming here to testify, and I want to thank you also as a veteran of the Korean war for the sacrifices you've made in fighting for this country's principles. I just want you to know I appreciate the contribution and sacrifice you've made.

Mr. **Addesso**. Thank you.

Mr. **Dannemeyer**. I want to ask you a question about your knowledge of this act, the ADA. I don't mean to put you on the spot. I don't know how much you've read it or studied it, or to what extent.

For instance, are you comfortable with the idea that within the definition of a disabled person this act would also extend the coverage to a drug addict or an alcoholic?

Mr. **Addesso**. I think it should go to all Americans, no matter what kind of disability they have. Everybody has that freedom. I wouldn't leave a certain class out of it.

Mr. **Dannemeyer**. You are a paraplegic and, of course, I think are fully qualified to perform a variety of work tasks in that capacity, and would not, as I see it, present a hazard to yourself or coworkers in terms of safety in performing those tasks.

But let's think for a moment, if we, as a public policy, extend the coverage of this act to persons who are alcoholics, for instance, do you believe that a person who has exhibited or professes to be an alcoholic should be permitted to drive a bus in the cities of America?

Mr. **Addesso**. Let me say this, sir. A person with a disability overcomes it at a certain point. That shouldn't hinder his performance in the future. I mean, it happened in the past. If he has recovered from it, there should be no way that he should be turned away from society. He should be able to do his job as before. People overcome their disabilities every single day.

Mr. **Dannemeyer**. What if the busdriver who claimed to be a recovered alcoholic becomes involved in an accident with the bus, injures or kills somebody, and an investigation discloses that that person had a blood alcohol level that fits the definition of intoxicated. Do you believe the act should then extend coverage so as to require the bus company to hire that person again as an alcoholic?

Mr. **Addesso**. I have to be honest with you. I have no legal knowledge of the questions that you're asking me. I mean, I think those are legal questions and I'm not qualified to answer.

Mr. **Dannemeyer**. No, no. I think it's a public policy question about this act. What I think is happening here, quite frankly, or may be happening here, is that the proponents of this legislation, including yourself and other groups, are seeking to extend the coverage of the benefits of the protection that's desired, when a person is presented such as yourself in a wheelchair, who has suffered a tragic loss of limbs in defending your country, for groups of people that the American public I'm not sure is willing to extend that benefit for.

For instance, I used the illustration of somebody who is an alcoholic driving a bus. How about a drug addict who is an airline pilot? Do you believe an airline company should be required to hire a pilot to fly a plane, putting at risk the lives of people, who previously was a drug addict?

Mr. **Addesso**. Previous, that's the key. I mean, he probably overcame his disability. I don't think they should shut him out of that. I don't think there should be any limitation on it.

Mr. **Dannemeyer**. What if he's a current user?

Mr. **Addesso**. That's a different story. I mean, if he's a current user, I wouldn't want him on a plane.

Mr. **Dannemeyer**. I suspect that most Americans would not.

Are you familiar, sir, that this act extends the benefits of protection to persons with a communicable disease?

Mr. **Addesso**. Yes, I am.

Mr. **Dannemeyer**. For example, HIV carriers, for instance, are included within the coverage of the act. HIV carriers, a high percentage of them, manifest dementia, a deterioration——

Mr. **Addesso**. Personally, I feel we shouldn't discriminate against anybody. That's how I feel about it.

Mr. **Dannemeyer**. How about to the airline pilot who is HIV positive, and we know that 40 to 50 percent of persons in that category exhibit dementia, deterioration of the brain? Do you believe that person should be flying an airplane?

Mr. **Addesso**. If medical judgment has found him to be sound, yes, I do.

Mr. **Dannemeyer**. Well, at some point——

Mr. **Addesso**. I'm sure they're not going to just let him on a plane without having a medical clearance.

Mr. **Dannemeyer**. That's the question. That's the question, sir. Who gets to decide; who has the burden of proof.

You know, if the person who is HIV positive comes to the airline and says "I want to fly this plane, even though I'm HIV positive," at what point do we know where the deterioration of the immune system as a result of the virus in that person's blood will result in deterioration of the mind, where it impairs their ability to safely fly the plane? I mean, is it sound public policy to say absolutely that being an HIV carrier gives that individual the right to compel that airline, under all circumstances, to let him fly the plane?

Mr. **Addesso**. Well, I think if the time comes, I think we should let legal counsel figure that one out. But I don't think——

Mr. **Dannemeyer**. What I'm suggesting, sir, is that I suspect there may be groups seeking the coverage of this act that go beyond, far beyond what the sensibilities and sympathies of the American public are willing to do in the way of accommodations for persons who have suffered genuine disabilities. That's the only reason I'm raising these questions.

I thank you very much for your contribution.

Mr. **Addesso**. I realize that. Thank you.

Mr. **Edwards**. Mr. Addesso, there is nothing in this bill, to your knowledge, that would require somebody to hire somebody who is not qualified for the job?

Mr. **Addesso**. Not from what I've read.

Mr. **Edwards**. That's right. That's the whole crux of the bill. We're talking about qualified handicapped people.

Mr. **Addesso**. Exactly.

Mr. **Edwards**. And disabled people who are discriminated against despite the fact that they are qualified for the job.

Mr. **Addesso**. That's right.

Mr. **Edwards**. The gentleman from Florida.

Mr. **James**. Thank you so much for your testimony. I have no questions at this time, thank you.

Mr. **Edwards**. Mr. Addesso, we are running into some opposition from the business community. If Mr. Brady was still here, I was going to ask him about that because he very proudly said—and he should be proud of it—that he's a good Republican and he has a lot of friends in the Republican Party and, generally speaking, that's a lot of the business community. But we're getting a lot of flak from the business community on this bill. They say it will cost too much money. The private bus companies say, "Look, we're going to go belly up if we have to make these changes."

What's your response to that?

Mr. **Addesso**. There's a lot of things in this country that cost a lot of money. I think this is well worth the effort and the money, no matter what they have to restructure or change.

Mr. **Edwards**. Thank you very much, Mr. Addesso. We deeply appreciate your testimony. We're proud of you as a veteran and what you did for your country, and the wonderful way that you fought back. I know it hasn't been easy, but it's a privilege for us to have you here today. Thank you for your testimony.

Mr. **Addesso**. Thank you.

Mr. **Edwards**. Our last witness is Chai Feldblum, legislative counsel for the American Civil Liberties Union [ACLU]. Ms. Feldblum formerly served as a clerk to Justice Blackmun and was of great assistance to this subcommittee during our consideration of the Fair Housing Amendments last year. We welcome you and you may proceed.

STATEMENT OF CHAI R. FELDBLUM, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Ms. **Feldblum**. Thank you.

I have submitted my testimony for the record and I'm just going to highlight the main points here today.

Mr. **Edwards**. Without objection, it will be made a part of the record.

Ms. **Feldblum**. I am very pleased to be here today in support of H.R. 2273, the Americans with Disabilities Act of 1989, a bill that for the first time will extend to the private sector comprehensive Federal antidiscrimination protection for people with disabilities.

For so many years, irrelevant characteristics like race, gender, religion and national origin were used to judge people and then to justify discrimination against those individuals. Ever since the landmark Civil Rights Acts of 1964 and 1968, there has been in place in this country a Federal policy and a Federal prohibition against discrimination against such individuals.

Having these laws in place certainly has not eradicated such discrimination on the basis of race, sex, or religion, but it has at least provided a source of redress for those individuals who have experienced such discrimination in this Nation's courts.

Unfortunately, there are some members of our society that still do not have that basic access to redress for discrimination. People with disabilities constitute one such class.

Mr. **Edwards**. Ms. Feldblum, may I impolitely interrupt just for a moment.

Ms. **Feldblum**. Certainly.

Mr. **Edwards**. The chief sponsor and Member of Congress who is carrying the bill to all of the committees is here, and we are honored to have the gentleman from Maryland, Mr. Hoyer. Mr. Hoyer, will you come up and join the committee.

Mr. Hoyer was at an important official meeting of the leadership and missed the splendid testimony of James S. Brady and Mr. Peter Addesso of the Paralyzed Veterans of America. We congratulate Mr. Hoyer for the splendid progress that has already been made in this bill. As you know, it appears, Mr. Hoyer, in the Senate and at the White House, a lot of the details have been worked out and it looks like we might even have some smooth sailing except for some business interests who think that it's going to cost too much money. We have splendid testimony going on right now from Chai R. Feldblum, who is legislative counsel on behalf of the ACLU. While we don't want to interrupt her, I'm sure she wouldn't mind if you want to say hello.

Mr. **Hoyer**. First of all, Mr. Chairman, I thank you for allowing me to join you. I apologize for being late. I just came from the Whip meeting.

I want to congratulate all of those in the audience and the literally thousands of others who have worked so hard over the past 2 years to get us to this point. I am expecting, Mr. Chairman, to have over a majority of the House of Representatives cosponsoring this legislation, hopefully by the end of business today. We have 214 cosponsors as of this morning. It looks now that all this work that so many in this room have done is coming to fruition. We join the White House and the Senate, Senator Harkin and others, in expressing our belief that this bill will be enacted into law hopefully before we go home finally for this first session of the 101st Congress.

I congratulate you, Mr. Chairman, for your leadership on this effort and thank you again.

Mr. **Edwards**. Thank you, Mr. Hoyer.

I again apologize, Ms. Feldblum. You may proceed.

Ms. **Feldblum**. No problem at all. Thank you.

I was just saying something that I know Congressman Hoyer knows well, which is that while there is protection for people on the basis of race, sex and religion in this country, there is no such protection for people with disabilities. For example, while a private employer under this country's law could not refuse to hire or promote a person because that individual was Jewish, or black, or she was a woman, that private employer could refuse to hire a person with a disability because of that person's disability. Such discrimination happens all too often, in situations where the person with the disability is otherwise completely qualified to do the job in question, and the discrimination that occurs is solely because of myths, stereotypes or fears about the disability.

The same type of discrimination that occurs in employment against people with disabilities occurs across the spectrum in all areas of society. People with disabilities face discrimination in a broad range of public accommodations. In some situations, the discrimination is attitudinal—the grocery store, the dress shop, the exercise club, simply don't want to open their doors to or provide services to persons with a disability. Sometimes the public accommodation simply needs to provide some sort of auxiliary aid or some modification of its policy in order to allow the person with the disability to use its benefits or its services. But that business or accommodation simply doesn't provide the aid or the modification in the policy. Sometimes the discrimination is one of simple physical access. The person with the disability can't even get into the public accommodation.

As someone who works on this bill a lot has often said, people with disabilities just want to get in, to get the same mediocre services that everyone else is getting, if that's what is going on in there. But simply physical access stops people with disabilities from getting in.

Problems with attitudinal discrimination and physical access discrimination exist in the sphere of private and public transportation as well. In order for the person with the disability to get to the job, or to get to the grocery store or the bakery shop or the shoe repair service, that person needs access to transportation. I think those people who are nondisabled take so much for granted our easy access to transportation.

Yet, in this country, many public buses are not equipped with lifts so that people with mobility impairments cannot get on them, and in private transportation, there are even fewer buses that are easily accessible.

People with hearing impairments experience a particular form of discrimination in our country. The basis of our society is communication, and a lot of that communication takes place on the telephone. Well, we use a telephone to do everything—carry out our business, set up appointments, engage in such life-sustaining activities as ordering Chinese food. The telephone is our basis of communication. But for someone who is deaf, they don't have access to this most basic tool of communication unless the entity or person on the other side also has a TDD [telecommunication device for the deaf], which enables them to talk to each other.

The Americans with Disabilities Act offers the means to redress these various forms of discrimination. The bill is a historic piece of civil rights legislation that will finally extend to people with disabilities equal opportunity and equal access in this society.

Now, as a general matter, in prohibiting these various forms of discrimination, the bill draws upon the longstanding case law and regulations that we have developed under the Rehabilitation Act of 1973, in which sections 501, 503, and 504 prohibit discrimination against people with disabilities by the Federal Government, people who have Federal contracts, and entities that receive Federal funds. For example, the definition of disability, who can gain access to protection under this act, the definition of disability in this act is exactly identical to that which is under the Rehabilitation Act, and exactly identical to the definition which this subcommittee put into the Fair Housing Amendments Act of 1988.

Specifically, the different titles of the ADA address the various forms of discrimination that I have just been describing. Title II of H.R. 2273 prohibits discrimination in employment. The bill covers employers who have 15 or more employees. Now, there are lots of people who believe that discrimination should be prohibited by any employer, even if it's two employees, but 15 employees is the number that exists in title VII prohibiting discrimination on the basis of race, sex, religion and national origin, and that is the figure that's put in this bill.

The discrimination that's prohibited is straightforward. An employer cannot refuse to hire, cannot refuse to promote, cannot set different terms or conditions of employment, for a person with a disability because of that disability. That's the straightforward, nondiscrimination mandate.

The bill also requires that employers make reasonable accommodations to the physical and mental limitations of the individual with the disability if that accommodation or modification would then make the person qualified to do the job. As the chairman noted, obviously every person with a disability has to be qualified to do the job. However, in some situations the employer must make reasonable accommodation in order to allow the person to do the essential functions of the job.

Title III of the ADA covers the provision of public services by a State or a subdivision of a State. Now, most of the programs and activities of a State are going to be already covered under section 504 if they get Federal funds, but to the extent that some programs or activities are not covered, title III extends that same coverage to the rest of the activities of the State.

Title III also incorporates specific provisions regarding public transportation. These provisions reflect a focus on the future. Instead of requiring extensive retrofitting of existing buses, this section requires that every new bus that is bought in a public transportation program must be readily accessible to and usable by people with disabilities, including people who use wheelchairs.

Title IV of the ADA prohibits discrimination on the part of all public accommodations operated by private entities. Again, I think this is a title that this subcommittee might be well interested in because it parallels in many ways what the subcommittee just did in the Fair Housing Amendments Act last year.

The bill states simply that no individual can be discriminated against in the full and equal enjoyment of any of the benefits offered by a public accommodation. The bill addresses the two aspects of discrimination that I was talking about before. First, it prohibits attitudinal discrimination. It says a place cannot say "we just don't want you in here; we don't like the way you look." Someone testified earlier on the Senate side, where a young girl with cerebral palsy who was not allowed into a movie theater because the movie theater owner didn't like how she looked. It prohibits attitudinal discrimination.

The second type of discrimination it prohibits is discrimination based on physical access. Again, as with transportation, the bill looks to the future. While there is a requirement that some modifications be made in existing facilities if those modifications would be readily achievable—that is, actions that can be accomplished without much difficulty or expense—the bill's basic requirement is that all design and construction of new buildings must be readily accessible to people with disabilities. This approach of looking to the future and this requirement of physical access is not at all new to this subcommittee, which as I noted just last year brought to the Congress the Fair Housing Amendments Act of 1988 which had the same approach and same requirements of physical access in new buildings.

Finally, title VI of the ADA requires common carriers to provide telecommunication relay systems. This rely system allows deaf individuals who have their own TDD's to be able to communicate with other people and entities, even if the person on the receiving side doesn't have a TDD, by the use of an intermediary relay system.

In conclusion, I would like to reiterate our strong support for the Americans with Disabilities Act of 1989. This bill, when enacted, will be a historic piece of civil rights legislation. It should have been passed in 1964 and in 1968, together with all the other civil rights laws. But it wasn't. It needs to be passed now. It needs to be passed by this Congress this year. The ADA is a piece of civil rights legislation whose time has truly come.

Thank you.

Mr. Edwards. Thank you very much, Ms. Feldblum, for splendid testimony.

[The prepared statement of Ms. Feldblum follows:]

PREPARED STATEMENT OF CHAI R. FELDBLUM, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman,

The American Civil Liberties Union (ACLU) is pleased to submit testimony in support of H.R. 2273, the Americans with Disabilities Act of 1989 (ADA). The ACLU is a national, non-partisan organization with over 275,000 members dedicated to the protection and defense of civil rights and civil liberties of all individuals.

The ACLU has a long-standing policy in favor of strong anti-discrimination protection for people with disabilities. We believe that every individual must be judged on his or her merits, without regard to characteristics that are irrelevant to a person's ability or worth.

For many years, irrelevant characteristics such as race, gender, religion, and national origin were used to judge individuals and to justify discriminatory actions against such individuals. Since passage of the landmark Civil Rights Acts of 1964 and 1968, a clear and consistent federal policy and federal prohibition against such discrimination has been in place. While the presence of the Civil Rights Acts has not been able to eradicate discrimination in our country on the basis of race, religion, national origin or sex, it has at least provided a source of redress in our nation's courts for those who have experienced such discrimination.

There are some members of our society, however, who still do not have access to this basic form of redress for unjustified discrimination. People with disabilities constitute such a class. While a private employer could not refuse to hire or promote a person because that individual were black, Jewish or a woman, that same private employer, if it did not receive federal funds or federal contracts, could discriminate against a person with a disability on the basis of the disability. Such discrimination happens all too often, in situations where the person with the disability is otherwise completely qualified to perform the job in question and where the discrimination is simply the result of fear, ignorance or misperception.

The same type of discrimination that occurs in employment occurs across all spectrums of our society. People with disabilities face discrimination in a wide array of privately operated public accommodations. In some situations, the discrimination is attitudinal: a restaurant, a dress shop, an exercise club, a movie theatre or some other service provider may simply not want to provide services to a person with epilepsy, cerebral palsy, AIDS or any other disability. In other situations, the public accommodation needs to provide a simple auxiliary aid to allow a person with a disability access to a particular service or benefit, but the aid is not provided. Finally, in many situations, the discrimination is one of physical access: individuals with mobility impairments often cannot even get into the door of a building that is a public accommodation.

Problems with attitudinal discrimination and physical access exist in the sphere of public and private transportation as well. In order for people with disabilities to get to employment positions or to public accommodations, they must be able to have access to effective transportation. Yet, many publicly-financed transportation systems have few lift-equipped buses that are accessible to people with mobility impairments, and the supplementary "paratransit" systems that are available to people with disabilities have severe limitations. Privately owned transportation systems offer even fewer accessible vehicles.

People with hearing impairments experience a particular form of discrimination in our society. The basis of our society is communication -- often communication that takes place through use of the telephone. We use the telephone to carry out our business, to set up appointments, to call for help, and to order food and theatre reservations. People with hearing impairments do not have access to this most basic tool of communication if the entity on the receiving end does not have a Telecommunication Device for the Deaf (TDD) or if a telecommunications relay system is not in place in that particular geographic area.

The Americans with Disabilities Act offers the means to redress these various forms of discrimination. The bill is a historic piece of legislation that will finally extend to people with disabilities the legal right to equal opportunity and equal access in all spheres of society.

In prohibiting these various forms of discrimination, the ADA properly draws upon the long-standing experience that has been gained through application of Sections 501, 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination against people with disabilities by the federal government, federal contractors and those that receive federal financial assistance. The regulations and case law that have been developed under these statutory provisions constitute a basic, workable scheme that has been incorporated in large part by the Americans with Disabilities Act.[1]

In determining who may gain access to the protections of the ADA, the bill adopts the same definition of "disability" that is used under Section 504 of the Rehabilitation Act to define "handicap." Thus, the same broad three-pronged definition of handicap that has been in place for years under Section 504 is incorporated by the ADA.[2] The purpose of this broad definition is to prohibit the range of discriminatory actions that result from myths, stereotypes and fears concerning people with disabilities.

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[1] The Rehabilitation Act of 1973 has provided important protections over the years to people with disabilities. However, that Act is limited in the scope of entities that it covers: the federal government, federal contractors, and those who receive federal funds. The ADA will fill an important gap by extending anti-discrimination protection to the private sector.

The various sections of the ADA reflect the types of discrimination that are directed against people with disabilities. Title II of the bill prohibits discrimination by private employers who employ more than 15 employees.[3] The section properly reflects the importance of reasonable accommodation in the employment of people with disabilities by requiring employers to make reasonable accommodations to the known physical or mental limitations of an applicant or employee, as well as prohibiting employers from denying employment opportunities to a person with a disability if the reason for the denial is the person's need for a reasonable accommodation. The provision of reasonable accommodations is critical in the employment sector: a person with a disability may be completely qualified to perform the essential functions of a job as long as some accommodation is made for the individual.

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[2] 2. The ADA uses the term "disability" rather than "handicap," to reflect the term of choice of the disability community. However, the definition used is precisely the definition used under the Rehabilitation Act. Thus, while the defining term has been changed in order to reflect changing and more appropriate terminology ("disability" rather than "handicap"), the substantive definition has not been changed. From a legal standpoint, therefore, the breadth of coverage available under the Rehabilitation Act is the same as that available under the ADA, when that coverage depends on the definition of "disability" or "handicap."

[3] 3. Discrimination against people with disabilities obviously also occurs on the part of entities that employ less than 15 employees. However, Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, religion, national origin and sex, currently incorporates an exemption for entities that employ less than 15 employees. The ADA carries over the same exemption for discrimination on the basis of disability. The ACLU believes that all employers should be covered by the anti-discrimination mandate.

In deference to the needs of employers, the ADA also incorporates the protective framework of Section 504 with regard to reasonable accommodation. An entity need not provide a reasonable accommodation if it can demonstrate that provision of the accommodation would impose an undue hardship on the operation of the business. The term "undue hardship" is a long-standing term of art under Section 504 regulations and case law. A determination as to whether a reasonable accommodation would impose an undue hardship depends on well-established factors, including the nature and type of the operation, the number of employees, and the nature and type of the accommodation requested. See 45 C.F.R. §84.12 (1987).[4]

Title III of the ADA covers the provision of public services by a State, agency, or political subdivision of a State.

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4. The determination whether an accommodation is "reasonable" focuses on whether it will achieve the objective of allowing the employee to perform the essential functions of the job. By contrast, the requirement that the accommodation not pose an "undue hardship" focuses on the burden on the employer in providing the accommodation.

Currently, the activities of most States would be covered under Section 504 if the State received any federal funds in those programs or activities, as that term is defined in the Civil Rights Restoration Act of 1987. However, to the extent that some State or local activities are not currently covered under Section 504, Title III extends that coverage to the remaining programs. As a reflection of the equivalent coverage, section 302 of the ADA incorporates the basic language of the original Section 504 provision.

Title III also incorporates specific provisions regarding public transportation. These provisions reflect a focus on the future of public transportation, by requiring that all new buses that are purchased be accessible to and usable by people with disabilities, including people who use wheelchairs. This provision is critical to the bill. A mark of a truly integrated society is one in which the mainline systems of that society are open and accessible to all.

Title IV of the ADA prohibits discrimination on the part of all public accommodations and services operated by private entities. The bill provides that no individual shall be discriminated against in the full and equal enjoyment of benefits or services provided by a public accommodation. This title incorporates the two aspects of discrimination that can occur in public accommodations, as discussed above. First, the title prohibits the attitudinal discrimination that can occur against people with disabilities in the range of public accommodations. Second, the title requires non-discrimination in terms of physical accessibility. As with the requirements regarding transportation, this title looks primarily to the future. While some modifications are required in existing facilities if such modifications are "readily achievable," the bill basically requires that construction of all new or remodeled buildings be fully accessible to people with disabilities. This approach of looking to the future is similar to that adopted in the Fair Housing Amendments Act of 1988 -- a bill which was actively supported by the ACLU and the Leadership Conference on Civil Rights and which was recently passed by the 100th Congress.

Title IV includes a definition of "public accommodation" which is different from that which appears in Title II of the Civil Rights Act of 1964. The new definition of the ADA appropriately addresses the kinds of discrimination faced by people with disabilities.5/ Title II of the Civil Rights Act defines public accommodations to include establishments which provide lodging, establishments which are engaged in selling

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5. The ADA defines public accommodations as privately operated establishments that "are by used the general public as customers, clients or visitors or that are "potential places of employment," and whose operations affect commerce. Section 401(2).

food, and places of entertainment.[6] These are the places which presented the most significant problems of racial segregation during the period in which the Civil Rights Act of 1964 was passed and therefore these were the places on which that law specifically focused. By contrast, people with disabilities face discrimination in a range of other public accommodations--in supermarkets, barber shops, laundromats, and in other service providers. It makes no sense to restrict the range of coverage of public accommodations to a definition that was developed at a different time, for a different purpose. Certainly, if we wish to build a truly accessible country in the future by requiring that all new buildings be constructed in an accessible fashion, it makes no sense to restrict artificially the definition of those buildings that should be covered.[7]

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6. The following types of establishments are covered by Title II: "Any inn, hotel, motel, or other establishment which provides lodging to transient guest..." 42 U.S.C. § 2000a (b) (1); "any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises..." 42 U.S.C. § 2000a (b) (2); "any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment..." 42 U.S.C. § 2000a (b) (3).

7. It should also be noted that individuals who have been discriminated against on the basis of race or ethnicity have legal recourse under 42 U.S.C. § 1981, as well as recourse under Title II of the Civil Rights Act of 1964. Section 1981 prohibits any discrimination on the basis of race or ethnicity in the making of a contract. See 42 U.S.C. § 1981 ("All persons within the jurisdiction of the United States shall have the same right...to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens..."); Saint Francis College v. Al-Khazraji, 95 L. Ed. 2d 582 (1987). Thus, much of what is covered under the ADA's definition of a public accommodation would also

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Title V of the ADA requires common carriers to provide telecommunication relay services. The provision of such services will be a significant step forward in communications for deaf individuals. The relay system will allow such individuals, who have access to their own telecommunication devices for the deaf, to communicate with others who do not own and use such devices. The provision of such services is an important first step forward in meeting the communication needs of deaf individuals.

Finally, the bill includes well-established provisions with regard to remedies for discrimination. The basic components of an effective remedy system are the availability of a private right of action, access to injunctive relief and damages, and availability of jury trials. These are elements that are available to other minorities under the combination of various other civil rights statutes that currently exist. The ADA appropriately incorporates these elements.

In conclusion, we would like to reiterate our strong support for the Americans with Disabilities Act of 1989. We look forward to working with you closely as you pass this historic piece of civil rights legislation.

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be covered under Section 1981. *See*, e.g., *Runyon* v. *McCrary*, 427 U.S. 160 (1976) (prohibits private, commercially operated, nonsectarian schools from excluding children because of race); *Jennings v. Patterson*, 488 F.2d 436 (5th Cir. 1974) (protects right to use public streets); *Hernandez* v. *Erlenbusch*, 368 F.Supp. 752 (D. Or. 1973) (protects right to speak Spanish in a bar).

Mr. **Edwards**. I believe Mr. Dannemeyer has some questions.

Mr. **Dannemeyer**. I notice in your presentation, Ms. Feldblum, that you mentioned nothing about making the provisions of the act available to drug addicts, alcoholics, and persons with communicable diseases. I gathered from the sense of your testimony that you used the constant illustration of making it available for those who are in need of assistance because of being in a wheelchair or disabled for that reason.

Let me ask this question. If we would, by amendment, delete within the definition the extension of, in this instance, qualification standards, if we would strike out the availability of persons with communicable disease, would you still support the act?

Ms. **Feldblum**. There is no reason to strike out people with communicable——

Mr. **Dannemeyer**. That's not my question. You can answer yes or no. Would you still support the act if we struck out its applicability for coverage of persons with communicable diseases?

Ms. **Feldblum**. The class of disability——

Mr. **Dannemeyer**. That can be answered yes or no.

Ms. **Feldblum**. No. The class of disability stands——

Mr. **Dannemeyer**. My next question is, if we struck out the application and availability and coverage of the act to drug addicts and alcoholics, would you still support the act?

Ms. **Feldblum**. To that, one has to give a slightly long answer because——

Mr. **Dannemeyer**. It can be answered yes or no.

Ms. **Feldblum**. There is a clear——

Mr. **Dannemeyer**. Ms. Feldblum, the question can be answered yes or no. Would you still support the act if we struck from the definition of the coverage drug addicts and alcoholics?

Ms. **Feldblum**. I would not support it if you struck it out. Now I will explain what the bill does and doesn't do.

Let me also go back to your first point, which I thought was a very interesting point. You said that when I talked I wasn't using examples of contagious diseases or drug addicts.

Mr. **Dannemeyer**. I noted that.

Ms. **Feldblum**. I think that was not intended because such individuals either don't need coverage or it's not important. In fact, when the President's Commission on the HIV Epidemic, which was a Commission appointed by President Reagan, came out with their recommendation, they recommended a broad-based disability rights bill as a means of protecting the HIV individuals.

Mr. **Dannemeyer**. Do you remember what the vote was on making that available for persons with communicable disease?

Ms. **Feldblum**. Excuse me, sir?

Mr. **Dannemeyer**. It was a split vote of the Commission itself on that issue, wasn't it?

Ms. **Feldblum**. No.

Mr. **Dannemeyer**. A shift of two votes would have tilted the judgment the other way on making the act available to persons with communicable disease.

Ms. **Feldblum**. I think what came out of that Commission was a very clear mandate toward having a nondiscrimination mandate.

Mr. **Dannemeyer**. Let me ask you this question. On page 11, where it deals with qualification standards, lines 3 and 4, who has the burden of proof, the applicant, the employee, or the employer?

Ms. **Feldblum**. The burden of proof in this bill follows exactly the burden of proof that exists in section 504. Under that system, the individual has to show that they are covered under the act; that is, that they are a person with a disability. They then have to show they meet the basic qualification standards for the job; that is, that apart from their disability, they meet whatever the requirements are.

For example, some jobs require that you have a college education——

Mr. **Dannemeyer**. Let me be a little more precise, Ms. Feldblum. On line 7, under the definition of drug addict or alcoholic, this is the section requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat. Who has the burden of proving as to whether or not the current use of alcohol or drugs is a direct threat to a coworker, the employee or the employer?

Ms. **Feldblum**. Here I'm thinking about the 504 case——

Mr. **Dannemeyer**. Two possibilities, Ms. Feldblum, the employer or the employee.

Ms. **Feldblum**. I guess, being a lawyer, doing some of the litigation in these cases, you can see that that's not the way it operates in terms of the judge thinking——

Mr. **Dannemeyer**. Ms. Feldblum, the question can be very simply answered. You helped write this act, didn't you?

Ms. **Feldblum**. Well, there were a number of people involved in putting this together.

Mr. **Dannemeyer**. Were you involved in putting it together?

Ms. **Feldblum**. Sure, yes, together with various other individuals.

Mr. **Dannemeyer**. Based on your involvement, who has the burden of proof, the employer or the employee?

Ms. **Feldblum**. What this bill says is that it is a valid qualification standard that someone not pose a direct threat to——

Mr. **Dannemeyer**. Are you telling me you don't know?

Ms. **Feldblum**. Oh, no. I'm telling you the way it often is in law.

Mr. **Dannemeyer**. Or you don't want to say?

Ms. **Feldblum**. No, no. The way it is often in law, that the question is not, for example, a yes or no issue.

Mr. **Dannemeyer**. Are we finessing legislative history for some judge to resolve?

Ms. **Feldblum**. No.

How about this. Why don't I finish and explain to you how I believe it would work under the law, and then we'll see whether you think it's finessing it or not.

Mr. **Dannemeyer**. Well, wait just a minute. I only have limited time, Ms. Feldblum. You can answer if you want to. My question again is, who has the burden of proof—it's very simple—the employee or the employer, or the prospective employee or the prospective employer?

Ms. **Feldblum**. The person has to make a prima facie case that they are qualified for the job. Now, that would include, for example, if you are someone with HIV, you would have to put in evidence in your prima facie case that HIV in that situation would not pose a direct threat to others; that is, that there isn't a significant risk of you transmitting that infection. That's a burden on the employee. That's a burden on the plaintiff, as part of making that prima facie case.

Once you make that prima facie case, then the burden would shift to the employer to prove that that wasn't the case.

Mr. **Dannemeyer**. In other words, if the employee who is HIV positive—how would they carry that burden of proof? Do you believe the burden of proof could be carried under the unilateral assertion of the employee, who is the HIV carrier?

Ms. **Feldblum**. That should carry that, but in a number of cases, the way that proof is carried is by placing into evidence materials from the Centers for Disease Control, from public health officials, to establish the fact that HIV infection would be transmittable.

Mr. **Dannemeyer**. How about an amendment which would require, in order to carry the burden of proof, that the employee would have to have a doctor's certificate saying the employee's presence on the job would not cause a health threat to coworkers? Would you support that?

Ms. **Feldblum**. I'm not sure I would support an amendment saying that. I would tell you that that would be part of what would be put into evidence. Often it's the person's own physician who will testify, as well as evidence from general medical information. That's exactly what's going on in the cases right now.

Mr. **Dannemeyer**. We know from history that some of these persons have, you know, cytomegalo virus, some of them manifest dementia, and a fairly large percentage of persons who are afflicted with AIDS have a form of tuberculosis. You know, these are opportunistic diseases that are present in persons who are HIV and/or with fully developed AIDS that are a direct threat to coworkers. For this country to adopt a law that extends the coverage of what this act seeks to do to persons in that class is a major policy step with ramifications that I suspect you understand precisely what you're about, but I suspect there are many proponents of this legislation who have no idea of the implications of what this law seeks to do.

Ms. **Feldblum**. You see, that's a very interesting point, to present it as a major policy change. That is sort of confusing to me because, in fact, section 504 has been on the books since 1973. Section 504 has been used in many cases by people who have AIDS or HIV who have been unjustifiably discriminated from their jobs, unjustifiably tossed out of places where they don't pose a threat to others. That's a law that has been in place since the time when Congress has——

Mr. **Dannemeyer**. Ms. Feldblum, you're confusing apples and oranges. There is nothing in section 504 that uses the term "direct threat."

Ms. **Feldblum**. Oh, yes. It was amended in the Civil Rights Restoration Act of 1988. Concerns were raised that you are raising. They said we have a law that covers such individuals. That can't be. Well, Congress then amended section 504——

Mr. **Dannemeyer**. Are you saying that the language "direct threat" is now in section 504?

Ms. Feldblum. Yes, it is. It's been in there——

Mr. Dannemeyer. That's contrary to what my understanding is. Maybe I'm learning something today.

Ms. Feldblum. Well, what happened was, 2 years ago, when concerns were——

Mr. Dannemeyer. There's another concern I want to ask you about and get your assessment, Ms. Feldblum. We have a definition of persons who fit within the coverage of section 504. We also know that last year the Congress adopted an amendment to the Fair Housing Act dealing with this issue of discrimination, and now this is the ADA. Each of these three subsequent pieces of legislation has different language defining the definition of a person who fits within the coverage of the act.

Is that sound public policy?

Ms. Feldblum. The definition of disability in each of those acts—section 504, the Fair Housing Amendments Act and this act—is the same. It's the same definition of——

Mr. Dannemeyer. Maybe I don't know how to read the English language. But when I read the definition of qualification standards on page 11, lines 3 through 12, and then I read the definition of the Fair Housing Act on page 67, section 802, there is not a small difference, Ms. Feldblum, but there is a substantial difference.

For instance, the Fair Housing Act includes within its coverage persons who are drug addicts but not alcoholics. In the ADA, we're making the coverage available to drug addicts and alcoholics, and we have a new term in there, "direct threat," which is not in the act relating to fair housing.

What's the rationale for this?

Ms. Feldblum. The Fair Housing Act does have the same "direct threat" provision later on in the bill. You are correct, that there was a modification made in the definition in fair housing with regard to drug addicts. But I think that also reflects another issue that is very important in this bill, very important. You have to be, as was mentioned before, qualified to do a job. For someone who is a recovered drug addict or recovered alcoholic, that's often no problem at all. For someone who currently uses drugs or alcohol, they are also covered, but they still have to be qualified to do the job, which might be a lot more difficult in certain situations.

Mr. Dannemeyer. Who has the burden of proof for a recovered alcoholic or drug addict?

Ms. Feldblum. It's the same as with any other person with a disability. The person with the disability has to make a prima facie case. They make the prima facie case and then the burden shifts to the employer.

Mr. Dannemeyer. Another question that really boggles the mind about the reach of this act is, if we take the case of the gentleman who was here previously, the veteran, he didn't describe his wife and I don't know whether she's disabled or not—he's shaking his head no. This legislation would also extend to this wife because she's associated with somebody who is disabled.

That's a unique thing in our law, isn't it? What's the rationale and necessity for doing that?

Ms. Feldblum. It would extend to her if she was discriminated against because of her association with her husband. For example,

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if she went to apply for a job and the employer found out that she had a husband who uses a wheelchair and said "I don't think someone with a wheelchair will fit into our social functions" and she doesn't get the job because of her known association with a person with a known disability, it's a natural extension of the prohibition against disability. In fact, it's not new policy in this act. That was put into the Fair Housing Act last year.

Mr. DANNEMEYER. As you describe this act, it's possible that there isn't anybody in America that doesn't come within the coverage. It's a brilliant political move about which you're engaged. All of us are disabled.

Ms. FELDBLUM. But you only come under the coverage, of course——

Mr. DANNEMEYER. You should hear some of the things about which they say of me. I mean, people have sincerely questioned not only my judgment but my thinking capacity. I probably would come within the definition of this act. Wouldn't you agree?

Ms. FELDBLUM. You would have to prove that you were mentally disabled in order to get under the protection.

[Laughter.]

Ms. FELDBLUM. I don't know if you want to come into court and do that.

Mr. DANNEMEYER. It's obvious, isn't it, really?

Ms. FELDBLUM. I do want to reiterate that you are protected only if you've been discriminated against because of your association with a person with a disability, and that was a provision that was placed in the Fair Housing Amendments Act last year by this subcommittee. So, in fact, it's not a new policy at all. It's an extension of the policy that was just put into place and passed overwhelmingly by Congress last year.

Mr. DANNEMEYER. How about this phrase in the act—as a lawyer and a legislator, I don't know that I have ever seen this before in proposed statute form. It gives a cause of action to one who is being or about to be subjected to discrimination. Just on the mere suspicion that somebody is discriminated against, you have a cause of action to go to court to bring some employer into the docket.

Is that good policy?

Ms. FELDBLUM. I often find it interesting that that's raised as something new in this bill, because, in fact, the Fair Housing Act that was passed in 1968 and the Public Accommodations Act that was passed in 1964 both had provisions that said, if someone is engaging or one has reasonable cause that someone is about to engage in an act of discrimination, then those acts can be stopped by an injunction, by a cause of action——

Mr. DANNEMEYER. Doesn't that really get the law into analyzing the mental processes of a prospective employer, a prospective landlord, far beyond anything the laws should ever be doing?

Ms. FELDBLUM. What it is is within the context of general injunctive relief; that is, it is not at all something that can sort of be out in the air, that if you somehow speculate that some discrimination can happen you can bring a lawsuit. You have to prove that discrimination is going to occur.

It's a very good example to bring up in disability, and it's actually interesting in terms of businesses. If you find out that there are blueprints for a building that's going to be built, that is going to be built nonaccessible, instead of waiting until that building is built and then bring the lawsuit, which will be incredibly expensive——

Mr. **Dannemeyer**. Ms. Feldblum, I don't think there is anybody in this room that objects to a law saying that, for the construction of new buildings, we have to make those buildings accommodating to persons in wheelchairs. There's no quarrel about that. We don't have to spend our time on that.

Mr. Chairman, I appreciate you giving me more time than I deserve, and I thank you for this indulgence. I thank you for your contribution.

Mr. **Edwards**. Thank you, Mr. Dannemeyer.

Mr. James.

Mr. **James**. I'm a little confused. In dealing with an alcoholic, what would constitute discrimination and what would not? You're a lawyer, correct?

Ms. **Feldblum**. Yes.

Mr. **James**. You have a 16-man law firm. A man or woman comes in, a person, and says "I'm an alcoholic. I'm trying to handle the problem. I don't know if I will succeed. I've been dry for 7 days and I haven't had a drink." What if you, as the head of the firm, said "Well, my requirements are that you be dry for 10 years and I won't hire anybody unless they've been dry for 10 years once they have been a demonstrated alcoholic." Is that discrimination?

Ms. **Feldblum**. Yes. In other words, you're not at all looking at an individual case, as to whether the person is qualified.

Mr. **James**. Yes.

Ms. **Feldblum**. Yes. It's a blanket rule.

Mr. **James**. Nine years?

Ms. **Feldblum**. Yes. I mean, it would——

Mr. **James**. Eight years?

Ms. **Feldblum**. Yes.

Mr. **James**. Seven years? Five, 4, 3, 1 year.

Ms. **Feldblum**. Yes.

Mr. **James**. One year, is that discrimination? I want a demonstration of sobriety, since you're a declared alcoholic, for 1 year.

Ms. **Feldblum**. Sure, if you just had as blanket policy. What is useful is to look at the bill that just came out of the Senate. A lot of these questions were raised——

Mr. **James**. Please. I'm talking facts.

Six months?

Ms. **Feldblum**. But it's going to be the same in terms of a blanket rule. You could, as the employer, say——

Mr. **James**. One week, then? Or 9 days. You've only been dry 7. That would be discrimination, correct, in theory?

Ms. **Feldblum**. You would have—It's interesting. I understand what you're trying to do, but I'm wondering——

Mr. **James**. It is interesting. That's why I'm asking the question. Two days would be theoretically discrimination because I'm setting what, an artificial criteria? Is that what you're suggesting?

Ms. **Feldblum**. But you could say "I have a rule that"——

Mr. **James**. Please. Would 2 days, by your definition, be setting an artificial criteria and, therefore, it would be discrimination and

I would be subject to suit, or you would be if you're the head of the firm—or you're not sure?

Ms. **Feldblum**. Well, what's interesting is that you can——

Mr. **James**. Do you know?

Ms. **Feldblum**. Yes. But——

Mr. **James**. Then answer if you know, or say you don't know. There's two answers possible.

Ms. **Feldblum**. Wait, no. You cannot have an arbitrary rule like that. You can say "You may not come"——

Mr. **James**. Then the answer is you would have at that point in time discriminated because you said the person hasn't been dry for 9 days but dry for only seven?

Ms. **Feldblum**. The person still has to prove that they are qualified for the job.

Mr. **James**. Is that correct?

Ms. **Feldblum**. Yes, yes.

Mr. **James**. I'm assuming the person is super qualified for the job, a graduate of Harvard, Princeton, whatever school meets your qualifications, with an IQ of 200, whatever.

Ms. **Feldblum**. And I don't want to hire them?

[Laughter.]

Mr. **James**. And no other disability, OK?

Ms. **Feldblum**. Yes.

Mr. **James**. That, in itself, would be discrimination because you're setting a 2-day criteria.

What if I said you have to go to AA? Would that be arbitrary, too, Alcoholics Anonymous [AA]? As long as you're in that program, I'll hire you. That's arbitrary, isn't it, if you say AA is the standard?

Ms. **Feldblum**. You, as the employer, can prohibit someone from coming to to work under the influence. You can prohibit the use of drugs or alcohol. This is not out of my mind. This is now in the Senate bill. You can prohibit the use of alcohol or illegal drugs in the workplace. You can require that an employee not be under the influence of drugs or alcohol, and you can require that employees conform to all of the requirements of the Drug-Free Workplace Act that was just passed. You can do all of those requirements.

Mr. **James**. Can I require them to take a breathalyzer each morning when they come in the office?

Ms. **Feldblum**. Yes, because you can require that they not be under the influence of drugs or alcohol in the workplace.

Mr. **James**. But isn't that discrimination unless, in fact, I require everybody to come in the office to take a breathalyzer?

Ms. **Feldblum**. No. What this bill says is that you can require that individuals not be under the influence of drugs or alcohol in the workplace.

Mr. **James**. And what is the definition of "influence?" Is it 0.1, like it is for driving, or is it one-tenth of that? Do you see what I'm getting at?

Ms. **Feldblum**. Sure. I think that's clearly something that you can have set forth in the regulations, in terms of under the influence.

Mr. **James**. Have you ever worked with an alcoholic?

Ms. **Feldblum**. Have I personally?

Mr. **James**. Yes.

Ms. **Feldblum**. Not that I know of. There might be people who are alcoholics who are very capable of doing their jobs and you don't know that they're alcoholics.

Mr. **James**. I can assure you of that. They are, for a significant percentage of the time. It's that other remaining percentage that you worry about, if, in fact, they're not successful in handling it.

Ms. **Feldblum**. That's right, which is why I think this provision was actually put in, not only can you prohibit the use but prohibit that people not be under the influence. You require that people conform to the requirements of the Drug-Free Workplace Act because you would be concerned about even those situations.

The person is not supposed to be qualified just for 80 percent of the time. The person has to be qualified 100 percent of the time.

Mr. **James**. I understand that. But when someone comes in and says they're an alcoholic and they've only been dry for a week, you have to hire them if—I mean, you can't use that as the reason not to hire them. You have to take a chance and hire them because of this act, and say OK, you've been dry for 7 days, or dry for 2 hours, fine. I'll hire you. Since you don't have it in your system now, I'm forced to hire them, even though they tell you they don't know if they can handle it and they have no history to prove they can stay off the alcohol. You would then be required to hire them under the act.

Ms. **Feldblum**. You are never forced to hire anyone that you're not sure is qualified. If I had someone like that, I would require that there be references, et cetera, to make sure that they are qualified. There are definite ways that you can ensure that you get the qualified person for the job, including someone who has had some disability.

Mr. **James**. Yes, but they hadn't worked for a year because they were an alcoholic, and they come in and tell you. You get a thousand references that say, up until a year ago, this guy was fantastic.

Ms. **Feldblum**. Obviously, you can require references that will show that the person is qualified to do the job at the time the person is seeking to do the job.

Mr. **Edwards**. Well, if he was drunk 7 days ago, I think it's pretty clear that he wouldn't be qualified.

Ms. **Feldblum**. Exactly. He's not going to have references to show that he is qualified.

Mr. **James**. In other words, it's only the second employee that's in trouble after the person has been an alcoholic; do you follow what I'm saying? In other words, with the scenario you're setting up, you wouldn't be guilty of discrimination with an alcoholic if—it's that first job that counts. If he gets a good reference with that first job, then the second employer might be guilty of discrimination but not the first because he doesn't have a record of employment and references intervening his alcoholic——

Ms. **Feldblum**. Let me just say in conclusion to this that section 504, which has been on the books since 1973, applies to many, many employers. We have not had troubles with either the coverage of alcoholism or drug addiction under that law, which has been in place since 1973 and has extended to numerous employers. I think that history should be applied to this bill as well.

Mr. **Edwards**. Unfortunately, there will be a series of votes, so we will have to bring this very useful hearing to a close. You're such a valuable resource, Ms. Feldblum, that we're going to send you some written questions. Is that OK?

Ms. **Feldblum**. Yes, sir, that's fine.

Mr. **Edwards**. If you could give us the answers within a week or two, we would appreciate it.

Thanks to all the witnesses. This has been a very useful and informative hearing. We are now adjourned.

[Whereupon, at 10:53 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

AMERICANS WITH DISABILITIES ACT OF 1989

WEDNESDAY, OCTOBER 11, 1989

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, Robert W. Kastenmeier, F. James Sensenbrenner, Jr., and Craig T. James.

Also present: Catherine LeRoy, chief counsel; Ivy L. Davis and Stuart J. Ishimaru, assistant counsels; and Colleen Kiko, minority counsel.

Mr. Edwards. The subcommittee will come to order.

Today the subcommittee continues its review of H.R. 2273, the Americans with Disabilities Act. This bill extends civil rights to the 43 million persons in the United States who are disabled. The bill prohibits discrimination on the basis of disability in public accommodations, employment, public services, and telecommunications and has been referred to four committees in the House for consideration.

Since the introduction of this bill in both Houses earlier this year, the Senate passed an administration-backed compromise by a vote of 76 to 8. The compromise which was negotiated between the Bush administration and Senate sponsors goes a long way toward addressing the major concerns raised by the business community regarding the impact of the bill on their operations.

The House sponsors of ADA were not party to the compromise negotiations. Therefore, it is appropriate that we review the implications of the changes encompassed in this new bill. To that end, each of the committees with jurisdiction—Judiciary, Education and Labor, Energy and Commerce, and Public Works and Transportation—have conducted hearings on the compromise bill.

This legislation has widespread bipartisan support—including the Democratic members of the subcommittee and, as we will hear tomorrow from Attorney General Thornburgh, it is strongly supported by President Bush. Indeed, our witnesses today support the bill but ask House sponsors to consider issues which may require further clarification.

As chairman of the Civil and Constitutional Rights Subcommittee, I support the bill's coverage of Congress; however, this chairman will take steps to ensure such coverage does not conflict with the Constitution's separation of powers provision.

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Mr. Kastenmeier.

Mr. **Kastenmeier**. I am pleased, Mr. Chairman, that you are proceeding with this, because it obviously is an important bill and it has very considerable impact on the national community. It is something a lot of people have waited for a long time, and I think the hearing should be extremely important in terms of the ultimate disposition of this matter. I congratulate you for proceeding with it.

Mr. **Edwards**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you.

Good morning.

The time has come for the disabled of America to achieve their independence. They should be given as many opportunities as possible to be able to live a normal life and do the everyday things we all do, such as shop for themselves, work along with others, call for pizza, go to restaurants, etc.

This Americans with Disabilities Act legislation gives the disabled a chance to succeed, and I applaud this effort and strongly support it.

The witnesses before us today agree that the Americans with Disabilities Act is a worthwhile goal. They have come here to work with us to make this bill as effective as possible with the minimum of negative impact upon business. It is true that the business community will bear the majority of costs associated with this bill, and I intend to listen carefully to their concerns and to work to make this bill as palatable as possible to all concerned. My aim is to make this bill a victory for the disabled, not a victory for lawyers and another "lawyers and accountants full-employment act," which Congress seems to be passing so often.

So, thank you for being here today, and I look forward to the testimony.

Mr. **Edwards**. Thank you, Mr. Sensenbrenner.

The gentleman from Florida, Mr. James.

Mr. **James**. I, likewise, look forward to the testimony and hope that we can work out definitions that meet everyone's satisfaction so as to proceed to protect the rights of the disabled in every possible way without interference and creating major problems with the definition section.

Thank you.

Mr. **Edwards**. Thank you, Mr. James.

The first witnesses will testify as a panel.

Mr. John Motley is director of Federal Government relations, National Federation of Independent Business here in Washington, DC; Mr. Christopher J. Hoey is assistant treasurer/assistant general counsel for the Woolworth Corp., who is testifying on behalf of the International Mass Retail Association here in Washington; and Mr. James A. DiLuigi, AIA, is director, technical information, Marriott Corp., testifying on behalf of the American Hotel and Motel Association, Washington, DC.

[Witnesses sworn.]

Mr. **Edwards**. Without objection, your full testimony will be made a part of the record and Mr. Motley, are you first?

Mr. **Motley**. I'd like to go first, Mr. Chairman.

Mr. Edwards. You may proceed.

STATEMENT OF JOHN MOTLEY, DIRECTOR OF FEDERAL GOVERNMENT RELATIONS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Motley. Thank you, Mr. Chairman. First of all, let me thank you and the members of the subcommittee for the opportunity for NFIB to testify on the Americans with Disabilities Act on behalf of its 570,000 members across the country.

I guess I should clarify in the beginning that NFIB does not officially support this legislation. In fact, we have a membership vote of roughly 87 percent against the original bill as introduced. We are not opposing the legislation at this time though, and we'll get a little bit more into that as I get into my testimony.

I'd like to address first if I could the types of businesses that we are concerned about in terms of compliance with this legislation if it's passed. Most of them could, I think, be considered main street lifestyle-type businesses rather than franchises or some of the larger businesses that you might think of when you think about access for the disabled.

They would be things like the dress shop that might be in the turn of the century building; dry cleaners establishments which are located on streets with very steep inclines; wood working shops that were started as a part-time and are now a full-time business but operating out of the basement of an individual; hardware stores with narrow aisles stacked with goods, or possibly the jewelry business which was established in a converted mill, which was converted some 20 or 30 years ago in New England. There's an awful lot of them which are there and are being used for that type of purpose.

We are not necessarily well off financially. In a recent survey of NFIB members, we found that roughly 43 percent of our membership grossed less than $350,000 a year, and 57 percent of those polled took out less than $30,000 a year from their businesses. They are not large firms; they do not have large professional staffs. They average somewhere in the neighborhood of 11 to 12 employees. They certainly do not have lawyers on staff or professional personnel administrators on staff, and many of them, roughly one out of four, do not even have accountants. They do their own books.

With that in mind, Mr. Chairman, I would like to get to some of our concerns about the legislation. As I mentioned before, NFIB does not want to oppose the ADA bill. In fact, we believe very strongly in the bill's intent to provide greater access for the disabled, and we believe it's a well-intentioned piece of legislation.

However, we are concerned about the approach taken by the ADA bill to mandate significant and often expensive changes in nearly every business in America. It should encourage businesses to increase opportunities for the disabled, not threaten them into compliance.

There exists a fundamental difference, we believe, between other civil rights legislation and the ADA bill; namely, that access for the disabled comes at the expense of others. These are expenses business owners alone are expected to pay for. Small business owners are concerned with the ADA bill for two major reasons: The need for clarity and its costs.

The intent of the bill is clear. However, the ambiguous language used in certain parts of the bill and its unknown price tag conjure up images within the small business community of a parade of attorneys and lawsuits to the average small business owners. Proponents argue that accommodations costing $25, $50 or $100 are not overly burdensome and that we certainly can agree with.

Unfortunately, we believe that this ignores the accumulated effect of accommodating a number of disabilities in one business. Keep in mind that not all costs are small. For example, it costs $1,000 to $10,000 for a concrete ramp; $3,000 for a new exterior door; $300 to $3,000 to modify a public restroom; $23 an hour for a certified signer; and $5,000 to purchase a computer with speech synthesizer for the blind.

Definitions remain a major problem within the ADA bill, as many of you referred to in your opening statements, since there is little understanding of the specific requirements that it seems to place on business. General guidelines and case law are inadequate in providing specific parameters for business compliance.

For example, the regulations of the Rehabilitation Act do not list what types of disabilities are covered. It is simply ridiculous, we believe, to expect that individual business owners, the type that I mentioned before, know which conditions are legitimate disabilities and therefore must be accommodated.

A solution that NFIB would support would include a list of disabilities, preferably with a layman's description, so that both the business owner and the disabled individual knows if the ADA applies. Small business owners, as I mentioned before, are not specialists in disabilities, nor are they legal experts. Yet the ADA bill, with its current broad approach, demands some—the same level of awareness from them as it does from larger businesses, with their staffs of legal experts and other specialists.

The drafters of the ADA bill recognize the problems faced by many small businesses, and they included a small business exemption in the employment section of the bill. However, an exemption for smaller firms was left out of the public accommodations section. Since the burdens we believe are relatively the same for those businesses under both sections of the bill, an exemption we believe is appropriate in both sections of the bill.

The business community over in the Senate fought long and hard to clarify a number of terms that were either inadequately defined in the original version of the ADA or are new. Even so, some terms such as "readily achievable," "reasonable accommodation," and "undue hardship" have not been adequately addressed.

For example, while a business owner may believe that modifications costing $500 to $5,000 would constitute an undue hardship for his own business, a court may feel differently. A better solution from the NFIB's standpoint would be to use a percentage of net profit cap to define what a business is expected to spend to accommodate the disabled.

NFIB believes that several changes in the enforcement provisions of title III are necessary. Of primary importance is the definition of "pattern or practice of discrimination." Currently, this phrase is defined differently in various laws. We believe that it would be reasonable to define this phrase as suggested by the Attorney General in his letter to Senator Kennedy. He states that "pattern or practice" should refer to egregious and willful acts of discrimination.

Also of concern in the enforcement section of title III is the undefined phrase "monetary damages." While the Senate committee report indicates that monetary damages are not punitive, it does not state what is intended. The chief Senate sponsor of the bill, Senator Harkin, stated firmly and repeatedly during Senate debate that damages could be awarded under the ADA bill—could not be awarded, excuse me.

Therefore, NFIB strongly urges that monetary damages be specifically defined to mean out of pocket expenses incurred by a plaintiff as a result of the actions of a business. Such clear direction would provide consistency and clarity.

In conclusion, Mr. Chairman, without question the ADA bill in our estimation is one of the most sweeping civil rights bills in decades. It is not enough to agree with the goals of this legislation. Members of this committee must also reach a balance between its noble intentions and the real world consequences of its vague language.

NFIB urges member to carefully weigh the ramifications of specific language in the ADA bill, so that the clearest and most enforceable statute can be enacted. Thank you, Mr. Chairman.

Mr. Edwards. Thank you very much, Mr. Motley.

[The prepared statement of Mr. Motley follows:]

NFIB
National Federation of
Independent Business

STATEMENT OF

JOHN J. MOTLEY III
DIRECTOR OF FEDERAL GOVERNMENTAL RELATIONS

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: House Judiciary Committee
Subject: Americans with Disabilities Act, H. R. 2273
Date: October 11, 1989

The National Federation of Independent Business (NFIB) is a voluntary membership organization made up of more than 570,000 small and independent business owners nationwide. Our membership parallels the national business population in that approximately 50% of our members own retail and service enterprises. 25% are in manufacturing and construction; and the remaining 25% operate agricultural, transportation, mining, wholesale, financial, insurance, or real estate enterprises. The average NFIB member has 13 employees and grosses about $350,000 in annual sales.

NFIB does not want to oppose the ADA bill. In fact, we believe the bill's intent -- to provide greater access for the disabled -- is noble and well intentioned. Proponents of the bill have noted that small businesses voluntarily have done more than larger businesses to accommodate the disabled. Small business owners view the disabled as educated, reliable, and talented employees. In a diminishing labor pool, the disabled are high on the list of desirable employees. And employers take pride in encouraging and sharing their success with their disabled employees.

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The Guardian of
Small Business

Small business owners also see the disabled as customers and clients, and in order to compete for their purchasing power, many voluntarily make adjustments in their facilities to accommodate the disabled.

While a good deal more needs to be done to accommodate the disabled, small business owners have done a great deal voluntarily to provide access to the disabled. And more will be done on a voluntary basis over the coming years. Therefore, the approach taken by the ADA bill to mandate significant and often expensive equipment, services, and structural changes in nearly every business in America is simply wrong headed. Instead of providing incentives, education, and opportunities to encourage greater access, the ADA bill takes a negative approach of imposing vague requirements followed by significant penalties if businesses fail to comply.

Many in the disability community view the ADA bill as a declaration of their independence, just as other minority groups have viewed major civil rights bills in the past. But there exists a fundamental difference between statutes for other groups and the ADA bill -- namely, as currently written, access for the disabled comes at the expense of others. Under past civil rights laws, businesses were required to "open their doors" to the various minority groups. The ADA would do the same for the disabled. However, in addition to opening the doors, businesses will be required to spend their own money to make alterations in those doorways and make other accommodations. These accommodations may include structural modifications along with the installation of ramps, accessible restrooms and dressing rooms, lower drinking fountains, and the use of auxiliary aids and services. These alterations and purchases of equipment and services are an expense that business owners alone are expected to pay for.

It is important to keep in mind that U.S. businesses are currently facing a full array of social legislation that they, not the public in general, are going to be expected to fund. Added to the potential burdens of upcoming child care, parental leave, and other mandated benefit legislation, business owners are now going to be forced to foot the bill for an unspecified number of modifications to their businesses whether or not disabled people ever choose to seek a job or to patronize a particular business.

Small business owners are particularly concerned with the ADA bill for two primary reasons -- clarity and cost. The intent of the bill is clear. However, the ambiguous language in the bill and the unknown price tag conjure up images of a parade of attorneys and lawsuits to the average small business owner.

Proponents of the bill claim that the language is clear and unambiguous, particularly as a result of changes made first during the Senate markup and later during Senate floor debate. Without question, progress has been made. The original version of the bill was entirely unworkable and unacceptable to anyone with an understanding of how businesses operate on a day-to-day basis.

However, even the Senate-passed version needs further refinement. NFIB and its members urge that the House take up the Senate-passed version of the ADA bill and add substantive, creative modifications to enact a bill that is balanced and fair to all affected people, both the disabled and the business community.

Scope of Coverage Under ADA and Associated Costs

For the first time ever, private businesses that receive no federal funds will be required to make alterations to their facilities to provide access to the disabled. In the past, only federal contractors and programs receiving federal grants were required to comply (under the Rehabilitation Act of 1973). The belief was that those who chose to accept federal money should, in turn, provide access to the disabled as a federally-mandated requirement -- in effect a quid pro quo for receiving Federal funds.

This is not the case with the ADA bill. Private businesses will be expected to provide accommodation without the benefit of receiving federal funds to offset those additional costs. Proponents argue that those businesses and programs already covered say that the cost of accommodating the disabled is "no big deal". They argue that accommodations costing $25, $50, or $100 are not overly burdensome. Unfortunately, this ignores the fact that the accumulated effect of a number of smaller costs can seriously threaten the economic health of a small business.

Contrary to what proponents would like us all to believe, not all the costs are small. The following is a list of prices for various accommodations based upon several studies and reputable news articles published during 1988:

- $1,000 to $10,000 for a concrete ramp (cost depending on number of steps to be ramped)
- $3,000 to widen and install a new exterior door
- $300 to $600 to widen and install a new interior door
- $200 to lower an existing water fountain
- $300 to $3,000 to modify an existing public restroom
- $23/hour to hire a certified sign language interpreter
- $150 to $700 to purchase a Telecommunications Device for the Deaf
- $2.50/page to translate written text into Braille form
- $5,000 to purchase a computer with speech synthesizer and appropriate software for the blind

This list is by no means exhaustive, but it indicates that not all accommodations can be described as "no big deal", particularly to a small, marginal business.

Small businesses are not necessarily well off and able to afford many extra expenses. According to a recent NFIB survey, 42.7 percent of small businesses averaged gross receipts of less than $350,000 last year. Another 18.8 percent averaged less than $750,000. More than half of small business owners (56.6%) took out of their businesses less than $30,000 last year.

In light of these statistics, it should be no surprise that small businesses fear the costs associated with the ADA bill. Several modifications of the language can alleviate a substantial portion of their concern.

Understanding of Disabilities

While the ADA bill has been reformulated to reflect certain "definitions" within the Rehabilitation Act, little understanding exists regarding the specific requirements for businesses. General guidelines are provided, and case law provides additional guidance with respect to individual cases, but these are entirely inadequate in providing specific parameters for business compliance.

For example, the regulations for the Rehabilitation Act do not list what types of disabilities are covered. The result of this lack of clarity is reflected in the confused case law associated with the Act where courts have been forced to determine which conditions, diseases, and behavioral patterns are "disabilities" protected by the Act on a case-by-case basis. One case was brought in which a woman claimed a disability because she was dependent upon her dog. While the woman did not prevail, her case is illustrative of the types of "disabilities" individuals may attempt to bring under the ADA bill.

It is simply ridiculous to expect individual business owners to know which disabilities are covered and therefore must be accommodated. And business owners will never know if they have guessed right or wrong until a complaint is filed and a decision is rendered.

A Senate amendment specifically excluded from coverage several types of conditions or behaviors that would have had serious consequences for business owners – particularly pyromania and kleptomania. But how many more conditions that could endanger a business remain in the bill? And how many more cannot possibly be anticipated by a business owner? And how can a business owner be expected to know how to accommodate some of the lesser known disabilities when he/she has no concrete list to which to refer?

At the very least, a list of disabilities, with a layman's description of each disability, should be included in the bill. When necessary, it can be amended to add or delete disabilities as technology and research bring us closer to understanding and addressing various disabilities. Certainly, it will be difficult to compile a list of the 900 types of disabilities the proponents indicate are covered under the ADA bill. But without such a list to provide guidance, business owners will not know what is covered and will never be safe from the threat of litigation. And individuals with less well known disabilities will never know if they can expect accommodation.

Small Business Exemption

Small business owners are not specialists in disabilities, nor are they legal experts. Yet, the ADA bill, in its broad approach, demands the same level of awareness and responsiveness from them as it does on large businesses.

The drafters of the ADA bill recognized the problem small businesses will face in the employment section of the bill and included a small business exemption. However, an exemption was left out of the public accommodations section which affects patrons to the business. This makes no sense whatsoever. The employment section is no more burdensome than the accommodations section, leading one to conclude that an exemption is appropriate in both.

The bill does not provide specific parameters, only general definitions that are inadequate. No one has any idea of what the ADA bill will cost small businesses. No one has any idea of the specific types of disabilities covered by the bill. Clearly, a small business exemption for public accommodations, based upon the language on the employment section, is appropriate and necessary. It will remove the fear of litigation from the smallest of businesses who are least able to afford it.

Definition Questions in the ADA Bill

The business community fought long and hard to get clear definitions of a number of terms that either appeared in the Rehabilitation Act or are new. Even so, some of these terms -- "readily achievable", "reasonable accommodation", and "undue hardship" -- have not been adequately addressed.

To paraphrase Title I (the employment section), businesses must make reasonable accommodation unless it results in an undue hardship. Title III (the public accommodations section) requires accommodation if it is readily achievable. Both of these standards pose serious threats to small businesses, even in their amended forms. Undue burden is defined as "an action requiring significant difficulty or expense". Readily achievable is defined as "easily accomplishable and able to be carried out without much difficulty or expense". This last term has never before been used in law.

Both of these standards are further refined to take into consideration (paraphrasing) the size of the business, the type of facilities, the size of the budget, the type of operation, and the cost of the accommodation. In addition, an amendment was added to the public accommodations section that "good faith efforts" by a business owner to comply with the law must be considered during a civil action against a business owner.

NFIB supports these hard-won clarifications. However, business owners will still never know if they have done what is necessary to avoid legal action since all of the above criteria are, like beauty, in the eye of the beholder. While a business owner may believe that modifications costing more than $500 or $2,000 or $5,000 would constitute an undue hardship, a court may feel differently.

A better solution would be a dollar or percentage-of-net-profit cap on what a business is expected to spend on structural alterations, physical alterations, and auxiliary aids and services. Such a cap would provide a type of safe harbor against lawsuits. This is particularly important for small, marginal, or failing businesses since the costs of going to court, even if the business owner eventually prevails.

can seriously affect the economic viability of the business before a decision is rendered.

Access Incentives

Many businesses want to accommodate the disabled, both as employees and as patrons. While many small businesses provide access as they become more economically sound, the Federal government can aid directly in this process. According to the Senate floor debate, the Federal government spends roughly $70 billion in support payments to the disabled -- clearly, a large amount of money.

Unfortunately, the only Federal assistance available to businesses to accommodate the disabled is a maximum $35,000 tax deduction that currently exists in the Internal Revenue Code to make structural alterations. If this nation really wants to accommodate the disabled to the greatest extent possible, the cap should be lifted and the deduction should be expanded to cover physical alterations and auxiliary aids and services, as well as the currently covered structural alterations.

While an expanded deduction would be useful for profitable businesses, a tax credit is necessary for those businesses that do not make enough money to take advantage of a deduction. A small tax credit limited to small businesses would encourage greater access for the disabled and a cooperative, creative spirit among struggling businesses to serve disabled employees and patrons. Such an incentive is a better approach to increase accessibility than the punitive approach currently contained in the ADA bill.

Enforcement Provisions in Title III

While NFIB has serious problems with the requirements of the ADA bill, of no less concern is the enforcement scheme currently included in Title III. Unlike Title I, Title III (the public accommodations section) provides no administrative procedure to correct cases of discrimination.

If a disabled individual has a complaint, that individual can attempt to receive injunctive relief (basically, correction of the situation), certain other costs, and attorney's fees. The case would be decided by a federal court.

If the Attorney General has reason to believe that a "pattern or practice" of resistance to compliance (more than one occurrence) has taken place, he can bring a civil action against a business owner. Penalties would include correction of the problem, civil penalties of up to $50,000 for the first violation and $100,000 for subsequent violations, monetary damages, and attorney's fees.

The judge can consider certain defenses on the part of the business owner, including cost of the modification, size of the business, and good faith efforts to comply. These are important defenses for small businesses, but they don't solve the basic problem. Even relatively modest fines will have serious consequences for many small businesses.

Keep in mind that one half of all new businesses start up with less than $20,000 in total capital. And as noted before, the majority of small businesses take out less than $30,000 in income each year.

To ensure fair, reasonable treatment under the law, several changes in the enforcement provisions are necessary. Of primary importance is a clear definition of "pattern or practice" of discrimination. Currently, this phrase is defined differently in various laws. A reasonable definition would be to define pattern or practice as suggested by Attorney General Thornburgh in his recent letter to Senator Kennedy. He states that the term pattern or practice should refer to egregious and willful acts of discrimination.

Small businesses, particularly, may unintentionally commit acts of discrimination due to the vague language of the ADA bill. Remember that small business owners do not have access to civil rights attorneys and personnel managers to advise them on the complexities of this type of legislation which has never before applied to them. They do not have access to the Federal Register to get an idea of what they are required to do. And they frequently do not belong to organizations that can adequately inform them of what their specific type of business must do to approach compliance.

It would be naive to think that innocent violations of the law will not occur, despite the best intentions of business owners. Therefore, it would be reasonable and correct to reserve the civil actions brought by the Attorney General to those cases where discrimination was truly egregious and willful.

The original intent of civil rights legislation was to "make a victim whole". By providing injunctive relief, victims will be made whole. For those cases where discrimination is egregious, the civil penalties will still apply.

Also of concern in the enforcement section of Title III is the undefined phrase "monetary damages". To NFIB's knowledge, this term has not previously been defined in case law. While the Senate committee report indicates that monetary damages are not punitive, it does not state what is intended.

The chief Senate sponsor provided some light to this issue by stating firmly and repeatedly that "damages" could not be awarded under the ADA bill. This would seem to imply that damages for pain and suffering, which can be large damage awards, are not to be included. However, neither the business community nor the courts have a specific definition upon which to understand potential liability without a clarification of "monetary damages". Therefore, NFIB strongly urges that monetary damages be specifically defined to mean out-of-pocket expenses incurred by a plaintiff as a result of the actions of a business. Such clear direction would provide consistency and understanding of the law.

Another concern with respect to the enforcement procedures in both Title I and Title III of the ADA bill is a result of a recent Federal court decision regarding jury trials. In the past, jury trials were not permitted except in cases brought under one particular law written in the post-civil war era. For civil rights laws written since 1964 (including the Civil Rights Act and the Rehabilitation Act used as bases for the ADA bill), no jury trials were allowed. However, in Beesley v. Hartford Fire Insurance Company, the court overturned the prohibition against jury trials, leaving a question about procedures for current civil rights cases.

A specific prohibition against jury trials in cases involving the disabled is important to maintain fairness. Unlike other types of civil rights, the determination on whether an individual is disabled under the provisions of the ADA bill will be very difficult to make. In addition, because of the subjective standards and vague language in the ADA bill, it will take many years of interpreting past civil rights laws, the legislative history of the ADA bill, and the regulations to make fair, balanced decisions.

Conclusion

As with all civil rights laws, fairness should be the overriding issue in the ADA bill. However, to date, the bill has moved much too fast for careful, thoughtful, responsible consideration. The Senate was held to artificial time deadlines that did not permit full and careful consideration by Senators. In fact, the ADA bill was marked up just days before the August recess, and the committee report was not available until near the end of the recess. Yet the bill was brought to the floor only two days after Senators returned to Washington, and it passed the same day.

Unlike the Senate, Members in the House of Representatives have the opportunity to carefully review the language contained in the ADA bill. It is well worth the time and energy, since the bill affects virtually every business in America.

Think of the neighborhood dress shop built in a turn-of-the- century building; think of the dry cleaner on a steep incline; think of the hardware store with narrow aisles and goods stacked to the ceiling; think of the delicatessen where the owner is trying to feed, clothe, and educate his children. All of them will be affected in some degree by the ADA bill.

NFIB has listed a number of concerns with the Senate-passed ADA bill. While it is not an exhaustive list, addressing these points will result in an improved bill to accommodate the disabled and to assist the business community in attaining that goal. Several of the suggested changes are simply technical in nature to clarify intent. Others would make broader changes to make the bill more equitable which will better serve everyone.

Without question, the ADA bill is the most sweeping civil rights legislation since the Civil Rights Act of 1964. It is not enough to agree with the goals of the bill. Members of Congress must also reach a balance between noble intentions and the consequences of ill-considered language. NFIB urges Members of Congress to carefully weigh the ramifications of the specific language in the ADA bill to enact the best legislation possible.

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Mr. EDWARDS. Now, Mr. Hoey.

STATEMENT OF CHRISTOPHER J. HOEY, ASSISTANT TREASURER AND ASSISTANT GENERAL COUNSEL, WOOLWORTH CORP., ON BEHALF OF THE INTERNATIONAL MASS RETAIL ASSOCIATION

Mr. HOEY. Thank you.

I am Christopher J. Hoey. I'm assistant secretary and assistant general counsel for the Woolworth Corp., where I deal with personnel and employment law issues.

I am here for the International Mass Retail Association and its 140 major discount retail chain members, who operate over 25,000 stores and employ well over a million individuals. IMRA appreciates this opportunity to express the views of the Nation's mass retail industry on the Americans with Disabilities Act.

ADA's very laudable objective and important goal is bringing disabled persons into the mainstream of American life. We completely share that objective and endorse that goal. Achieving it will not only benefit disabled persons but the entire Nation. By resolving some practical questions about ADA's effects in some areas and by fixing some provisions in the bill that are ambiguous, imperfectly drawn, or have insufficiently considered likely adverse effects, this subcommittee can improve ADA.

IMRA's questions and suggestions on public accommodations fall into four main areas: (1) Identifying ADA's specific requirements for existing buildings and the costs they impose; (2) adopting a site-specific test for what actions are readily achievable; (3) giving building operators sufficient flexibility to develop the most workable alternatives; and (4) clarifying new construction requirements, particularly in the area of potential places of employment.

Existing buildings—the Senate report stresses that ADA's intent is to require changes to existing buildings used by public accommodations only if they can be achieved without major expense or difficulty. IMRA remains concerned that this intent has been incompletely or imperfectly realized.

One statement in the Senate report has caused considerable concern in retailing. It states that ADA may require the removal of physical barriers, including those created by the arrangement or location of such temporary and movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs or a department store may need to adjust its layout of display racks and shelves in order to permit access to individuals who use wheelchairs where these actions can be carried out without much difficulty or expense.

Layout costs are substantial. My company normally calculates the cost of physically moving merchandise from one location to another within the store, even an adjacent location, at $2.50 per square foot. Thus, in a relatively small outlet of 10,000 square feet of selling space, a reconfiguration could cost the average retailer $25,000, but there are other much larger costs associated with relayouts.

Many stores have at least some aisles that are not wide enough for a wheelchair to navigate. It would be a drastic and, in some cases, a ruinous step to impose 4- or 5-foot aisles on stores which presently have 2- or 3-foot widths. This would mean that affected areas would lose up to three-fifths of their productive space, with consequent reduction in sales and employment.

Equally profound would be the impact if ADA could be interpreted as limiting the height of merchandise shelves and displays. Mass retailers typically stock merchandise to a height of at least 8 feet. Some go significantly higher. There would be substantial costs in lowering existing shelves so as to be reachable by an individual using a wheelchair—up to $10 per square foot in labor and equipment costs alone, but by far, the largest cost would be in lost productivity, as retailers would forfeit one-half or more of the current shelf space, with corresponding reductions in sales, profits, and employment.

Interpretations that would force across-the-board changes in such key productive factors as aisle width or shelf height would be the functional equivalent of closing a substantial fraction of the Nation's stores or even of outlawing some types of stores. The subcommittee should make clear that advancing the rights and aspirations of disabled persons does not require substantial reformatting of store aisles, shelves, fixtures, and displays so as to provide physical access to every nook and cranny of a store.

Site-specific analysis in public accommodations—for multisite companies, such as mass retailers, whether or not an accommodation is "readily achievable" or creates an "undue burden" is judged on a very different basis than ADA currently provides. It defines "readily achievable" as easily accomplishable and able to be carried out without much difficulty or expense.

Up to this point, we can support this section fully, as long as architectural barriers mean a building's major structural features, such as walls, roofs, stairways, entranceways, and interior supports, but not its nonstructural items, such as merchandise displays, counters, or shelves, but the current definition of "readily achievable" raises one major difficulty that, if not remedied, will have significant and unfortunate consequences.

ADA defines the factors to be considered in determining whether an action is "readily achievable" as including the overall size of the covered entity.

Our company has analyzed the continued economic liability of any particular facility not on the basis of the company's overall size but on the basis of the particular site's performance. The same is true for assessing a change in operation, such as remodeling. Whether a company continues to operate at any particular site depends on the site's operating results, not the company's. A location which becomes marginal or unprofitable faces closing, even when the company is profitable overall.

Ignoring these site-specific economics is likely to produce more, not fewer, closings. That result would not benefit disabled or nondisabled workers and customers.

Our testimony gives the real world of a company which operates over 500 very small stores located in communities with populations of 10,000 or less. For a significant number of stores, the annual gross sales is less than $250,000. An additional $2,000 expense figured on a facility earning an industrywide pretax average return of 2 percent of sales would need an additional $100,000 in sales to offset the added $2,000 expense. Some types of alterations—for example, being required to retrofit an electric-eye door, which costs about $8,000—would wipe out one of these stores.

This example in the testimony dealt with small rural communities, but the same could be said for many older, inner-city stores, whose customers may experience special difficulties finding or getting other places to shop.

Applying the "readily achievable" on an establishment basis rather than on an enterprisewide basis has ample precedent under sections 503 and 504. Section 503 compares the nature and cost of an accommodation with the size of the operation involved in the contract, not to the overall size of the enterprise received in the contract. Section 504 uses the size of the program activity in the geographically separate facility, not the overall size of the enterprise. ADA should also use site-specific rather than enterprise-wide comparisons in analyzing "readily achievable" and "undue burden" and "undue hardship."

Ensuring flexibility on accessibility alternatives—where an accommodation is required, an employer or facility operator needs flexibility to accommodate disabled persons in any effective method. This avoids forcing more expensive and disruptive methods where better, less burdensome alternatives exist.

We believe this is ADA's intent, but it needs clarification to make clear it is not discriminatory but, rather, reasonable accommodation for a store to employ any effective method of its own choosing to assist disabled customers to obtain access to goods and services in areas of a facility that are not completely accessible. Where not all merchandise is readily accessible to some disabled customers, the facility needs to have the flexibility to respond in a systematic fashion that is most appropriate for its type and size of operation, and our testimony gives some examples.

The point is that the facility should have the freedom to provide an alternative method of accommodation that effectively serves disabled customers.

New construction—the dramatic and, we believe, unintended impact of restricting such key operational factors as aisle width, counter height and shelf height, which I have already outlined, would remain true for new construction. We believe that its accessibility requirements properly deal with structural factors, not store layout.

In addition, there needs to be practical alternatives to completely restructuring fixtures and equipment used in normal operation. For instance, a snack bar or lunch counter should have the alternative of making some, not all, of its spaces of a height and width suitable for wheelchairs or its customers.

Finally, "potential places of employment" should be removed from section 303(a)(1). If it remains, it may have the effect of bringing under the public accommodations sections nonpublic working areas, such as backrooms and behind checkout and displays.

Any accommodations that employers must undertake in these nonpublic workplace areas are best handled by ADA's employment provisions, which require employees to tailor accommodations to the specific needs of the actual job applicant or employee.

ADA speaks of alterations or major structural operations but nowhere defines either term. IMRA suggests adopting the sensible delineations used in the Pennsylvania statute enacted last year which ties the degree of accessibility required to the percentage of the building's value affected by the remodeling or renovation.

In the area of auxiliary aids and services, we have three comments and suggestions.

First, "readily achievable" ought to be the standard for provision of aids and devices in employment and public accommodations, as well; second, a site-specific analysis is the most realistic and productive way of addressing needed accommodations; and finally, the discussion of auxiliary aids and devices should explicitly take into account how frequently the service is needed, the size of the particular facility or establishment, and the economic benefits.

IRMA greatly appreciates this opportunity to share with the subcommittee our suggestions for making ADA as workable and cost-effective as possible in ending discrimination against the Nation's disabled.

Mr. EDWARDS. Thank you, Mr. Hoey.

[The prepared statement of Mr. Hoey follows:]

PREPARED STATEMENT OF CHRISTOPER J. HOEY, ASSISTANT TREASURER AND ASSISTANT GENERAL COUNSEL, WOOLWORTH CORP., ON BEHALF OF THE INTERNATIONAL MASS RETAIL ASSOCIATION

I am Christopher J. Hoey, Assistant Secretary/Assistant General Counsel for the Woolworth Corporation, with which I have been associated for about 25 years, dealing with personnel and employment law issues. My company employs nearly 75,000 persons and operates 5,700 stores of various types and sizes, ranging from 2,200 square-foot jewelry boutiques to large downtown multi-level self-service general merchandise stores.

I am appearing here today on behalf of the International Mass Retail Association. IMRA is a trade association that represents 140 major discount retail chains. Collectively, they do business in all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands and represent an overwhelming majority of the $130 billion a year discount retail industry. Our members operate over 25,000 stores and employ well over a million individuals.

IMRA appreciates this opportunity to appear to express the views of the nation's mass retail industry on the "Americans with Disabilities Act" (ADA). IMRA's comments today will deal almost exclusively with Title III's public accommodations provisions. We would welcome the opportunity to continue this dialogue on those provisions, and other portions of the bill where we can identify questions or concerns, in an effort to address particular issues of how the bill can best serve disabled citizens while at the same time recognizing legitimate business concerns.

The ADA aims at the very laudable objective and important goal of bringing disabled persons as fully as possible into the mainstream of American life. IMRA completely shares that objective and endorses that goal. Achieving it will not only benefit disabled persons, but the entire nation. Our businesses are always looking for capable workers; our stores obviously have a compelling interest in attracting and serving customers.

No matter how praiseworthy ADA's intentions are, and how desirable its aims, your duty, and ours, is to examine how well it will work in practice. By resolving some practical questions about ADA's effects in some areas, and by fixing some provisions in the bill as presently drawn that are ambiguous, imperfectly drawn or have insufficiently considered likely adverse effects, this subcommittee can improve ADA by making it more effective, more predictable, and less needlessly burdensome.

IMRA's questions and suggestions on public accommodations fall into four main areas: (1) identifying ADA's specific requirements for existing buildings and the costs they impose, (2) setting the most productive and realistic standard for analyzing what actions are "readily achievable," (3) ensuring that building operators have sufficient flexibility to develop the most workable alternatives, and (4) clarifying the coverage for new construction.

Our analysis will draw on the Senate-passed bill, and accompanying report, since we believe that S. 933 will -- and should -- be the starting point for consideration of ADA in this subcommittee and in the House.

Specific requirements and costs for existing buildings

At the outset, IMRA notes that while concerns have been raised about the potential costs that will be occasioned by ADA in such areas as transportation and telecommunications, similar study does not appear to have been made of the costs that ADA's public accommodations provisions may impose. The sketchy estimates in the Senate Committee's report, for instance, estimate the costs of accommodations in employment (it says that 49% of disabled workers may need accommodation with a cost impact, and the costs may exceed $100 in 70% of those cases), and for renovations and new construction (it estimates up to 1% of budget). No estimate was made, however, for the costs of what public accommodations may be needed in existing buildings. IMRA respectfully suggests that the Committees considering the ADA request a cost-analysis as quickly as possible from an appropriate government agency.

With what we hope is considerable understatement, the Senate report on S. 933 noted that "Witnesses recognized that it is probably not feasible to require that existing facilities be completely retrofitted to be made accessible." While the report also contains a number of statements stressing that ADA's intent is to require changes to existing buildings used by public accommodations only if they can be achieved without major expense or difficulty, IMRA remains concerned that this intent has been incompletely or imperfectly realized.

From the point of view of the nation's mass retailers, retrofitting of existing buildings can be a very complex and costly proposition, and IMRA believes that ADA attempts, although imperfectly, to recognize that. As IMRA understands it, one of ADA's primary aims is promoting the elimination of architectural barriers that deny disabled persons access to a wide range of public accommodations, including stores of various types.

One statement in the Senate report, for which we see no clear support in the bill's somewhat general wording, has caused considerable concern in retailing. It does not deal with the well-recognized term "architectural barriers," but instead introduces the new and troubling term "physical barriers." It states:

> What the "readily achievable" standards will mean in any particular public accommodation will depend on the circumstances... but the kind of barrier-removal

> which is envisioned includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

Yet perhaps without realizing the magnitude of what is being suggested, the report then introduces the previously unseen term "physical barrier" and gives an example that is far from a "modest adjustment."

> This section may require the removal of physical barriers, including those created by the arrangement or location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

Retailers know that layout costs are substantial. One division of my company, for instance, normally calculates the cost of physically moving merchandise from one location within a store to another, even adjacent location at $2.50 per square foot. I am reasonably confident that this standard estimate that we use would apply to most other retailers as well. Thus in a relatively small outlet of 10,000 square feet of selling space, a mandated reconfiguration would cost the average retailer $25,000.

But there are other costs associated with re-layouts that would dwarf that not-inconsiderable sum. Many stores, especially older ones, have at least some aisles that are not wide enough for a wheelchair to navigate. It would be a drastic, and in some cases, ruinous step to impose four- or five-foot aisles on stores which presently have two- or three-foot widths; this would mean that affected areas would lose anywhere from one-third to three-fifths of their productive space, with consequent reductions in sales and employment.

Equally profound would be the impact if ADA could be interpreted as limiting the height of merchandise shelves and displays. Depending on the type of operation, mass retailers typically stock merchandise to a height of at least eight feet; some types of operations, such as warehouse-type retailers, may go significantly higher. There would be substantial costs in lowering existing shelves so as to be reachable by an individual using a wheelchair (between $3 and $5 per square foot in labor costs alone to lower existing shelves, and up to $10 per square foot in labor and equipment costs to acquire and install lower shelving).

The most enormous costs, however, would be in lost productivity, as retailers would forfeit one-half or more of their current shelf space -- with corresponding reductions in sales, profits and employment (but not in rental and most other overhead costs).

Interpretations that would force across-the-board changes in such key productive factors as aisle width or shelf height would be the functional equivalent -- in lost sales and employment -- of closing a substantial fraction of the nation's stores, or even of outlawing some types of stores. The subcommittee would perform a major service to making ADA better-understood and focused by making clear that advancing the rights and aspirations of disabled persons does not require re-formatting of store aisles, shelves, fixtures and displays.

IMRA wishes to raise one other question related to when retrofitting of existing stores is required. Section 302(b)(2)(vi) of ADA requires a higher degree of accessibility for existing buildings during alterations, and yet a higher standard for buildings where a "major structural alteration" is being undertaken. Yet nowhere in ADA is either of these significant terms defined. IMRA suggests that the subcommittee consider adopting the sensible delineations used in a Pennsylvania statute (Act 1988-166) on disabled accommodations enacted last year, wherein the degree of accessibility required is tied to a definite and ascertainable standard, the percentage of the building's value affected by the remodeling or renovation.

Under the Pennsylvania statute, when the construction cost of remodeling is less than 30% of the building's worth, only the remodeled area or areas need by made accessible, and an accessible route to the remodeled area or areas is not required. When the construction cost is 30% or more, but less than 50%, of the building's worth, the remodeled area or areas must be accessible and an accessible route provided; a series of remodelings within a three-year period will be subject to this provision if their accumulated cost is 30% or more but less than 50%. Only if remodeling costs over a three-year period exceed 50% of the building's value must the entire building and site be made accessible.

Site-specific analysis in public accommodations

For multi-site companies such as mass retailers, whether or not an accommodation is "readily achievable" or creates an "undue burden" is judged on a very different basis than ADA currently provides.

Section 302(a) generally prohibits discrimination by a retail store or other public accommodation, and section 302(2) contains a number of specific prohibitions. Among other items, these include:

- o failure to remove architectural barriers, and communication barriers that are structural in nature.... where such removal is readily achievable [in section 302(b)(2)(iv)]; and

- o when removal of such a architectural/structural communication barriers is not readily achievable, failure to use alternative readily achievable methods of making available goods, services, facilities, privileges, advantages and accommodations [in section 302(b)(2)(v)].

Section 301(5)(A) defines "readily achievable" as:

> easily accomplishable and able to be carried out without much difficulty or expense.

Up to this point, IMRA can support this section fully, as long as architectural barriers are defined, as we believe they should be, to include a building's major structural features (such as walls, roofs, stairways, entranceways, and interior supports), not its non-structural items as merchandise displays, counters or shelves.

The current definition of "readily achievable," however, raises one major and, we believe, insufficiently considered difficulty, since its analysis differs in one important respect from the analysis used by companies with multi-site operations. If not remedied, this imbalance will have significant and unfortunate consequences.

Section 301(5)(B) defines the factors to be considered in determining whether an action is "readily achievable" as including:

> (i) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;
>
> (ii) the type of operation of the covered entity, including the composition and structure of the entity; and
>
> (iii) the nature and cost of the action needed.

When businesses such as ours analyze the continued economic viability of any particular facility, they do so not on the basis of the company's overall size or success, but on the basis of the particular site's performance. The same is true for assessing a change in operations, such as a remodeling, whether mandated by government or by competitive factors. Whether or not a company continues to operate in any particular site depends on the *site's* operating results, not the *company's*. A location which becomes marginal or unprofitable faces likely closing, even when the company is profitable overall, just as an investor with a diversified portfolio does not keep non-performing assets just because the overall portfolio is profitable.

Ignoring these site-specific economics -- as would be the case if the cost of any accommodation is assessed on the basis of its impact on the overall company -- is likely to produce more, not fewer, closings. That result would benefit neither disabled nor able-bodied workers and customers.

Take one "real world" example. One IMRA member company operates over 500 very small stores, typically about 6,000 square feet, located in communities with populations of 10,000 or less. The stores average five employees; some have only two or three. For a significant number of stores, the annual gross sales is less than $250,000.

Industrywide, the gross pre-tax operating profit is about 2% of sales. This means that an additional $2,000 expense imposed on a facility earning that average return would need an additional $100,000 in sales to offset the added $2,000 expense.

Some types of alterations -- for example, being required to retrofit an electric-eye door, which costs about $8,000 -- would be heavy enough to wipe out the profitability of one of these stores. Yet since the company is not a small business and shows a profit overall, it might well be required, under ADA's present test for "readily achievable," to undertake major costly changes or stop operating in those locations -- which are primarily in underserved rural areas. According to the company operating those 500 smalltown stores, analyzing what actions are readily achievable on the basis of the company's overall size, rather than on the size of the facility in question:

> will force us to close many of the smaller, marginally profitable stores, and reduce the overall economic viability of our company. Thus, while the goal of ADA is to extend access to jobs and retail services to the handicapped, the actual effect will be to reduce the number of jobs and services to everyone, including the handicapped. The hardest hit will be the small rural communities which are often only served by small retail establishments which are part of a larger chain.

The same could be said for many older inner-city stores whose closings would have a similar impact on the populations they serve, who may experience special difficulties finding or getting to other places to shop.

Applying the "readily achievable" test on an establishment basis, rather than on an enterprise-wide basis, has ample precedent. Regulations under sections 503 and 504, which are the model for much of ADA, use a similarly better-targeted analysis. Under Section 503, the nature and costs of an accommodation are compared to the size of the operation involved in the contract, not to the overall size of the enterprise receiving the contract. The comparison in section 504 is with the size of the program or activity involved, which for most private-sector corporations does not mean the entire corporation (unless the Federal assistance is extended to the corporation as a whole). Section 504 generally applies to "a geographically separate facility" receiving Federal assistance, not to the overall enterprise.

Likewise, the proper comparison under ADA should be with the affected "facility or establishment," rather than with the overall size of the enterprise operating the facility or establishment. The term "facility" already appears several times in ADA; the term "establishment" is well-defined in the Fair Labor Standards Act. For these reasons -- practicality and precedent both -- a site-specific, rather than enterprise-wide, test should apply both to "readily achievable" and "undue burden" analyses in the public accommodations section, and to "undue burden" in section 101(9) of ADA's employment title.

Ensuring flexibility on accessibility alternatives

A fundamental principle for IMRA's approach to ADA's provisions on reasonable accommodations is that, where an accommodation is required, sufficient flexibility needs to be provided for the employer or facility operator to accommodate disabled persons in any effective method. This is necessary to avoid forcing more expensive and disruptive methods where alternatives exist that are better-suited to, and less burdensome on, the business involved.

IMRA believes that this is ADA's intent, but some statutory and report language needs clarification to give adequate guidance to the Department of Justice and courts. For instance, sections 302(b)(1)(A)(ii) and (iii) provide that:

> It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class... to a denial of the opportunity... to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity [or]...
>
> to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class.., with a good, service, facility, privilege, advantage or accommodation, or other

> opportunity that is as effective as that provided others.

In addition, section 302(b)(1)(B) provides that:

> INTEGRATED SETTINGS. Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

IMRA believes that these provisions must be more fully and carefully explained so as to make clear that it is not discriminatory, but rather a reasonable accommodation, for a store to employ any effective method of its own choosing to assist disabled customers obtain access to goods and services in areas of a facility that are not completely accessible. For example, the store could designate store clerks, greeters, managers or other personnel to respond to questions or obtain merchandise that a customer is unable to locate or reach. Some establishments may choose to use accessible telephones for such inquiries, while others may prefer other systems allowing customers to signal for and receive assistance.

Where not all merchandise is readily accessible to some disabled customers, the facility needs to have the flexibility to respond in a systematic fashion that is most appropriate for its type and size of operation. The Senate report, for instance, gives a few examples. In discussing auxiliary aids, it states:

> ...a bookstore need not braille its price tags, stock brailled books, or lower all its shelves so that a person in a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make out a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

At another point, in discussing a public accommodation's obligation to provide "readily achievable" alternatives when removing architectural barriers is not readily achievable, the report gives several examples:

> ...coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

IMRA believes that ADA's provisions on integrated settings are presently open to interpretation as requiring a public accommodation to change its operations in response to the particular wishes of each disabled customer, rather than providing a system of its own devising that effectively serves customers.

In this regard, it needs to be noted that the accommodation system chosen by one type of operation may not be appropriate for other operators, even those within the same overall industry. Traditional department stores may be better able to provide counter personnel to assist shoppers than would be a central check-out self-service mass retailer, which may prefer to provide accommodations through an accessible central location. Even different mass retailers may choose to devise different systems. The essential point is that the facility should have the freedom to provide any alternative method of accommodation that effectively serves disabled customers.

A related issue in both the employment and public accommodations sections of ADA is the provision of "auxiliary aids and services." ADA's public accommodations title, in section 302(b)(2)(A)(iii), includes among the act's specific prohibitions:

> failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of

the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or result in undue burden.

"Auxiliary aids and services" are defined, in section 3(1), to include:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices;

(D) other similar devices and actions.

In this area, IMRA has three comments or suggestions. First, as the Senate report notes, "undue burden" and "undue hardship" -- which cover accommodations in existing buildings and employment -- are each a significantly higher standard than "readily achievable." So too is the burden of demonstrating that provision of an auxiliary aid or device would alter the fundamental nature of the goods or services being provided. IMRA believes that "readily achievable" ought to be the standard for provision of aids and devices in employment and public accommodations as well.

As discussed previously, IMRA strongly believes that a site-specific analysis is the most realistic and productive way of addressing needed accommodations. This should be the case as well for auxiliary aids and devices.

Finally, the Senate report's discussion of auxiliary aids and devices in the area of employment notes that many can be acquired for nominal sums, and that interpreters or readers will often be needed only on an intermittent, on-call basis, while normally performing other duties. The only instance where the report suggests that a reader might be required on even a part-time basis is for a "otherwise qualified" attorney in a law firm (unless that presented an undue hardship).

Whatever the merits of requiring an employer to provide a part-time reader for a visually-impaired attorney, the discussion of auxiliary aids and devices should explicitly take into account how frequently the service is needed, the size of the particular facility or establishment, and -- for employment purposes -- the economic benefits. A part-time reader may be justified for a highly skilled, trained and productive employee, such as an attorney, but would not be for a less-skilled or productive position, such as a clerical worker or a store cashier.

Standards for New Construction

ADA sets stricter standards for accessibility of new construction for first occupancy thirty months after its effective date. The dramatic and, we believe, unintended impact of restricting such key operational factors as aisle width, counter height and shelf height or depth, which we have already outlined, would remain true for new construction; we believe that its accessibility requirements properly deal with structural factors, not store layout.

In addition, there need to be practical alternatives to completely restructuring fixtures and equipment used in normal operation. For instance, a snack bar or lunch counter should have the alternative of making some -- not all -- of its spaces of a height and width suitable for wheelchairs.

Finally, "potential places of employment" should be removed from section 303(a)(1). This is not intended, the Senate report notes, to add to an employer's duties. But if it remains, it may have the effect of bring under the public accommodations section non-public working areas (such as in back rooms and behind checkout and displays).

Any accommodations that employers must undertake in these non-public workplace areas are best handled by ADA's employment provisions, which require employers to tailor accommodations to the specific needs of the actual job applicant or employee. Imposing public accommodations standards on non-public work space could result in facilities being required to make expensive but unneeded changes (such as installing elevators going only to non-public work areas when no employees require them). If qualified disabled job applicants apply, or employees needing such as accommodation are later hired or transferred, or employees at the site become disabled, they would have the protections of ADA's provisions on employment.

IMRA wishes to make brief comments on several provisions of ADA in areas other than public accommodations. These include:

"Pattern or practice": In finding a "pattern or practice" of discrimination, multi-site operations should not be found to have multiple violations for unrelated occurences at physically separate sites. Mass retailers typically operate in many locations, often far-flung and usually with a large degree of de-centralization. Typically, store managers or assistant managers handle hiring interviews and decisions on-site, and nearly any manager or employee in a store may come into contact with members of the public. When facility managers have operating authority, separate instances should not automatically be charged against the company as a "pattern or practice." Several years ago, the Judiciary Committee recognized this principle in the Immigration Reform and Control Act.

This is especially true since ADA at present lacks a requirement, found elsewhere in Title VII, that violations be intentional, and that "pattern or practice" violations be wilful or egregious. IMRA suggests that ADA likewise adopt the requirement of intent generally, and set an even higher standard of intent for its "pattern or practice" provisions.

Exclusive remedies: ADA does not pre-empt differing state or local government requirements in these areas, leaving employers and operators of public accommodations subject to being sued in several different forums. The bill should either pre-empt differing state and local requirements in the area of discrimination and the disabled, or at a minimum, provide that the remedies provided by ADA are the exclusive remedies for alleged violations of ADA. In states and local jurisdictions where tort actions may be brought for violations of "public policy," making ADA remedies exclusive will prevent litigants from bypassing the intent of Congress and, by referring to ADA, availing themselves of procedures -- such as jury trials -- or penalties -- such as punitive damages -- which ADA does not contemplate.

Mr. **Edwards**. We will now recess for a very few minutes for a vote in the chamber.

[Brief recess.]

Mr. **Edwards**. I apologize for the delay. The subcommittee will come to order and we will now hear from the third member of the panel, Mr. James A. DiLuigi.

[Witness sworn.]

STATEMENT OF JAMES A. DiLUIGI, AIA, DIRECTOR, TECHNICAL INFORMATION, MARRIOTT CORP., ON BEHALF OF THE AMERICAN HOTEL AND MOTEL ASSOCIATION, WASHINGTON, DC

Mr. **DiLuigi**. Good morning, Mr. Chairman. My name is James DiLuigi. I'm executive director of technical information, specifications and quality assurance for the Architectural and Construction Division of the Marriott Corp. I'm an architect. I'm a member of the American Institute of Architects. Prior to joining Marriott 10 years ago, I was engaged in private practice for 11 years. I'm pleased to be here this morning on behalf of the American Hotel and Motel Association to present this testimony on the Americans with Disabilities Act.

The American Hotel and Motel Association has approximately 9,000 member properties; 1.5 million rooms; and, we represent all the major hotel chains, as well as many independent properties of all sizes. In that respect, I think it's important to understand, even though we do represent chains and I'm a member of a chain, each property in that chain kind of has to stand alone. It's an independent business and it has to sink or swim.

AH&MA is and has been for quite some time committed to expanding opportunities for individuals with disabilities, both in employment and in public accommodations. According to statistics, some cited in your reports and some cited in other places, there are somewhere between 37 million and 45 million people with disabilities and apparently 8 million of those folks are looking for jobs. So we have a specific interest.

Also, it's important to understand that one in every two people over the age of 65 has some sort of disability. So we are looking to accommodate disabilities both for those who would be our potential customers, and for those who would be our potential employees. Mark Donovan, one of my associates at Marriott, spoke highly of the employment aspects of this bill before the Labor Committee previously. So today we are going to kind of focus on title III, which are the public accommodations aspects, and on title V of the enabling legislation.

On a little bit of a sadder note and personal note, I'd like to state that there is some sadness in our industry this week. Our President, who I am representing here, Elaine Etess, lost her son, who is also in the hotel business, in an unfortunate accident yesterday. Our President, Bill Marriott, had a heart attack last week. So we ask for your prayers and thoughts for their well-being.

On the issue of the bill, there are three things I'd like to speak about. These are not presented this way in the testimony. This will be a little bit of a more candid discussion. One is the need to understand exactly what is being required. Another is the methodology for developing the design guidelines to help us implement the legislation. The third is balancing costs against return.

The need to understand exactly what is required kind of falls into four stages, and the two gentlemen to my left spoke a little bit about them. The term readily achievable is defined as easily accomplishable, able to be done without much difficulty or expense. These are rather subjective statements and are easily argumentative statements and are the kinds of things that one of the gentlemen on the council mentioned earlier that can lead us into lots of legal arguments and not get the job done that we're looking to try to accomplish.

If, for instance, one owner has more debt than another, if one makes less profit, if one has less occupancy, is he or she less compelled to act than the person next to them that has another property with different circumstances and maybe a similar property? Some items that may appear to be easily accomplishable may be more difficult than first perceived. For instance, if we were to put grab bars in all of the guest baths, the grab bars maybe cost $25 to $100, but to put them in correctly to preserve the safety of the people using them, you have to remove walls and you have to put support in behind them, and that can cost easily $2,000 or more per unit.

Now, we should have enough units; that's not a point of argument here; but we should not go off haphazardly and say we should put them in all the units if we know that the cost is a significant factor. Alterations; make accessible to the maximum extent feasible is the terminology used in the legislation. We would ask what does that mean? What are the priorities? What should our priorities be? We want to help develop the priorities.

Where should we invest our dollars in order to get the benefit of the maximum extent feasible that's asked for? Can routine maintenance and replacement costs be excluded in the definition of spending money for alterations? I don't believe that is addressed in the legislation. And can there be an incentive? For example, if we were to have a 10-year deadline tax credit for implementing certain standards with a diminishing return where, if you were to do it within the first couple of years, you would get a full credit. If you were to delay certain things that needed to be done, you would get a diminishing credit. To be an incentive to take care of these issues that we need to put in our properties.

The third term is major structural alterations. That is addressed in the same language as alterations, but it's not clear where they divide. It is clear that it requires we address passive travel, bathrooms and water fountains in major structural alterations. That particular issue was addressed by my colleague to the left, suggesting that we look at the Pennsylvania statutes which say that 50 percent of the building cost formula might be used in identifying what is a major structural alteration.

Lastly, new construction. We have questions in regard to what is the intent for nonpublic work areas. There are certain work areas that pose a threat or a danger to both able and disabled people and for people with certain disabilities, there are higher risks than those who are fully able. I believe that should be looked at carefully.

The second item, methodology for developing the design guidelines. Here we request the balanced approach with representation of all affected parties. I'm happy to say in the testimony we refer to this particular publication, Design for Hospitality. The AH&MA, the Marriott Corp. and other hotel corporations worked for 2 years with the Paralyzed Veterans of America to develop this design guideline which addressed the public areas in hotels and motels.

It was a struggle; it wasn't simple. We addressed many different kinds of disabilities. We're not just talking about wheelchairs. We're talking about many types of disabilities. As I said earlier, the elderly population, which I will be one of in the not too distant future, of over 65 will be one in two of those people who will have some sort of disability.

So we request a balanced approach. We request to be able to participate and all industry members be encouraged to participate. This is a new territory. There's going to be a lot of exploration needed. There's going to be a lot of testing needed. There's going to be a lot of attitudinal adjustments to be made in solving these problems.

The National Fire Protection Association, which started about 1913, creates some standards aimed at our life safety. They didn't go from fire safe building products to fire proof roofing and building materials to smoke detectors to sprinkler systems in 6 months. It takes a lot longer than that and it's an ongoing process and there are standards that need to be updated approximately every 3 years to be effective.

There are many types of disabilities to be addressed. I would like to stress that. We're not just talking about people who have difficulty because they are in wheelchairs. They maybe have the biggest difficulty in terms of certain aspects of making a facility accessible, but there are people with hearing, with vision, with tactile senses, with range of motion, hand function, with strength and stamina, with mobility and with cognitive ability problems and these can all be addressed through design, but it takes a lot of research and a lot of work and a lot of cooperation.

Lastly, balancing costs against priorities. Perhaps in the design guidelines that are required to be set up, a first objective would be to develop a prioritized list of barriers to be removed. Those lists might be developed according to building types and according to new versus retrofitted construction. These lists don't have to have these solutions, but at least the need should be established so that we know how to work and where to start.

If I had a sum of money available, I'd like to know best how to use it. If I had $10,000, if I had $100,000, or if I had $1 million, I'd like to know where to put that money to best satisfy these needs. I don't want to do A if B is better and I don't want to do B if it has no value unless C is done along with it.

Retrofit costs can be significant; more so for existing buildings than old. For my company, we have approximately 125,000 guest rooms, 55,000 of those were put into service 10 years ago. We didn't know what we know now. We know a lot more today and the buildings today reflect that. It's going to be expensive to go back and we need to know what things are most critical. We would expect for a combination of new and retrofit construction to spend $45 to $116 million annually, depending on the range of requirements that were established.

After 10 to 15 years if we were to have all of our older facilities brought up to date, we'd spend $10 to $40 million annually, and we'd spend another $2 million annually for the employment aspects of added medical insurance. For those we would expect to get return on investment. But some of the items mentioned earlier as to employment issues, such as personal attendance and readers, we kind of see those as a necessity to make this thing work, but we sort of see those as a social service also and we'd like to see some thought given to a tax credit along those particular lines.

In conclusion, I'd just like to say that we know about this subject. We've been working on it and continue to work on it. We applaud the legislation and we ask for a balanced approach in developing the tools to make it work. Thank you very much.

Mr. EDWARDS. Thanks to all three witnesses. Your testimony has been very helpful.

[The prepared statement of Mr. DiLuigi follows:]

PREPARED STATEMENT OF JAMES A. DILUIGI, AIA, DIRECTOR, TECHNICAL INFORMATION, MARRIOTT CORP., ON BEHALF OF THE AMERICAN HOTEL AND MOTEL ASSOCIATION, WASHINGTON, DC

Good morning, Mr. Chairman, my name is James A. DiLuigi. I am the Executive Director of Technical Information, Specifications and Quality Assurance for the Architectural & Construction Division of Marriott Corporation. I am a member of the American Institute of Architects, and prior to joining Marriott ten years ago, was engaged in the private practice of Architecture for 11 years. I am pleased to be here this morning on behalf of the American Hotel & Motel Association to present testimony on the Americans with Disabilities Act to this subcommittee.

The American Hotel & Motel Association is a federation of affiliated lodging industry associations located throughout the United States, Puerto Rico, and the Virgin Islands. The association represents almost 9,000 member properties comprising more than 1.4 million rooms. Our membership includes all the major hotel chains as well as many independent properties of all sizes.

AH&MA is committed to expanding opportunities for individuals with disabilities both in employment and in public accommodations. Recently, we worked with the Paralyzed Veterans of America to develop the book entitled Design for Hospitality. The purpose of that book is to illustrate for architects, designers, and hotel and motel developers how to design and construct buildings that expand accessibility to hotels and motels for all potential guests. A copy of the book was provided to subcommittee staff and is evidence of our long-standing commitment in this area.

In addition, Elaine Grossinger Etess, 1989 president of the American Hotel & Motel Association has dedicated her term to expanding employment opportunities for individuals with disabilities as well as for senior citizens. In numerous speeches to the lodging industry, Mrs. Etess has encouraged her colleagues to tap this pool of employable talent to meet the growing human resource needs of our industry.

With this history of commitment to expanding opportunities for all members of our society, we welcome the Congress's and White House's efforts to provide fair and balanced federal legislation. We have worked with the White House and the Senate as they attempted to refine the Americans with Disabilities Act as originally introduced. We believe substantial progress resulted from that effort, and that S. 933 as passed by the Senate was a better bill than that introduced. We also believe that the Committee Report accompanying S. 933 clarified the legislation in many instances.

However, we believe that there remain issues to be addressed in ADA, and we applaud the Judiciary Committee for holding these hearings on the bill. We look forward to working with you on this important issue.

It is our intention throughout to refer to S. 933 as passed by the Senate and to the committee report which accompanied that bill. We believe it appropriate to build on the foundation formed in the Senate with the hope of erecting a structure that strikes the appropriate balance between the needs of all individuals with disabilities and the legitimate concerns of those who must implement the requirements of this legislation in our society.

While the lodging industry will be impacted by this legislation in several areas, including that of employment, we will concentrate today, on Title III of S. 933, dealing with Public Accommodations as well as the accompanying committee report, and more specifically to the requirements imposed on our physical structures. We will also address Title V dealing with design guidelines.

Title III defines a continuum of response by lodging facilities to the needs of individuals with disabilities for accessibility. That continuum can be conveniently broken down into four stages: the "readily achievable" stage which requires certain retrofitting of existing facilities; the alteration stage which imposes requirements on certain areas when they are altered; the major structural alteration stage which adds to the alteration stage certain requirements on paths of travel; and finally, the new construction stage which imposes requirements on new buildings.

Along each stage, the burden to the facility is increased, as the effort undertaken by the facility on its own behalf increases. This is an appropriate pattern and one we do not disagree with. However, we feel several issues must still be addressed.

I. Readily Achievable

"Readily Achievable" barrier removal is used as the standard for retrofitting existing public accommodations where no modification, alteration or similar change is ongoing. The term is given a general definition of "easily accomplishable" which unfortunately is little more than a synonym for the term being defined and adds nothing to the understanding of the term. That synonym is then somewhat modified by a description of "able to be carried out without much difficulty or expense."

Several factors are then cited to help determine whether an action is "readily achievable". However, those factors fail to contain a direct link to the economic health of the specific entity either by reference to profitability or other specific measure that a business may rely on. There also is an implied indication that there would likely be only one "readily achievable" action for a facility. However, such may not be the case, particularly in a large facility such as a hotel. This lack of some specific measurement or limit is exacerbated in the committee report which gives several examples of what may be considered "readily achievable" changes including grab bars and ramps over a few steps.

The reality is that the installation of grab bars typically requires at a minimum removal of the existing outer wall, installation of reinforcement such as 3/4 inch plywood into the wall, and replacement of the wall prior to installation of the grab bar. If you are speaking of a bathroom, in addition to sheetrock, there would also be ceramic tile to be removed and replaced. Additionally, there is the potential for electrical wires within the wall which may need to be moved.

The total cost of materials and labor for the installation of a single grab bar could be more than $2,000. While the bill seems to suggest only one action, the open-ended nature of the example in the committee report suggests this cost could be replicated numerous times in a single hotel facility. This seems to far exceed what one would call "readily achievable", but is a foreseeable event under the definition and examples of readily achievable.

Similarly, ramping one or several steps cannot be done by merely throwing a few sheets of plywood down. Liability concerns, code requirements, aesthetics, and durability of materials among others require installation of a permanent ramp. Again, the cost for such a ramp may be several thousand dollars, and more than one ramp might be demanded for a facility to make it truly accessible. Other examples in the committee report raise similar cost issues.

A larger concern under the "readily achievable" standard is the broad range of potential changes which may be requested. Considering the wide scope of disabilities covered by this bill, it is not likely to be just one ramp, or just one grab bar, but several of each as well as other changes including alarm lights, plumbing fixture relocations, door hardware modifications, and the like. The overall cost of all the "readily achievable" changes could exceed the ability of a facility to afford such cost, but no limitation on cumulative changes is found in the legislation. When the cost of "readily achievable" standards was mentioned in the Senate, it was frequently said that minor changes costing $50 to $150 may be all that was required. However, as can be seen from these examples, the likelihood is for costs far in excess of the minimum amount mentioned. A measurable limit on "readily achievable" must be added by this committee.

A specific problem with the example of grab bars used in the committee report is whether, when applied to a hotel, the changes are intended only for the common use, public areas of the hotel, or whether individual guest rooms are contemplated. An interpretation that "readily achievable" changes of the nature contained in the committee report would be required in all guest rooms would create a burden that would likely lead to the closing of some facilities. In addition, it would be inconsistent with committee report language under "new construction" that not all rooms must be fully accessible.

In spelling out this concern over the potentially broad scope of "readily achievable" despite the seeming limitations of S. 933 cited above, it is not our intention to call for removal of this provision but rather to request this subcommittee to eliminate any possibility of such unintended effect by adding to the existing definition an understandable limit that is knowable and can be adhered to by businesses. Given a standard or guideline more specific than that offered to date, a standard which a business can know and understand, it will respond with a high degree of compliance. The vague standard we currently have offers no clear way for a business that wishes to comply to do so.

It is not our intention to offer specific language in this testimony, but having pointed out the need for such language, we readily offer the staff and resources of AH&MA to work with committee members and staff to reach clearer language.

II. Alterations/Major Structural Alterations

The legislation passed by the Senate contains requirements when a facility makes alterations/major structural alterations. The essential difference in the bill's requirements is that when a major structural alteration is undertaken, the paths of travel, bathrooms, and water fountains in addition to the altered portion of the facility must be readily accessible to and usable by individuals with disabilities. This "readily accessible" standard applied to new construction is limited by a standard that requires accessibility only to the "maximum extent feasible" in the two alteration situations. The principal problem with the two alteration requirements is the lack of a dividing line between them. It is not clear when an alteration ends and a major structural alteration begins. Also, there is no exception to the alteration requirement for routine maintenance and replacement of items subject to wear and tear which have at most only a minor impact on accessibility and usability by individuals with disabilities.

The lack of a clear line between alterations and major structural alterations is further muddied in the committee report which does not discuss at all or provide even a single example of an "alteration" and which discusses major structural alterations in a way which is at variance with the common meaning of those words as well as the meaning of those terms as used within the building industry.

The emphasis in the committee report discussion is on "major" meaning the same as "important," rather than as describing a level of alteration. In the same way, "structural" is equated with "facility usability" rather than with elements integral to the building such as load bearing walls which actually support the structure.

The result of this confusion is to push typical alterations into the higher category of major structural alterations. This creates the extra responsibility of making paths of travel accessible where true structural alterations have not occurred. The likely result of this requirement, if unchanged, will be to curtail building alterations, thereby cutting against the goal of this legislation.

In saying the above, it is not our intention to criticize the committee report, but rather to present to the subcommittee an opportunity to remove confusion and add clarification in this area.

Since this problem can be solved by a simple amendment to the bill, we would recommend that a percentage limitation - measured against the value of the facility being altered - be inserted into the bill. An alteration costing more than 50% of the value of the building would be a major structural alteration. Any alteration of a value of 50% or less would be an alteration. A de minimus exception to the alteration standard for replacement of routine items, limited to no more than 5% of the value of the building would allow maintenance and upkeep to take place without disruption, and should also be included as part of the definition.

This simple solution would obviate the attempted explanation of "major structural alteration" contained in the committee report. We understand it would be consistent with the approach taken by Pennsylvania in its legislation.

III. New Construction

Newly constructed facilities are required to be "readily accessible and fully usable by" individuals with disabilities except where structurally impracticable. The committee report in attempting to further explain this concept speaks in terms of excluding from this standard "unusual spaces that are not duty stations."

However, within a facility such as a hotel, there are public areas such as the lobby, restaurants, meeting rooms, and guest rooms, etc. There are also nonpublic areas such as offices, kitchens, storage rooms, and mechanical/electrical equipment areas, and the like where only employees are allowed. Within the nonpublic areas are work stations where some individuals with certain disabilities would not be able to meet the requirements of the job done at that station. Under the employment title, this would seem to present no problem.

Under the "new construction" standard, it appears a hotel may be expected to make that work station "fully accessible to and usable" by individuals with disabilities. An example of such a situation may be a wheelchair bound individual being unable to work at a stacked oven, tilt kettle, or commercial stove, yet the hotel may be faced with demands for wheelchair accessibility to and of that work station. In fact, it is not clear that demands to make the fixture itself, the stove etc. in our example, fully accessible, could not be made, despite the fact that there is only a lesser standard, "reasonable accommodation" under the employment title. Despite language in the committee report that Title III does not cover employment situations, the "readily accessible" standard for both new construction and alterations applies so broadly, that clearly exempt work stations do not appear to be exempted.

While we are concerned about the sweep of this provision, it is not our intention to request significant modifications. We agree with the committee report that the purpose of this standard is to enable people with disabilities to get to, enter, and use a facility. We point out, however, where use is not contemplated, costly modifications should not be demanded.

The term "readily accessible" has another implication for the lodging industry when the term is applied to guest rooms. While the committee report indicates that "the term does not necessarily require the accessibility of every part of every area," when it uses a hotel as an example, it speaks of all doors and doorways being designed to allow passage into and within all hotel rooms. If that is intended as a specific requirement, that all doorways in newly constructed hotels be of sufficient width to allow wheelchair passage, we have no disagreement with that. If it is interpreted as an example of the level of conformity hotels will be held to for all items in the guest room or for other areas of the facility such as parking lots, we are greatly concerned about the financial implications of such an interpretation.

Some comfort exists in the language of the committee report which speaks of "readily accessible" as requiring a percentage of each class of hotel room to be fully accessible. However, what is intended as a "class of hotel rooms" is not explained by the report, nor is that a term which has a commonly accepted definition within the lodging industry. Related to the "class of rooms" problem is the segregation issue which is a unique problem for hotel guest rooms. Uniformity of design and construction requirements make randomly placed fully accessible rooms difficult to install in newly constructed hotels. Modification of the design of the building either vertically or horizontally to accommodate differing plumbing and electrical needs often necessitates a grouping of rooms that are fully accessible. Such grouping could be claimed to be segregation, even though done merely to accommodate construction requirements. Clarification by the subcommittee of these issues is required.

IV. Design Considerations

It is AH&MA's objective to help design and construct facilities to be accessible. However, there has been very little effective guidance available to designers and developers to help accomplish that objective. The American Standards Institute's "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons" (ANSI 117.1-1986) is lacking in its ability to provide design solutions. Our Design for Hospitality book was an attempt to address this lack with specific design solutions.

However, we believe that overall, enough has not been done to date. The Americans with Disabilties Act will have a significant positive impact in seeing that more will be done. As currently drafted, it requires that design guidelines be developed by the Architectural and Transportation Barriers Compliance Board within six months after it becomes law. We are not confident that this is a fully conceived assignment of that responsibility or that six months is sufficient to develop the design guidelines. We, therefore, request that this part of the legislation be reconsidered by the House of Representatives.

We suggest that a well balanced group representing all facets of the issue be involved in developing the design guidelines and in continually cultivating them over time. A good model for such a group is The National Fire Protection Association (NFPA) which originated in 1913 and which develops standards and regulations pertaining to life safety in buildings and structures. The design standards which are published by NFPA are typically adopted by state and local code authorities by simple reference.

It is our request, therefore, that composition of the Architectural & Transportation Barrier Compliance Board be evaluated for its ability to meet that objective and that its membership be adjusted as necessary.

The AH&MA would like to participate in the development and maintenance of the design guidelines and encourages professional organizations, industry associations, public sector officials, advocacy groups, service providers, and independent interested individuals to similarly contribute to the effort of seeking practical solutions to the needs of the disabled. We believe that the inclusion of all parties as active participants in this problem solving process will yield good answers and even more importantly lay a strong foundation for effective implementation.

IV. Conclusion

In closing, the goal we ask you to strive for is that of eliminating as much litigation as possible by giving business clear standards to be achieved, with reasonable protection of their financial integrity. Many steps have been taken to reach the goal of eliminating discrimination on the basis of disability. We believe the areas we highlighted in our testimony will not hinder that goal in any way, but will instead further that goal by promoting a higher degree of cooperation by the business community.

Mr. Edwards. Mr. Sensenbrenner.

Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

First of all, let me say that the testimony I think on balance has been very helpful. Obviously with an increasing percentage of our society having some kind of disability or another coupled with a shrinking labor pool, having protection for the disabled is an economic necessity in the real world of economics today.

If people close their doors to workers or potential workers with disabilities it will be that much more difficult to find qualified people to do the tasks that need to be done in businesses and as far as retail establishments that are providing goods or services to the public, closing one's door to disabled customers will probably mean that 20 to 25 percent of the potential buying public will be excluded from spending their money in a retail establishment and it simply isn't good business.

I also agree with many of the witnesses that there are some ambiguities that need to be clarified in the Senate-passed bill and obviously what we would like to see happen is a very clear set of guidelines on what you've got to do and what you don't have to do in order to comply with this law so you don't need to hire a lawyer and an accountant and spend money that could be used fixing the place up to make it accessible to the handicapped on lawyers' fees and other types of litigation expenses.

Now having said all of that, you know, let me specifically take issue with some of your statements, Mr. Motley, about an insinuation that those of us who want to do something for the disabled are oblivious to the real world consequences of what we're doing here in the Congress.

I happen to have a wife who's a paraplegic and a sister-in-law who has Down's syndrome and maybe some of your members are oblivious to the real world consequences of having to live with a disability on a day-to-day basis and that is why this legislation is here and that's why it passed the Senate by an overwhelming margin and has got the support of a probusiness national administration and President of the United States, so I would hope that when we approach this issue— you know we are going to do it in a constructive manner to try to clarify these ambiguities rather than trying to nitpick the bill to death, and some of the statements, Mr. Motley, in your prepared testimony in my opinion are very nitpicky and I'd like to ask you a question about one of them.

On the bottom of page 9 you say a better solution would be a dollar or percentage of net profit cap on what a business is expected to spend.

Can you tell me how a potential buyer in a retail establishment who's disabled is able to determine whether or not the business has complied with the ADA simply because it might be less profitable than the competitor down the street?

Mr. Motley. No, I can't tell you that, Mr. Sensenbrenner.

I would think though that if there is cause for that individual to think that the business is not living up to its obligations that that information can be found out rather readily.

If I am also not mistaken it's part of the North Carolina law in this particular area where that is defined as reasonable. Before going on though——

Mr. **Sensenbrenner**. My time is limited. You know, following up on that statement——

Mr. **Motley**. So is mine, Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Following up on your statement there, Mr. Motley, you know you said that it could be found out relatively readily if a business is not living up to its obligations.

If a business should be exempted for one reason or another, would you support an amendment to the law that would require that business to hang a sign out in front that says "Disabled Not Welcome?"

Mr. **Motley**. I don't get the gist of your question.

Mr. **Sensenbrenner**. Well, that would inform somebody who was going down the street who's disabled who wants to go shopping that the business is not readily accessible according to the terms of the law and they can go spend their money elsewhere because I am sure that a disabled person would want to support a business that's helping them out and not support one that isn't.

Mr. **Motley**. Well, that's a matter of choice for the disabled person to support any business it wants, just as it is a matter of choice for any other individual in the country to support a business.

Mr. **Sensenbrenner**. Well, your point, Mr. Motley, was that a disabled person should know whether or not the establishment is in compliance with the law and hanging a sign out in front that says "Disabled Not Welcome" would drive that point home pretty quickly.

Mr. **Motley**. I would assume, Mr. Sensenbrenner, if the individual has a complaint that the individual would look into the remedies which are available in the legislation and it would be relatively simple I believe for a lawyer or for some other official to find out whether the business has the available amount of money to make the changes.

Mr. **Sensenbrenner**. But isn't it one of everybody's goals including your organization's to try to keep these complaints out of court so we don't spend money on lawyers' fees but we get the job done?

Mr. **Motley**. It is also my intention and the desire of my organization to make sure that businesses are not forced out of business and people lose their jobs because they cannot make the types of changes which are referred to in the legislation or are needed.

Mr. **Sensenbrenner**. You were the one who suggested a percentage of net profit cap in your testimony.

Mr. **Motley**. And that's right out of the North Carolina State law.

Mr. **Sensenbrenner**. Well, you know I can't understand if one is in the business of selling goods to the public or selling services to the public why a percentage of net profit cap can be used for an exemption or not. Basically what you are doing is saying that unprofitable businesses or less profitable businesses don't have to comply with the law but very profitable businesses do. You are ending up penalizing the profitable ones.

Mr. **Motley**. I wouldn't put it exactly that way but the way I see what you're saying is that we're going to treat everybody exactly the same and we don't give a darn about the consequences of it.

Mr. **Sensenbrenner**. No, that's not what I am saying.

Mr. **Motley**. We don't care whether people are put out of work. We don't care whether the business closes. We don't care if there are five or six disabled people working for this that they lose their jobs.

Mr. **Sensenbrenner**. Sir, I have received a Guardian of Small Business Award from your organization for the last several years. You're off base on this one. You are way off base on this one and if I don't get a Guardian of Small Business Award because of my support of the ADA, that's just too bad.

Thank you, Mr. Chairman.

Mr. **Motley**. Mr. Chairman, could I make one comment, please?

Mr. **Edwards**. Yes. Go ahead.

Mr. **Motley**. Mr. Sensenbrenner, we very well could have brought a number of different witnesses in here. We have NFIB members across the country who are severely disabled who run businesses. We have other NFIB members who have done a great deal to help the disabled and I think in the conversations we've had with the disabled community and that the Congress has had with the disabled community they tend to feel that small business is doing a fairly decent job of trying to accommodate them. Therefore you know we are not coming in here to nitpick the legislation.

In addition to that, you know my membership does feel that many of the pieces of legislation that come out of Congress, come out of Washington don't apply very well in the real world. I simply refer you to section 89 of the Internal Revenue Code, auto logs, a number of other things which have caused severe problems.

Mr. **Sensenbrenner**. Well, Mr. Motley, I was the only member of my State's delegation that voted against the 1986 tax bill and I did so——

Mr. **Motley**. Because of section 89?

Mr. **Sensenbrenner**. Well, it was not just because of section 89 but that was because of one of these, one of the provisions and I have worked to make a lot of civil rights laws more workable and more flexible in terms of their application and have had no problems in having very strong disagreements with the chairman of this subcommittee, whom I respect very greatly.

My point to you is simply this, and that is that disability has been the ignored reason for discrimination far too long in this country.

I want to make this bill more workable and I agree with all three of the witnesses that have appeared before us this morning that there are certain provisions in the Senate-passed bill which are so ambiguous that nobody knows what they've got to do and whether doing what they think they have to do is going to place them in compliance with the law or not.

My argument is with the attitude and with the tenor of your testimony. It is not with the attitude and tenor of the other two witnesses' testimony and it seems to me that you are not approaching this issue in a constructive manner to try to clean up these ambiguities, you know. You are trying to figure out how to exempt as many of your clients as possible.

That certainly is a legitimate reason for someone who is a hired gun for a trade association. It is not a legitimate reason for someone who is supposed to represent the public interest.

Mr. **Motley**. Mr. Chairman, from the beginning of this process NFIB has attempted to work within the process to make the bill better. It is not our desire to have to oppose this particular piece of legislation. With the administration, with the Senate committee and with the various different House committees, with the Democratic and Republican leaderships we have made the same point. That is our intention in appearing here today and I am sorry, Mr. Sensenbrenner, that you don't believe it's such.

I would hope that the committee would make changes in the legislation which we feel will make it easier for small business to comply with the law and also make it easier for the Justice Department to enforce it.

Mr. **Sensenbrenner**. Well, I would just say in response to the comment that you made is that one of your principal points is that there is an undue hardship exemption in title I which is the employment section but you want to have the same type of exemption for title III which is the public accommodations section.

I think there is a considerable difference between the two because with the public accommodations section that covers facilities that are open to the public, which means everybody including the 20 to 25 percent of the American population that has got some kind of a disability. It is entirely different than the employment section where there has to be an agreement between the employer and the employee that there be a hiring and you know there you are not open to the public and there are some small businesses that do not sell goods and services at retail that are open to the public——

Mr. **Motley**. But most of them do.

Mr. **Sensenbrenner**. There is a justification for that.

Mr. **Motley**. The vast majority of businesses in this country, Mr. Sensenbrenner, are in the area of public accommodations, either in service retail or in some other type, and I think our suggestion for an exemption—we don't see—there are differences. From the standpoint of the employer we don't see where there are such significant differences not to consider the same type of treatment and I think what we are asking the committee to do is to you know balance the extent and coverage and accessibility to the handicapped against the cost of compliance, against the problems that it will cause.

This type of an approach is one which you know is in law in the Regulatory Flexibility Act for smaller businesses.

If an exemption is not possible, possibly a phase-in period for smaller businesses is something that would work.

You are going to have an extremely difficult time getting small, main street rural businesses of this country to realize what their obligations are under this statute and they are going to be sitting out there not knowing that they are going to comply, not knowing the types of disabilities that they are going to have to change their businesses for.

We are terribly, terribly concerned that under those circumstances they become sitting ducks for the type of legal actions that you are concerned about preventing and that we are concerned about preventing.

That is the reason for our suggestion.

Mr. **Sensenbrenner**. Let me give you a hypothetical. How about a small rural filling station. Do the bathrooms have to be wheelchair accessible? Should they be?

Mr. **Motley**. I would think that they should be, yes.

Mr. **Sensenbrenner**. OK. Thank you very much.

Mr. **Motley**. But I would also think, looking at a legitimate smaller business exemption, even a small rural filling station unless it's just family operated would have more than just, let's say, five or six employees. They'd have to, to operate the station and keep it open to make business.

Mr. **Edwards**. Mr. Motley, do you think that there should be a general exemption for small businesses?

Mr. **Motley**. We believe that the cost of compliance, Mr. Chairman, in the very smallest of small businesses, is literally outweighed by the benefits that might be gained. We also believe that many of these would probably come into compliance on their own over time. So that's our official position.

If it's not possible to have an outright small business exemption, again a phase-in is something that we would wish the committee to consider, such as the type of phase-in which has been done on some of the environmental laws, because you have just a class of businesses out there who simply will not know what their obligations are under this law.

Mr. **Edwards**. Thank you. Mr. DiLuigi.

Mr. **DiLuigi**. Yes, if I may speak to that issue a little, in terms of the rural filling station or the small hotel, whatever it might be. Our experience in working with the Paralyzed Veterans of America in developing this particular design guideline book has really shown that there are many different solutions available to many different problems, and it takes some arm-wrestling, sometimes, to get the solutions out on the table, and it takes some understanding of the thing to be solved by the design community and the two working together.

For instance, in a small property or a small hotel, where you may not be able to afford to tie or to tear out a front desk and put a new desk in which would be accessible to someone in a wheelchair, it is possible to have clipboard, something as simple as a clipboard that can be handed over the counter and used by that particular individual.

Similarly, in maybe a larger or luxury hotel, you can have a concierge desk which can be used in a more gracious manner to solve that particular problem. Also, we've learned that most wheelchairs can get through a 2-foot-6-inch-wide door. We don't necessarily need to have 32-inch net clear openings or 3-foot-wide clear openings. Those are good to do in new construction, definitely, and standards should be developed for new construction because it doesn't cost but pennies more or even nothing in many cases to put that in, new construction, than it does to go and tear it out of old construction.

So there really needs to be a balance of standards. The things you can do to make a place more accessible in an existing facility can be a lot less, maybe not as completely accessible, maybe not as desirable, but still accessible to meet the intent of the legislation, and that really needs to be understood.

Mr. **Edwards**. Thank you. When this subcommittee handled the fair housing bill last year, and when we came to new construction of apartments and so forth for the handicapped, we found that hypothetical questions that we would feel obliged to answer was a very useful process, and I would suggest that some of this discussion today has been too theoretical, insofar as nailing down answers that your people have to have.

So the subcommittee would invite a series of hypothetical questions, such as Mr. Sensenbrenner asked about the rural service station. We would welcome just dozens of them and then you would pass the buck to us and we would have to struggle with them, with experts just like you have had to in your hotel business.

Generally speaking, I believe that the testimony of all three witnesses is that you are in favor of a bill, but it does need that kind of clarification; is that generally true?

Mr. **DiLuigi**. Yes.

Mr. **Hoey**. Yes.

Mr. **Edwards**. So that you can live with it without getting into real trouble financially and legally; is that also correct? Mr. Motley.

Mr. **Motley**. Yes, that's correct, Mr. Chairman. Let me say that from our standpoint, the more that can be clarified in terms of the vagueness and ambiguity of the language, the less need there is for exemptions.

Mr. **Edwards**. All right. Well then you put your thinking cap on and write us some questions on it. We'll wrestle with them, because we're going to get asked those questions anyway. We're going to get asked those questions in the full committee and on the floor and back home, and we welcome them. Yes?

Mr. **DiLuigi**. Sir, if I might, the key point I've tried to make here is that you can't legislate the solutions, I don't believe, that the solutions are going to have to be evolved, and that there's much work needed to be done because we haven't done it in the past.

The legislation would be best suited to allow for that kind of an effort to occur, for the kind of exchange to occur between businesses, between the design community and with the disabled, to come up with good solutions. Make it happen through the legislation; force it to happen through the legislation, but allow for the creativity to do it effectively

Mr. **Motley**. And Mr. Chairman, many of the solutions that have come about out there have been done in the trial and error atmosphere of, you know, of a working everyday business. Things that will work are decided upon by the business owner and by the disabled individual who either is seeking employment or wants to deal with the business, and I think that's an extremely important point. Now all of the mailing——

Mr. **Edwards**. We have to make the legislation specific enough so there's not too much trial and error. We would like to have some answers so that your clients, your members, can move ahead with some competence in doing their business.

Mr. **Motley**. That's very important.

Mr. **Hoey**. Mr. Chairman, in the hypothetical question area, we have been trying to get questions—answers from proponents of this legislation. I have been trying to get it in the area of what is meant by "potential place of employment" and what is required of a retailer. If I want to build a store 30 months down the road after you pass this legislation, what do I have to do to accommodate a potential disabled applicant?

Do I have to lay my place flat so I take chances on who comes in the door? I specifically addressed it in a case of a security counter with cameras or jewelry. Do I have to leave a 5-foot place behind that counter and low counters in case somebody wants to work there in a wheelchair?

These are the questions which if we leave the employment part in the bill, in the public accommodations bill, and would leave that part in new construction, it will cause hotel people problems in their kitchen areas. It causes us problems in the layout of our stores and planning. If you literally read it, you can't build a so-called snackbar because it can't be accessed behind it by a person in a wheelchair to wait on you at the snackbar. Snackbars are usually in excess of 40 inches in height.

When you go through the airport at National Airport, there are loads of snackbars, but the person behind that can't really work at it in a wheelchair. Now if we pass the bill in its present form, you will outlaw that type of an operation. I shudder to think what it will do to a place like McDonald's and Burger King for future planning.

How are we going to accommodate—and that's just wheelchair. I'm not talking about all of the other 899 disabilities. So that's a factor that really has to be taken under consideration before 303 stays in the law. It's a nightmare.

Mr. **Edwards**. Well, you ask us those questions, Mr. Hoey and we'll wrestle with them. That's what we're getting paid for—we're not getting paid enough, but that's what we'll do.

[Laughter.]

Mr. **Hoey**. Nobody does.

Mr. **Edwards**. Thank you very much. It's been very helpful. We're now going to welcome our second panel: Laura Cooper, Esq., of the law firm of Pettit & Martin in San Francisco, and the Rev. Scott Allen, who is a member of the National Commission on AIDS here in Washington, DC.

[Witnesses sworn.]

Mr. **Edwards**. Ms. Cooper. Without objection, your full statements will be made a part of the record and Ms. Cooper, you may proceed.

STATEMENT OF LAURA D. COOPER, ATTORNEY, PETTIT & MARTIN, SAN FRANCISCO, CA

Ms. **Cooper**. Thank you. My name is Laura Cooper. I'm an attorney with Pettit & Martin, a major international law firm based in San Francisco, CA. I'm also the current chair of the Disabled Lawyers Committee of the American Bar Association, Young Lawyers Division, the former California State chair of the Dole Disability Coalition and a former national cochair of the Bush/Quayle National Disability Coalition.

Recently, I was named as 1 of 20 outstanding young lawyers of 1989 by the American Bar Association, Young Lawyers Division and its Barrister publication editorial board. While these credentials may, at first blush, create the appearance of a career path that's been unmarred by discrimination, that's, in fact, not the case.

Just 4 years ago, after graduating near the top of my law school class at the University of Washington with law review experience, a regional moot court award, an internship experience at a Federal appellate court and a summer clerking experience with the west coast's leading intellectual property law firm, I found it nearly impossible to land any kind of legal job.

My experiences in attempting to locate employment clearly showed a pattern of discrimination. I can recall representatives from firms who told me, among other things, that they were afraid of how their clients would react to me; that they didn't want to give me work I couldn't handle; that I somehow wasn't right for their firm's culture and I was rejected over 400 times by legal employers.

I have with me today a sample of just some of those rejections that I received from legal employers during my job search. Nevertheless, I persisted and I was one of the extremely lucky ones. I finally found a firm that was willing to look at my qualifications and not just my disability.

Now, I'm busy in the litigation department of Pettit & Martin in San Francisco. I'm here before you today in a number of capacities as a result of my life experiences and with a unique set of experiences that enables me to appreciate the critical importance of the ADA.

I am an American with a severe disability, a capacity that's profoundly affected both my outlook as well as the course and content of my life. I'm also a former resident of a nursing home, a status that I was forced to endure as recently as 1980, by virtue of the inaccessibility of the community in which I was living.

As such, I have a personal understanding of the unnecessary dependence and isolation wrought by architectural and attitudinal and communication barriers that exist in many aspects of daily living for most Americans with disabilities. Third, I'm here as a practicing attorney with a disability, an honor that places upon me a profound sense of responsibility for improving the landscape of opportunities for other Americans with disabilities that will come after me.

I'm also an active member of the party of Abraham Lincoln, well aware of the need for limited government, yet supportive of well-reasoned and well-crafted legislation designed to serve compelling Federal interests in the causes of individual liberty, opportunity and the recognition of human dignity.

The significance of the ADA public accommodations provisions to Americans with disabilities simply can't be emphasized enough. Ten years ago in 1979, I was diagnosed as having multiple sclerosis and wound up using a wheelchair before the year ended. In 1980, I had to use the drive-through window at my bank in my wheelchair, even in the rain and the snow, because I couldn't gain access to the front door of the building.

In 1981, I was turned away from a movie theater without an attendant because of the architectural layout of that particular movie theater. The management told me that I would have had to overcome significant barriers at the fire exit in case of fire.

In 1982, I was forced to stay in my van for days at a time as I attempted to tour the west coast, without leaving because I couldn't find accessible bathrooms, restaurants, hotels, retailers and other businesses, both large and small. In 1983, I had to transfer to a new law school because I was unable to climb aboard a municipal bus to get to and from school and no comparable accessible services existed in the community in which I was attending school.

In 1985, I had to sit by myself on stage at my law school graduation, instead of with my classmates in the gallery and the auditorium in which the graduation was being held because I couldn't climb the stairs to receive my degree. In 1986, I was thrown out of a shopping mall because a security officer believed that my electric wheelchair was a safety hazard to other patrons.

That same year, I was told by a clerk in a shoe store that I would have to take my developmentally disabled friend to another store to buy shoes because she might scare other customers away. In 1988, I was forced to invent a set of bathroom grab bars out of wooden chairs in an inaccessible hotel room that I had to occupy for a week while I was traveling on business.

As recently as August of this year, I was excluded from a significant portion of the annual meeting of the American Bar Association, even after I had traveled all the way to Honolulu, because the facilities in which the meeting's functions and events were being held were largely inaccessible.

Thus, a lack of access of public accommodations not only deprives me of social and recreational and commercial opportunities, but it has a very real and a very negative impact on my ability to be employed; to be able to function as a practicing attorney in the real world; both when I'm required to travel on client-related business and when I attempt to participate in activities of the organized bar, such as continuing legal education programs and local, State, and national bar association meetings, functions and events.

If the employment provisions of the ADA are to have any real meaning, the public accommodations provisions must be seen both as free-standing provisions designed to eliminate isolation and segregation among all of America's disabled citizenry, as well as provisions necessary to open and maintain meaningful employment and corollary associational opportunities for persons with disabilities.

While I, along with most good Republicans, view any effort to regulate business with an extremely jaundiced eye, I can safely say that my reasoned analysis of the Senate compromise ADA allows me to conclude that this bill is essential, timely and absolutely reasonable.

Aside from the human dignity and productivity benefits that will obtain from the ADA, there will also be a direct financial benefit to the Federal Government and to employers. In my case, when I was finally able to obtain permanent employment, I no longer had to collect my monthly Social Security disability payment, Medicare benefits or vocational rehabilitation funding.

Instead, I became a productive, taxpaying citizen and consumer, able to support the domestic and medical and other bills I incurred, through salary and benefits obtained on my job. Even though the

Federal benefits I was receiving before I became employed, were pretty minuscule compared to those received by most persons with severe disabilities, only 4 years after going to work, I now estimate that the net, direct and positive financial impact on the Federal Government due to my employment alone is approximately $40,000 to $50,000 per year.

In addition to these measurable benefits, the ADA can be seen as sort of, as it's been called, an emancipation proclamation for Americans with disabilities. The ADA would make possible for persons with disabilities, what we have always wanted to believe about America—that the truest measure of a person is the content of that person's character and not the presence of a disability.

Mr. EDWARDS. Thank you very much, Ms. Cooper. I'm sure I'm speaking for all the members of the subcommittee and the staff when I tell you what huge respect we have for you and how moving your testimony was.

[The prepared statement of Ms. Cooper follows:]

PREPARED STATEMENT OF LAURA D. COOPER, ATTORNEY, PETTIT & MARTIN, SAN FRANCISCO, CA

My name is Laura D. Cooper. I am an attorney with Pettit & Martin, a major international law firm based in San Francisco, California. I am also the current Chair of the Disabled Lawyers Committee of the American Bar Association/Young Lawyers Division, the former California State Chair of the Dole Disability Coalition, and a former National Co-Chair of the Bush/Quayle 1988 Disability Coalition. Recently, I was named as one of twenty outstanding young American lawyers for 1989 by the American Bar Association/Young Lawyers Division and its Barrister publication editorial board.

While these credentials may at first blush create the appearance of a career path unmarred by discrimination, that is not in fact the case. Just four years ago after graduating near the top of my law school class with law review experience, a regional moot court award, an externship experience at a federal Circuit Court of Appeals, and a summer clerking experience with the west coast's leading intellectual property law firm, I found it nearly impossible to land a job. When I went to on-campus interviews at my law school, interviewers typically cut the interview short and concentrated on my disability instead of my resume by asking questions such as how fast my wheelchair could go. When I sent resumes directly to law firms as an alternative to the campus interview process, I discovered that when I did not indicate on my resume that I was disabled, I almost invariably received an interview request from the firm to which the resume was sent. In those cases, however, I generally arrived for a scheduled interview and discovered that the interview location was inaccessible. Even where I was able to attend an interview, the interviewer usually still did not know how to deal with the fact that I was disabled, or I was often simply kept waiting until the interview was cancelled altogether -- even though I usually had travelled hundreds or thousands of miles at my own expense to attend the interview.

So then I tried another tactic. I began inserting a benign indication on my resume that I was interested in disability-related issues, and also added a neutral signal in my cover letter indicating that I had a disability. Subsequently, I only rarely received any interview requests.

My experiences clearly showed a pattern of discrimination. Following one interview during my last year of law school I received an offer to work as a permanent law clerk for a firm in Portland, Oregon for a salary of $6/hour. When I turned that job down, the firm instead hired a full-time associate attorney. I also vividly recall classmates receiving interviews and job offers from firms that previously had told me they were not hiring, and classmates who had neither performed as well as I had in law school nor had comparable law school experiences or achievements getting job offers at firms that would not even interview me. I can recall representatives from firms who told me, among other things, that they would not hire me because of what I would do to their insurance rates, that they were afraid of how their clients would react to me, that they did not want to give me work I could not handle, that they were not sure I knew what litigation was all about because if I did I would not assume that I was capable of doing it, that I somehow just was not "right" for their firm culture, or that they doubted that I could handle the stress of a law firm practice.

Nevertheless, despite these horrific experiences, I am one of the lucky ones. I persisted, and after over 400 rejections from legal employers, I finally found a firm that was willing to look at my qualifications instead of my disability. I am now busy in the litigation department of Pettit & Martin in San Francisco, practicing in the field of accountant liability.

I look back now to the unbelievable experiences I had in trying to find professional employment and am astonished at what has transpired over the last four years. I went from nobody's choice in 1985, to a federal appellate clerkship with the Fifth Circuit in New Orleans in 1986, to a Pettit & Martin litigation position in 1987, to an interview for a position with C. Boyden Gray as Associate Counsel to the President in 1988, to being selected as one of the twenty outstanding young American lawyers in 1989. It is difficult to understand how -- only two years into a career as a private practitioner I could be so highly regarded by my peers when only four years ago I was not valued in any demonstrable way by any firm to which I had applied for employment.[1]

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[1] I have since discovered through my contacts with other attorneys with disabilities as Chair of the Disabled Lawyers Committee of the ABA/YLD that my experiences were all too typical

The dramatic change in my status that I have experienced over the last several years allows me to come before you today in a number of capacities, and with a unique set of experiences that enables me to appreciate the critical importance of the legislation you are presently considering. First, I come to you as an American with a severe disability -- a capacity that has profoundly affected my outlook as well as the course and content of my life. Second, I come to you as former resident of a nursing home, a status that I was forced to endure as recently as 1980 by virtue of the inaccessibility of the community in which I was living. As such, I have a personal understanding of the unnecessary dependence and isolation wrought by the architectural and attitudinal barriers that exist in so many aspects of daily living for most Americans with disabilities. Third, I am here as a practicing attorney with a disability -- an honor that places upon me a profound sense of responsibility for improving the landscape of opportunities for other Americans with disabilities that will come after me. Fourth, as the Chair of the Disabled Lawyers Committee of the ABA/YLD, I appear as a representative of other practicing attorneys with disabilities, all of whom collectively and individually experience nightmarish conditions in their attempts to survive and advance in the profession due to the pervasiveness of architectural, attitudinal, and communication barriers. Fifth, I am here as an active member of

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among law school graduates who have disabilities. *See* N.Y. Times, Dec. 31, 1988, (Section on *The Law*). A copy of the cited article is attached to this statement.

the party of Abraham Lincoln, well aware of the need for limited government, yet supportive of well-reasoned and crafted legislation designed to serve compelling federal interests in the causes of individual liberty, opportunity, and the recognition of human dignity. Finally, and most importantly, I am here as a citizen of the United States, entitled to the full enjoyment of the same rights and privileges that are enjoyed by able-bodied citizens. In every one of these capacities I strongly urge you to pass the Americans with Disabilities Act of 1989 (the "ADA") as it is composed in the compromise Senate Bill.

The significance of the ADA to the population of Americans with disabilities, including myself, cannot be emphasized enough. My own experiences in fact paint a vivid picture of the need for this legislation.

It was only ten years ago in 1979, while engaged in my first year of teaching junior and senior high school science after graduating from college, that I was diagnosed as having multiple sclerosis. In 1980 I had to use the drive-through window at my neighborhood bank -- even in the rain and snow -- because I could not gain access to the front door of the building; in 1981, I was turned away from a movie theater without an attendant because of the architectural barriers that I would have had to overcome at the fire exit in case of fire; in 1982, I stayed in my van for days at a time as I attempted to tour the west coast because I could not find accessible bathrooms, restaurants, hotels, or retailers; in 1983, I had to transfer to a new law school because

I was unable to climb aboard a municipal bus to get to and from school, and no comparable accessible service existed in the community in which I was attending school; in 1984, I was trapped for hours in a bathroom in a restaurant because the double set of doors were not far apart enough for me to get out without getting stuck; in 1985, I had to sit by myself on stage at my law school graduation instead of with my classmates in the gallery because I could not climb the stairs in the auditorium to receive my degree; in 1986 I was thrown out of a shopping mall because a security officer believed that my electric wheelchair was a safety hazard to other patrons; that same year, I was told by a clerk in a shoe store that I would have to take my developmentally disabled friend to another store to buy shoes because she "might scare other customers away"; in 1987 I was thrown off an airplane after boarding because the pilot believed that my lack of mobility exposed the airline to greater liability in the event of an emergency; in 1988, I was told that I was "lucky" because I was allowed to vote outside my inaccessible polling place; also in 1988, I was forced to invent a set of bathroom grab bars out of wooden chairs in an inaccessible hotel room that I had to occupy for a week while I was traveling on business; in 1989 I was excluded from a significant portion of the annual meeting of the American Bar Association even after I had traveled all the way to Honolulu, because the facilities in which the meetings, functions, and events were taking place were often inaccessible.

Thus, inaccessibility in public accommodations has affected every aspect of my existence. Not only does a lack of access in public accommodations deprive me of social and recreational opportunities, but it has a very real and very negative impact on my ability to function as a practicing attorney. Among the larger problems I have experienced in that regard are those that arise when I am required to travel on client-related business[3] and those associated with attempting to participate in activities of the organized bar such as continuing legal education programs, and local, state, and national bar association meetings, functions, or events.[4] Because these difficulties are so pervasive and enormous, and because they often engender humiliation, embarrassment, or stress on my part, when I am otherwise not required to patronize public accommodations for business reasons, I generally choose not to eat in restaurants, stay in hotels, fly on airplanes, ride on buses, shop in stores, visit museums, attend sporting or cultural events, or otherwise avail myself of the public accommodations in my own community.

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[3] In addition to the difficulties I encounter in air travel, the largest impediments I routinely experience in my attempts to travel are the lack of sufficient numbers of truly accessible hotel rooms, my inability to obtain a guaranteed accessible room reservation under hotel industry standard reservation practices, a complete lack of reasonably-priced and reliable demand-responsive accessible ground transportation in almost every major city in the country, and the general inaccessibility in restaurants and other public accommodations at many sites where business is being conducted. In fact, the effort necessary to determine in advance whether a particular location is physically accessible and to arrange adequate transportation is often extremely time-consuming and grueling, if not impossible. My need to investigate accessibility every time I have to attend a meeting away from the office results in a substantial increase in the number of hours I must work to achieve parity with my peers in overall productivity.

[4] The problems that disabled attorneys face in their attempts to become integrated into the organized bar are largely a result of vicarious inaccessibility: bar activities are generally inaccessible because they are reliant upon services and are conducted largely in facilities that are provided for the public at large. To the extent that these facilities and services are inaccessible, the adoption of them for use by the bar results in a lack of access for attorneys with disabilities. An unfortunate but necessary result of this pervasive pattern of vicarious inaccessibility in bar activities has been an inability for attorneys with disabilities to form an effective voice within the

If the employment provisions of the ADA are to have meaning, the public accommodations provisions must be seen both as free-standing provisions designed to eliminate isolation and segregation among all of America's disabled citizenry, as well as provisions necessary to open and maintain meaningful employment and corollary associational opportunities for persons with disabilities who also want to work.

To that end, it is important that the provisions in the ADA address the fact of inaccessibility rather than its cause. It is my firm belief that many, but not all of the inaccessibility problems that I have encountered are not so much the result of hostility or willful discrimination; rather, they are the result of benign neglect and a lack of understanding or concern about how particular policies or practices affect the disabled patrons

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profession. We are highly underrepresented in places of legal employment; we are, however, even more underrepresented in the policies, practices, and activities carried out by the organized bar, including those relating to the admission to practice law in the first instance. Consequently, I also hear scores of horror stories on an annual basis arising from the experiences of persons with disabilities who attempt to take bar examinations.

in our midst.[7] Nevertheless, regardless of the reasons for the historic attitudes and treatment of persons with disabilities, the remedies feature of the ADA focuses on the cure rather than the diagnosis. The Section 504 model used in the ADA ensures that it is the actual _effects_ of policies or practices of covered entities, rather than the _reason_ for those policies or practices, that is addressed by the legislation.[8]

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[7] Architecturally inaccessible facilities are not natural occurrences. They are the product of human attitudes that — consciously or not -- have accepted the notion that structural use limited to the able-bodied is an acceptable design standard. Just as it is unthinkable to design a building with a bathroom only for use by men, it ought to be just as unacceptable to design a building that can only be used by able-bodied persons. It is exclusive _designs_, and not any inevitable consequence of a disability that results in the isolation and segregation of persons with disabilities in our society. Our structures are a reflection of our social attitudes; every inaccessible structure represents at least one person whose conscious or unconscious attitude toward the disabled is based on the notion that segregation of the disabled is an acceptable practice.

[8] This point is consonant with the litigation experience under Section 504, whereunder the vast majority of cases brought are not for willful refusals to accommodate persons with disabilities. *See, e.g., Pushkin v. Regents of University of Colorado*, 658 F.2d 1372, 1385 (10th Cir. 1981)(in rejecting University's assertion that "disparate treatment" test requiring some proof of motivation by intentional discrimination should be required in Section 504 cases, court noted that "[i]t would be a rare case indeed in which a hostile discriminatory purpose or subjective intent to discriminate solely on the basis of handicap could be shown. Discrimination on the basis of handicap usually results from more invidious causative elements and often occurs under the guise of extending a helping hand or a mistaken, restrictive belief as to the limitations of a handicapped person.") Most cases instead deal with whether an accommodation would be effective and whether it would pose an undue burden on the covered entity without focusing on the mental state of the entity being sued. This is a very pragmatic approach in dealing with problems related to disability in that it focuses energies on remedies rather than fault. Under the Senate compromise ADA bill, individual plaintiffs are only allowed to obtain injunctive relief. Consequently, even more than in a private action for

Moreover, in addition to providing a means for remedying already extant accessibility problems, the regulatory process envisioned by the ADA will provide an effective means for educating the public about accommodating persons with disabilities. The regulations promulgated under the ADA will serve as an effective encouragement with good working instructions for covered entities to provide an alternative to the all-too-common current practice of segregating or ignoring persons with disabilities.

This educational process is a critical step in any effort to integrate persons with disabilities into the mainstream of American society. It is precisely because of historic ignorance or oversight by ADA-covered entities that persons with disabilities are isolated. The common disability-related experience of isolation makes it extremely difficult for persons with disabilities to develop the resources and organization necessary to educate and persuade the general public about their needs and capabilities. Consequently, the ADA regulations will serve an important social role that neither the marketplace nor American culture has independently fulfilled.

The fact that this social role has never been and is unlikely to be filled by any private initiative, along with the

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damages under Section 504, the state of mind of a covered entity is irrelevant to a determination of an appropriate remedy designed to integrate the person with a disability; it will be accommodation and not blame or punishment that will serve as the substantive focus for any private lawsuit brought under the public accommodations provisions of the ADA.

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enormously important ultimate objectives of the ADA, legitimizes the legislation even as against the sacrosanct ideal of unobtruded free enterprise. While I, along with most good Republicans, view any effort to regulate business with an extremely jaundiced eye, I can safely say that a reasoned analysis of the Senate compromise ADA renders inescapable the conclusion that it is essential, timely, and absolutely reasonable as presently crafted.

My initial review of the original bill last year left me with some concern about its impact on small business. I was very understanding of the need to include small businesses within the scope of the substantive provisions of the ADA. If the public accommodations provisions in the ADA are to have any meaning, they must have broad application to small as well as larger businesses. Many restaurants where my client or firm business is conducted are small businesses. Many of the businesses in my neighborhood and community that I would like to patronize but cannot due to inaccessibility are small businesses. It is important that the public accommodations substantive provisions not differentiate among businesses of different sizes because it is access that is at stake. Any exemption based strictly on size and no other factor would effectively deny the very right of access to the types of businesses that this bill is designed to create.

Nevertheless, I was concerned that there was no safety valve for the enormous cost pressures that might be imposed on small businesses within some circumstances contemplated by the bill. That concern has been more than vitiated by the Senate compromise version of the bill that includes an "undue burden" relief provision.[8]

I am now firmly convinced that all of America stands to gain from the passage and implementation of the ADA as it now exists. Aside from the human dignity benefits that will be reaped by Americans with disabilities, the most obvious benefit to the public at large will be realized from the unleashing of the talents, potential, and enthusiasm of the millions of working-age Americans with disabilities who are isolated, segregated, or unproductive simply by virtue of the inhospitable and inaccessible environments in which they live.

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[8] The small business exemptions in the ADA track the exemptions that exist in other civil rights laws. Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, sex, religion or national origin, exempts employers with 15 or fewer employees. The ADA adopts the same exemption. By contrast, Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations on the basis of race, religion or national origin, does not have a small business exemption. This differentiation is logical: the point of a public accommodations provision is to ensure that people with disabilities (or people of a certain race) can gain access into public places, such as restaurants, movie theaters and stores. The fact that such a business may have only five or ten employees is irrelevant to the issue of providing access.

One related relevant consideration, however, would be whether the provision of access would create an undue burden for any particular business -- no matter what the size of the business. The ADA in fact takes this concern into account and provides a flexible measure of undue burden by considering the size of the business along with the cost of the accommodation in deciding whether the provision of the accommodation would create an "undue burden" on the business. Size alone does not transform every form of accommodation into an "undue burden."

Even though this flexible standard is necessary in order to reasonably address the vast number of different situations that are likely to arise under the ADA, the standard and practice for determining the existence of an "undue burden" under the ADA will be guided by fifteen years of experience using the same standard under Section 504. The factors outlined in the ADA are the same factors set forth in the Section 504 regulations (size of business, type of operation and cost of accommodation).

There will also be a direct financial benefit to the federal government. In my case, when I finally was able to obtain permanent employment I no longer had to collect my monthly Social Security disability payment, Medicare benefits or vocational rehabilitation funding. Instead, I became a productive, tax-paying citizen able to support the domestic and medical bills I incurred through salary and benefits obtained on the job. Even though the federal benefits that I was receiving before I became employed were minuscule compared to those received by most persons with severe disabilities, only four years after going to work I now estimate that the net direct and positive financial impact on the federal government due to my employment is approximately $40,000 to $50,000 per year. This benefit is reaped not just directly by the federal government, but also indirectly by all taxpayers -- including the covered entities that will incur the direct costs associated with the ADA.

The other direct beneficiaries in this process will be employers. In my case, Pettit & Martin now has a professional employee who is enormously grateful for the opportunity to work and live independently. The result, I believe, is that I exhibit on-the-job performance well above firm expectations, a level of dedication and commitment to the firm that is typically not found among associate attorneys, a willingness eagerly to perform the hardest or least-desired tasks on assigned matters, and a ready-made desire to achieve excellence in practice that is difficult to instill in any employee. I know from whence I came, and I would just as soon not go back.

In addition to these measurable benefits, the ADA represents the idea of possibilities to millions of Americans. The ADA is a statement to millions of Americans with disabilities that we may all dare to dream. It is a statement to even more Americans that if they or a loved one were to develop a disability, they would not need to stop dreaming. The ADA simply makes possible for persons with disabilities what we have always wanted to believe about America -- that the truest measure of a person is the content of that person's character, and not the color of the person's skin, or the presence of a disability. For the above reasons, I heartily urge you to adopt the ADA as it is composed in the Senate compromise.

THE NEW YORK TIMES THE LAW FRIDAY, DECEMBER 30, 1988 p. B6

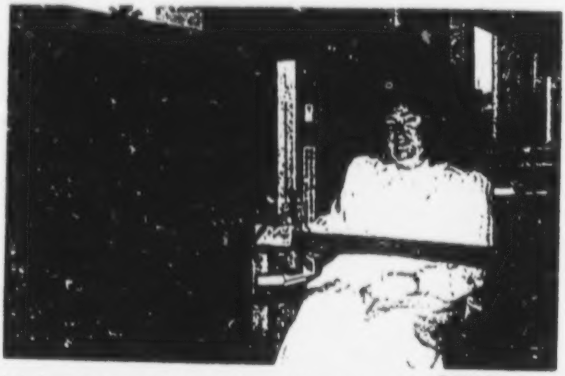
Disabled Lawyers Join in Drive on Bias in Hiring

By LIS WIEHL

As the legal profession opens its doors to many it once shunned, handicapped lawyers are presenting themselves for consideration. They are raising their voices against discrimination by law schools and law firms and pushing for special legislation and improved hiring.

"Lawyers more than anyone are supposed to be advocates for the unheard," said Laura Cooper, a 34-year-old wheelchair-bound lawyer who heads the American Bar Association's Disabled Lawyers Committee. "If they don't do better, who will?"

After graduating near the top of her law school class at the University of Washington and winning a judicial clerkship, she was rejected 400 times before she got her first job offer from the San Francisco firm of Pettit & Martin.



The New York Times/[illegible]

Laura Cooper, head of the A.B.A.'s Disabled Lawyers' Committee, with her specially equipped van. After graduating near the top of her law school class, she was rejected 400 times before she got her first job offer.

Rejected as 'Freak'

Paul Miller, a recent Harvard graduate who heads the legal affairs committee of Little People of America, said firms often showed bias against dwarfs. "I did as well as most of my classmates in law school, but I had to make literally hundreds of job inquiries," he said. "A Philadelphia firm told me they didn't want clients to think they were running a sideshow freak act."

Ms. Cooper's bar committee is seeking data on the number of disabled lawyers ("No one has ever bothered to count us," she said) and is finding such statistics hard to come by.

Organizations for blind lawyers report combined rolls of nearly 500 members, said Steven Speicher, director of the American Blind Lawyers Association, Lincoln, Neb. There are at least 12 blind judges.

Tapping the Rights Act

Several hundred lawyers in wheelchairs have graduated from law schools in the 80's. Many are Vietnam veterans. The National Center for Law and the Deaf refers prospective clients to a list of 13 deaf lawyers. Little People of America keeps a list, too.

Federal civil rights laws offer the disabled almost no protection and handicapped lawyers are lobbying for a measure extending protections now accorded other groups by the Civil Rights Act of 1964. It prohibits most private employers from discrimination based on race, gender and religion.

The handicapped are lobbying for a bill in Congress.

The bill, endorsed by Vice President Bush in his campaign, would bar employers from turning away applicants unless a disability would interfere substantially with the job. It would also require, within certain cost limits, that employers remodel the place of business if, for instance, a doorway was too narrow for a wheelchair. Certain employers would also have to get special equipment for the disabled.

Disabled lawyers are also putting direct pressure on law firms to acquire new aids, including synthetic speech systems that already let blind lawyers use computer research tools like Westlaw and Lexis. Hearing-impaired lawyers want amplification devices in courtrooms. Mr. Miller wants law schools to use their leverage with firms that recruit on campuses.

Many impaired lawyers said their feelings of alienation began in law school. "It was a hint of things to come," said R. Donald Brown, a 58-year-old blind lawyer in Seattle, who heard students complain that his presence cheapened their degrees. His wife, Lisa, also blind, is to become his sole law partner. "Professors tell us bluntly that we'll never keep up with the reading," he said, "but with recorded materials and volunteer readers, we get it done."

The sites of bar examinations can pose problems for applicants in wheelchairs, said Ms. Cooper. "It is inconceivable to me that lawyers could schedule important events in places that I can't get to," she said. "But it happens all the time, including depositions and compulsory bar seminars."

Her committee is drawing up rules for accommodating the disabled at bar exams. Robert Raven, president of the American Bar Association, said he could foresee special test sites.

Disabled lawyers say law firms hire women and members of racial minorities but not the handicapped. "It is nearly impossible for us to get hired," Ms. Cooper said. "The jobs we find are usually low-paying ones, working with people who don't readily believe in our worth, in courtrooms and offices that are often inaccessible."

The Firms' Point of View

The firms say that from their point of view, the issue is largely economic. "I'm not sure what the response of our firm would be in hiring a blind lawyer, but we'd certainly have to look at the costs," said Kenneth Anderson, hiring partner at Gibson, Dunn & Crutcher in Los Angeles. He fears that disabled lawyers might not be able to work long hours. "To compensate for lost efficiency, we would probably adjust compensation."

He said his firm could accommodate only a limited number of disabled lawyers. "We could have one person off the partnership track because of a mobility impairment, but we can't have 15," he said. His firm has more than 600 lawyers.

At Cravath, Swaine & Moore in New York, the hiring partner, Evan Chesler, said that in evaluating disabled applicants, his firm would apply its usual standards, but would not want to "put people into situations they can't handle."

Those Who Scrabble By

Because few disabled lawyers have been hired by big firms, most have government jobs or small practices. When Mr. Brown opened his practice he depended on clients no other lawyers would take. "The local bar sent me all its disabled referrals, evidently believing that disabled clients should have disabled lawyers," he said. "Can you imagine a deaf client and a blind lawyer talking?"

Some disabled lawyers get high government jobs. Evan Kemp, confined to a wheelchair, is a commissioner of the Equal Employment Opportunity Commission. But firms that do hire disabled lawyers often assign them to tax work, estate planning and real estate. "Many firms hope they'll quietly turn out memos where no one will see them," Mr. Speicher said. "The few who break into litigation are often pulled off cases immediately before trial."

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Mr. Edwards. We now hear from the Rev. Scott Allen, who is a member of the National Commission on AIDS.

STATEMENT OF REV. SCOTT ALLEN, COMMISIONER, NATIONAL COMMISSION ON AIDS, WASHINGTON, DC

Mr. Allen. Mr. Chairman and members of the committee, I'm Rev. Scott Allen, a Commissioner on the congressionally mandated National Commission on AIDS. I am pleased to provide testimony on the importance of the Americans with Disabilities Act, with particular focus on antidiscrimination protections for people with HIV-related conditions.

My work with AIDS has been varied and diverse. I am employed by the Christian Life Commission of the Baptist General Convention of Texas. My specific experience began with AIDS when I was the founding director of the AIDS Interfaith Network of Dallas, an organization that provides AIDS education for our religious communities and pastoral care for persons living with AIDS, as well as their family members and loved ones.

In addition, I have served as a member of the Dallas County AIDS Planning Commission, and on the Legislative Task Force on AIDS for the State of Texas, chairing the State Responsibility Subcommittee. As a citizen, minister and participant in the development of AIDS policy at the local and State level, I fully support the Americans with Disabilities Act. I urge the House to move expeditiously, so as to provide important redress for the acts of discrimination that have such devastating impact on the lives of many Americans, particularly those with the HIV virus and with AIDS.

As a Commissioner for the National Commission on AIDS, I am charged with the important task of advising Congress on the implementation of the recommendations of the President's Commission on the HIV Epidemic. Admiral Watkins and the other Commissioners are to be commended for their exhaustive and thoughtful articulation of the important issues related to the HIV epidemic.

As you well know, the centerpiece of their recommendations was the passage of a bill to address discrimination experience by people with AIDS and HIV infection. They specifically recommended comprehensive Federal antidiscrimination legislation which prohibits discrimination against persons with disabilities in the public and private sector, including employment, housing, public accommodations, and participation in government programs, should be enacted.

All persons with symptomatic or asymptomatic HIV infections should be clearly included as persons with disabilities, who are covered by the antidiscrimination protections of this legislation. That recommendation was endorsed by President Bush immediately after issuance of the Commission's report. One year after the President's Commission made that recommendation, the ADA moved through the Senate. The President's endorsement was clearly a key factor in the Senate's overwhelming passage of ADA.

It is now incumbent upon the Congress, with the assistance of the National Commission, to move this bill as quickly as possible without damaging amendments. Truly, with an epidemic that has affected more than 100,000 Americans with 37 million other Americans with the disability awaiting the protections guaranteed under this act, the political and moral imperatives are clear.

To underscore the priority of the ADA, the National Commission on AIDS passed its first resolution in support of this bill. We stated: We the members of the National Commission on Acquired Immune Deficiency Syndrome strongly support passage of the Americans with Disabilities Act, legislation which would implement the key recommendation of the Presidential Commission on the Human Immunodeficiency Virus epidemic.

People living with AIDS and HIV infection and those regarded as such deserve the same discrimination protections as all people with disabilities. Such protections from discrimination are not only necessary to enhance the quality of life for people with AIDS and HIV infection, they are, as the Presidential Commission and the Institute of Medicine have reported, the linchpin of our Nation's effort to control the HIV epidemic.

Thousands of Americans who would seek voluntary counseling and testing services, and many who need lifeprolonging medical treatment, will not come forward if they believe that doing so could result in the loss of their job or lack of access to public accommodations.

Legislation that is based not only on compassion but sound public health principles is a must if we are to reach and assist these individuals. We are extremely pleased that the majority of the U.S. Senate and the White House have made a bipartisan commitment to enact the Americans with Disabilities Act. We oppose any effort to reduce the scope of coverage of the present bill, particularly in respect to HIV, the special focus of this Commission.

The ADA will provide a clear and comprehensive mandate to greatly extend discrimination protections for people with disability. We are proud to endorse this landmark legislation.

A diagnosis of HIV infection and its related diseases is clearly a devastating event in a person's life. The subsequent act of irrational discrimination that occurs has been one of the unfortunate landmarks of our Nation's response to the HIV epidemic.

A review of a front-page headline over the past 8 years will awaken in most of us the urgent need for a bill like the Americans with Disabilities Act. Remember, Ryan White, denied entry to school. The Ray family, burned from their home. A woman with AIDS denied entry with her children to a public swimming pool. A bright young attorney forced into poverty because he was fired from his job.

The ADA will not be able to address all forms of private discrimination, but it will provide protections in the critical areas of private employment and public accommodations. Mr. Chairman, you may wonder how a Baptist minister from Texas sojourned through the local ministry to families affected by AIDS to city and State task forces and then finally to the national level and congressional testimony on this bill.

The answer is simple. I have seen first hand the dual tragedy of HIV infection and illness, coupled with the cruelty of discrimination. I walk with people on a daily basis who encounter the cruelty of discrimination. I've listened to their words of bewilderment as to how a society as ours could be so callous to a person who is sick.

I have seen families living in absolute fear at the thought that one of their family members' HIV positive status might be disclosed. I witness people who are HIV positive and who are healthy, contributing members of our society, lose their jobs, lose their homes, their medical insurance and other necessities of life due to discrimination.

The question always arises how can people be so mean? How can our society be so cruel? With the passage of the Americans with Disabilities Act, Congress will be able to lead our societal structures in providing a compassionate response of equal protection to people with disabilities in our Nation, including people with HIV infection. These stories and hundreds like them provide the impetus for action for the National Commission on AIDS and for millions of compassionate and concerned Americans.

The wonderful work of many commissions and task forces that have addressed the AIDS epidemic have virtually expressed unanimous agreement that antidiscrimination protections are the cornerstone to addressing the complex public policy issues presented by AIDS. The good work of these dedicated and concerned citizens has moved many city and State legislatures to enact antidiscrimination measures. But a great deal more needs to be done.

In my own experience, neither the city councils of Dallas County nor the Texas State Legislature have formally adopted the recommendations made by the commissions established to advise them. The action by the U.S. Senate last month was the first hopeful and direct statement that perhaps the Congress will take the leadership and move the ADA, with the blessing of President Bush, in a timely manner.

Please be assured that for myself, the Commission and most importantly persons living with HIV and their loved ones, this action is enthusiastically welcomed. Mr. Chairman, our Nation's public policy is dependent on the responsible and informed actions of Congress. The ADA is a bill that utilizes 15 years of antidiscrimination protections for people with disabilities in federally assisted programs and extends those protections to the private sector.

The bill's inclusion of people with HIV infection, AIDS and those who care for them is a hallmark in our fight against this epidemic. There may be yet challenges against inclusion of such individuals. Exclusion would be a tragic mistake. As Secretary Sullivan, a fellow Commissioner has stated, discrimination against individuals with a virus is unacceptable. This administration is committed to enacting legislation that will prohibit such discrimination.

Therefore, I urge you to remember that this bill has the strong support of the President. Bipartisan leadership of the Congress, a multitude of national organizations including public health professionals, religious communities, service organizations and advocacy groups, and particularly the National Commission on AIDS.

We as a nation have the blessings of wealth and resources. We pride ourselves in our compassion and spirit. In passing the ADA, the Congress will embody the best of the American spirit and send the needed message that equal rights and compassion are a standard that this Nation will uphold with pride and vigilance.

I would like to submit additional materials for the record, including letters of support and policy statements from our religious communities.

Mr. Edwards. Without objection, they will be received and made part of the record.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF REV. SCOTT ALLEN, COMMISSIONER, NATIONAL COMMISSION ON AIDS, WASHINGTON, DC

Mr. Chairman and members of the Committee, I am Rev. Scott Allen, a commissioner on the Congressionally mandated National Commission on AIDS. I am pleased to provide testimony on the importance of the Americans with Disabilities Act, with a particular focus on anti-discrimination protections for people with HIV-related conditions.

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As a citizen, minister and participant in the development of AIDS policy at the local and state level and now as a member of the National Commission on AIDS, I fully support the Americans with Disabilities Act. I urge the House to move expeditiously so as to provide important redress for the acts of discrimination that have such devastating impacts on the lives of many Americans, particularly those with the HIV virus and with AIDS.

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> Comprehensive federal anti-discrimination legislation which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

That recommendation was endorsed by President Bush immediately after issuance of the Commission's report. One year after the President's Commission made the recommendation the President endorsed the ADA as it moved through the Senate. The President's endorsement was clearly a key factor in the Senate's overwhelming passage of the ADA. It is now incumbent upon the Congress, with the assistance of the National Commission, to move this bill as quickly as possible and without damaging amendments. Truly, with an epidemic that has affected more than 100,000 Americans and with 37 million other Americans with a disability awaiting the protections guaranteed under this act, the political and moral imperatives are clear.

To underscore the priority of the ADA, the National Commission on AIDS passed its first resolution in support of this bill. We stated:

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Mr. Chairman, you may wonder how a Baptist minister from Texas sojourned through local ministry to families affected by AIDS, to city and state task forces and finally to the national level and Congressional testimony on this bill. The answer is simple: I have seen first hand the dual tragedy of HIV infection and illness and the cruelty of discrimination. I walk with people on a daily basis who encounter the cruelty of discrimination. I have listened to their words of bewilderment as to how a society such as ours could be so callous to a person who is sick. I have seen families living in absolute fear at the thought that one of their family member's HIV positive status might be disclosed. I have witnessed people who are HIV positive, and who are healthy contributing members of our society, lose their jobs, their homes, and their medical insurance due to discrimination. The question always arises, "How can people be so mean...and how can our society be so cruel?" With the passage of the Americans with Disabilities Act, Congress will be able to lead our societal structures in providing a compassionate response of equal protection to the people with disabilities in our nation, including the people with HIV infection.

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In conclusion, Mr. Chairman, our nation's public policy, is dependent on the responsible and informed actions of the Congress. The ADA is a bill that utilizes fifteen years of anti-discrimination protections for people with disabilities in federally assisted programs and extends those protections to the private sector. The bill's inclusion of people with HIV infection, AIDS, and those who care for them is a hallmark in our fight against the epidemic. There may yet be challenges against inclusion of such individuals. Exclusion would be a tragic mistake. As Sec. Louis Sullivan, a fellow commissioner, has stated "discrimination against individuals infected with the virus is unacceptable. This administration is committed to enacting legislation that will prohibit such discrimination." Therefore, I urge you to remember that this bill has the strong support of the President; bipartisan leaders of the Congress; a multitude of national organizations including public health professionals, religious communities, service organizations and advocacy groups and particularly of the National Commission on AIDS.

We have as a nation the blessings of wealth and resources. We pride ourselves on our compassion and spirit. In passing the ADA, the Congress will embody the best of the American spirit and send a needed message that equal rights and compassion are standards this nation will uphold with pride and vigilance.

Thank you.

Mr. **Edwards**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much. Ms. Cooper, I would like to add my voice to the chairman's in commending you for your testimony. I think that you have come up with some very concrete examples as to the effects of discrimination on people who are disabled and those who are severely disabled and how counterproductive that discrimination is.

Your statement that your getting the job has saved the Federal Government $40,000 to $50,000 per year. I think if we can just multiply that by all of the other people who are in the situation that you were in prior to your employment, we would be able to make our society better as well as reduce the Federal budget deficit a bit.

I can say that, in my family, with my wife having disability, probably the thing that has stood out the most since we got married is, 3 years ago when President Reagan appeared in my district, she had to be taken to the stage alone for 1½ hours prior to the President's appearance, with the other elected officials and their spouses. She stood up there underneath the hot television lights in front of a crowd of several thousand people for 1½ hours before the President arrived and the show came on, and you can imagine what that did to her makeup, among other things.

I'd like to ask a question or two, if I could, to you, Reverend Allen. Now, as you know, the Senate, when it passed the bill, passed a provision that specifically excluded homosexuality from the definition of a disability. While HIV-related diseases are not exclusively homosexual, I think that it is fair to say that the preponderance of those who are HIV positive are homosexual by sexual preference.

Given that basic framework, how do we deal in the context of the Senate-passed bill with someone who is an admitted homosexual and, thus, not disabled by definition and one who has tested HIV positive, particularly in the employment discrimination provisions?

Mr. **Allen**. I think it should be emphasized that we're dealing with illness. We're dealing with someone who is disabled. So one's sexuality should not be an issue in this decision process of an employer. So that's how we deal with it. Is this individual able to do the work? That's how I would deal with it.

Mr. **Sensenbrenner**. I guess I'm looking for both a legally acceptable and a politically acceptable clarification of what I think is probably a contradiction in terms. Obviously, with the exemption for homosexuality in the Senate bill—and let's face it, that's the way the bill is going to pass—an employer could simply turn down an application on the basis of admitted homosexuality of the applicant and be exempt from any kind of sanctions, and we do not get into whether the person has tested HIV positive or not. Now, how do we get out of this conundrum?

Ms. **Cooper**. May I jump in here for a moment, sir?

Mr. **Sensenbrenner**. Sure.

Ms. **Cooper**. I think that part of the answer to that problem lies in the burden of proof under the model 504 case. In the 504 case, the plaintiff, the person who is claiming that they have been discriminated against based on their disability, has to show enough evidence to at least raise an inference that the category in which they fall, that falls under the qualified disability label, if that—I mean—let me back up for a minute.

In order to make out a 504 case, somebody would have to show that they, in fact, meet the definition of a disabled person within the statute. Homosexuality is excluded, but being an HIV positive person is not. If there was enough evidence to show that the employer's action was calculated based on the presence of HIV positivity, that would then make out——

Mr. SENSENBRENNER. Then the complainant has met his burden?

Ms. COOPER. That's right. In other words, the fact that somebody is a homosexual wouldn't make out that prima facie case.

Mr. SENSENBRENNER. In other words, what you're saying, Ms. Cooper, is that we don't need to change the definitional sections of the Senate-passed bill in order to get ourselves out of the conundrum which I have asked in my question to Reverend Allen.

Ms. COOPER. No. You would have the same problem with somebody who had another characteristic that is specifically exempted, but also perhaps had a disability. If the employment decision was based on some acceptable criteria, such as the use of illegal drugs, then that does not raise the issue of discrimination based on disability under this statute. There would have to be some other additional indicia, enough evidence to at least raise an inference that the decision was, in fact, calculated based on a covered disability for there to be a prima facie case.

Mr. SENSENBRENNER. In other words, this is basically a determination that is made by the trier of fact.

Ms. COOPER. Well, I don't think you would necessarily say that it's a determination based on the trier of fact, because you can—a judge can grant a directed verdict if the inference hasn't been raised and the plaintiff hasn't made out his case and the defendant doesn't even have to go forward. You wouldn't necessarily have to have the judge sitting as trier of fact at the end of the case making that determination. It comes very quickly.

Mr. SENSENBRENNER. Thank you very much.

Mr. EDWARDS. Ms. Cooper, you were here when the representatives of various businesses testified and the witness for small businesses felt that there was really too much of a burden on small businesses; the mom-and-pop store, the two or three employees, and so forth. Do you think that this bill puts too much burden on small businesses?

Ms. COOPER. I don't, and I think that there is a principal difference between the sections in public accommodations and the section in employment. The employment section exempts small business, but the exemption of businesses that employ 15 or fewer people wouldn't preclude employment opportunities for persons with disabilities. There would be other businesses out there that persons with disabilities could go to.

But if you turn around and you look at the issue of access, if you exempt small businesses, then access is really what is lost. The very purpose of the public accommodation section is undermined by any exemption based specifically on the size of the business. I think it's a legitimate consideration in some instances to consider more than just size, but size alone is not enough of an indicia of an ability of a business to provide the accommodations or accessibility necessary.

I also want to point out that there are some forms of exemptions in the public accommodation section that already exist. There is an exemption for elevators, so that a building that is three stories or less or has less than 3,000 square feet per floor, with the exception of particular categories of businesses, doesn't have to install an elevator. There is an undue burden exemption for business in providing auxiliary agent services.

I don't think that it's reasonable just based on size alone to exempt a business from the provisions of the ADA, because we would lose the very grist of this bill, of this part of the bill, which is access, that's so critical.

Mr. EDWARDS. Thank you. Now, Ms. Cooper, what do owners of buildings have to do to provide you with service? What do you envision a building, an existing building—what changes should be made in an existing building to provide you with services?

Ms. COOPER. The existing building standard is that of being—the accommodations really are those that are going to be readily achievable. There is no——

Mr. EDWARDS. What do you think "readily achievable" means?

Ms. COOPER. Well, "readily achievable" is a lower standard than "undue burden," which is in the employment section. It is my understanding that that standard was incorporated specifically in order to address the concerns of business. It is without significant, I think, I do not remember the language exactly—significant expense or—I forget the other term. But it is a much lower standard than "undue burden."

It seems to me that although it is not regulatorily defined because it has never been used in the 504 context, it is a significant compromise to the business community already. "Readily achievable" would be something that a business owner could do without a lot of trouble or cost. And the clipboard example that was given by the representative from the hotel-motel industry is the perfect example.

There is no requirement that there be, in fact, sign interpreters available or menus in braille. You can just have them, or, you know, all the price tags be braille, or that all of the high shelves be brought down. I mean it is very accommodating under the "readily achievable" standard to have somebody go and reach something for you if you cannot reach it because it is too high, or to have the waiter read the menu, or to have somebody working in the stores read the price tags for you. There are various ways to accommodate a disability that do not require lots of technology, lots of significant expense or cost.

I think it is really a misunderstanding of the availability of low cost options that causes a lot of people concern. I think the point that the gentleman who was sitting here earlier made that when they really started looking at the various options, that, you know, things do not have to be as expensive or as troublesome as originally believed.

Has not that been the case in 504 compliance? That in fact costs of accommodations in 504 cases have been minimal. I do not perceive any reasoned basis for assuming that in existing facilities under a "readily achievable" standard, which is, in fact, lower than any of the other standards in the regulations, that this is going to be a significant expense or problem for small or large businesses.

Mr. **Edwards**. Thank you. Well, what experience do you have, we will say—you are from San Francisco—at the San Francisco airport at the snackbars? Are they accessible to you?

Ms. **Cooper**. In some respects they are. I mean there are State laws, as well as Federal laws, in California. I can use facilities where people are willing and able and understanding and help me. I can say that a lot of the counters are too high for me. But that does not really preclude me from using the services operated by the business, because I mean it is just a matter of courtesy for somebody to help you. You know, all you have to do is flag them down and get their attention, and they can come out from around behind the counter and do whatever you need to help. They can get things and they can come around and hand it to you.

They have not had to rebuild counters. They have not had to, you know, go through and make sure that everything was at a height that I could reach and that I could personally handle. I have not had really those kinds of problems in the San Francisco area—in the airport or in public accommodations there.

I have had problems with architectural barriers that have been there a long time. But I do not recall any major problems in, you know, those kinds of situations.

Mr. **Edwards**. Well, one of the witnesses brought up the subject of a retail store where all of the shelves would have to be, or the aisles, would have to be changed. Have you had that experience where your wheelchair would not get down an aisle?

Ms. **Cooper**. I have, but I also have had the experience of being able to ask somebody to go get what it was that I could not reach. That was a perfectly acceptable means for me to shop in a retail store that had narrow aisles. In an existing facility, the "readily achievable" standard does not require anybody to rebuild all of the shelves and to eliminate a lot of floor space in any retail business. That just simply is not the only alternative available under this bill, and I think it is a real misapprehension of what the various standards are that causes somebody to come to that conclusion

Mr. **Edwards**. Well, I think I would like to have you hanging around when some of these questions come out.

The last question that I have before I ask if counsel has any questions, is about the public safety threat. When you are at a motion picture show, where is your wheelchair? In the aisle?

Ms. **Cooper**. It depends on the way the place is built. If it is built with those nice big old cushy seats, I like to jump in those instead. But if it is, you know, of the newer facilities and there is a relatively—the slope of the hill going down is not too bad, or there is a big space in the back and they have got the wonderful sound, then I would just as soon park in the back and that way I can come and go as I please.

Mr. **Edwards**. But you are not in the way in the case of a fire?

Ms. **Cooper**. Well, I cannot imagine somebody thinking that I am going to be any more in the way than the 20 people in front of them. My wheelchair moves, as do other bodies, and I find it difficult to believe that the fact that I use tires instead of toes to get in and out of a building makes me somehow a threat. I have yet to see a situation where that, in fact, was the case.

Mr. Edwards. Well, in my family we have had the same kind of an experience with discrimination in employment. One of my sons has a disability because of spinabifida. He can walk, but with great difficulty, and he has lost a lot of his height, and so forth.

He is a good lawyer, a graduate of Stanford and of Santa Clara Law School. He cannot get a job.

Ms. Cooper. Sounds something like me.

Mr. Edwards. So he has to open his own law office, with his wife as his secretary, and get cases from the judges where the public defender is disqualified. It really is very difficult. Of course, being where there is a birth defect, it seems to me that it is easier to have or more likely to have a lack of confidence because the discrimination starts almost immediately upon birth.

Ms. Cooper. I think that is true.

Mr. Edwards. And I notice that men and women who get their disability later in life, it doesn't seem to diminish their self-confidence which is already built up.

Ms. Cooper. I think that we also have more of a sense of outrage because we have been on the other side, and we know what life is like for a nondisabled American. We were fortunate to get the same education while we were young and to have the same benefits that everybody else had.

I mean that sense of outrage generally propels people forward.

Mr. Edwards. Counsel.

Ms. Davis. Thank you, Mr. Chairman.

Ms. Cooper, you have shown us a segment of the rejection letters that you got. Why are you so convinced that you were discriminated against because of your disability?

Ms. Cooper. Well, I have some pretty explicit examples in here. Let me pull one out. This is probably the best. In this particular case, I am not going to name the law firm. I will just say that it is in the Palm Springs area in California. I interviewed with this particular law firm in early February 1985.

The secretary of this law firm did not see fit just to send me the rejection letter in the particular rejection letter envelope. She sent me the entire file that law firm had kept, including the draft rejection letter, the notes taken by the attorney with whom I interviewed, who wrote down the nature of my disability and questions about health and life insurance on the yellow pad.

I also have the interoffice memorandums that were created following that interview, one specifically asking about how my disability would interface with the insurance coverage at that office. Then the response from somebody else in the office showing how it would interface. That response was dated just a few days before the rejection letter I received.

The rejection letter I received does not mention any of that. It simply says that they decided they wanted somebody who was already admitted to the California Bar. But they flew me down there knowing that I was not admitted to the California Bar.

So I think this is a pretty explicit example of that.

Ms. Davis. It is too bad this law was not in effect at the time that could have established your prima facie case.

Ms. **Cooper**. Yes, although I am not sure I would want to work there anyway.

Ms. **Davis**. There have been some concerns raised about the cost of this legislation and comparing it to other civil rights laws where the argument has been there hasn't been a big cost involved. There are those who say that cost should never be a factor when considering the civil rights of an individual and others say it should be the deciding factor.

Certainly, we have heard that in certain instances with respect to this legislation. Do you have a sense of how the ADA deals with the cost factor? Do you feel that it's addressing it adequately?

Ms. **Cooper**. Absolutely. I don't know any other civil rights statute that even has any cost analysis or cost exemptions or cost justifications or cost anything in it. This is the only major civil rights bill I have ever seen that really attempts to address the needs of those who are going to be making the expenditures. I think it's extremely reasonable in that experience under 504 has shown that the cost of compliance generally has been exaggerated by the persons who thought they were going to have to spend the money to comply, that in fact, accommodations don't cost that much.

The provisions in the ADA for undue burden, undue hardship, the readily achievable standard, I think really do adequately address costs and the beauty of all of those standards is that with the exception of readily achievable, they're both flexible but they've also got 15 years of history behind them so you're not dealing with a total vacuum.

Now readily achievable, it's true, it doesn't have the regulatory history but it was inserted in order to appease the concern of the business community. Now if they would like to take it out so that we could put in the more rigorous standard, I'd be willing to do that, one that they already understand but I think that was done in order to address those concerns of cost. Anything that strips away any more of the protections of this bill by addressing cost, I think, puts too much emphasis on the fact that it historically has not been shown to be significant in the implementation of nondiscrimination based on disability law.

Ms. **Davis**. I have one final question. Many of us like the chairman have family members who are disabled. What would you say to persons in the disability community in terms of how the quality of life for them is going to change as a result of this law. What can they anticipate do you think?

Ms. **Cooper**. That's hard to predict exactly. I can say that in my case, I can only really speak from the standpoint of persons with mobility impairments. It's difficult for me to fully comprehend how this bill is going to change the lives particularly of persons with hearing impairments. The relay service is really I think going to have a major impact for them.

Persons with mobility impairments have been excluded from living normal lives, not just because they couldn't get out their front door but because of a whole combination of factors. We've had legislation that has in kind of a piecemeal way addressed some of those problems one at a time. This is the first time that somebody has recognized that in order to live a normal life, to hold a job, to have a family, to survive in the community, you can't just have vocational rehabilitation.

You can't just put somebody through school. You can't just make sure they don't get discriminated against in the hiring decisions. It recognizes that transportation, public accommodations and all those concerns are part of that picture and it addresses them altogether. So, I'm very hopeful that this is going to have a significant impact on persons 18 to 64 with disabilities who want to work, that after all the implementation period, after the regulatory process is finished, after the Attorney General is active in enforcement that in fact we will see a different landscape of opportunities for persons with disabilities in America and it won't be a sentence to unproductivity and life in an institution just because you happen to have a medical diagnosis that tells you that you're going to end up mobility impaired.

I think that's the biggest freedom. In fact, I kind of look forward to the day that somebody over at the Social Security office has to look at a mobility impaired claimant and say, so? I mean I think that that would really be a major step forward. Right now, our public just assumes that that's a cause for unproductivity and I would like to see that changed.

Ms. KIKO. Mr. Chairman, I just have one question and I will address it to either of you who would care to answer it. The definition of disabled includes a term called, being regarded as having a disability.

With respect to the definition, exclusion of homosexuality under the Senate-passed bill, I'm wondering if you believe that in fact, the exclusion of homosexuality from the definition of disabled is essentially usurped by the definition of disabled where it says, being regarded as, if an individual who is homosexual claims to be discriminated against on the basis of being regarded as having AIDS or HIV positive reactions of some sort, could anybody address and answer?

Mr. ALLEN. You may address more of the legal. I can address some of how crucial that phrase is in this legislation in that what we are looking at as I look in a community-based organization and trying to implement compassion and care and care teams out of churches for individuals that are infected that there is the potentiality of individuals who want to volunteer being discriminated against because of perceived impairment, that, if you touch someone who has AIDS then you're going to have AIDS, that kind of mentality.

I have a specific example of a seminary student who worked out of a Baptist church in Fort Worth and was a volunteer at the AIDS clinic at the public hospital. Her church in which she was employed found out and said, you either work here or you work there but you cannot do both. It was basically because of the AIDS and that's a perceived impairment, basically, and so she decided to quit her job at the church.

That happens. So, if we're going to be able to utilize the volunteerism across this Nation, we have to have protections of people who want to volunteer and this is just one instance of how that takes place. Being a homosexual does not mean you're HIV positive. So that's—I don't see how that could be discerned as being someone who has a physical impairment—just being homosexual.

So I don't see how that could be part of the decision process. My concern is that we do exclude many people that want to volunteer, want to be a part of care. It is absolutely crucial in this strategy to get people in their homes, out of hospitals, and we need help and churches can help in a significant way and others can help but if it's found out that you're helping someone and you lose your job, then that's going to diminish the potentiality of getting individuals to care.

So I believe that's a very crucial element of this legislation.

Ms. Cooper. I would just add that if somebody's operating on the assumption that all homosexuals are HIV positive, that's a pretty irrational fear and it seems like that's exactly what the "regarded as" category is designed to address—irrational fears that employers have. To the extent that the decision is based strictly on homosexuality, it's not covered explicitly by this bill.

To the extent that the decision is based on the irrational fear that all homosexuals are HIV positive, that's another matter altogether and then somebody's being discriminated against based on the perceived status of a disability that doesn't in fact exist, that doesn't in fact limit their capability to perform on the job or that doesn't make them otherwise unqualified for the position and I think that that would be a legitimate basis for raising a complaint.

Ms. Kiko. It just seems a fairly fine line to attempt to understand if there is discrimination going on, if it is basically because someone has an irrational fear against homosexuality in general or if they have an irrational fear that all homosexuals may have the AIDS virus and I think that—it just makes me wonder whether there is in fact an exclusion for homosexuality in the bill.

Ms. Cooper. I don't see that line as being so fine. I think that there's a difference between facts and perceptions that aren't grounded in facts. To the extent that somebody excludes somebody from a job because they're HIV positive and they represent a direct threat, therefore, they're not otherwise qualified, then there is a ground for excluding them from the work force.

To the extent that somebody believes somebody is HIV positive and they're not and therefore there is no grounds for thinking they're a direct threat, then there is a basis for a complaint. To the extent that somebody only voices, look, you're homosexual, we don't hire homosexuals. There's no basis for a complaint. To the extent they say, you're a homosexual and we all know homosexuals are HIV positive and therefore I'm not going to hire you, there's a basis for a complaint.

The real test is and I think this is pretty bright, it's a pretty bright line, if it's an irrational fear based on the status of being HIV positive or an irrational fear and a direct threat based on the status of being HIV positive, it falls within the provisions of the statute.

If somebody is hired or not hired simply by virtue of the fact that they're a homosexual, it's not covered by the statute. To the extent an employer gets those mixed up, if their mixup is grounded in fact, they don't have a problem. If it's not grounded in fact, they might.

I don't see a fine line there at all. I mean, all we're doing is asking people to use their heads when they make hiring decisions. I don't see that it's a fine line.

Mr. **Edwards**. Well, both of you have been very helpful and it's been a great pleasure to have you testify. Thank you very much.

[Whereupon, at 11:43 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

AMERICANS WITH DISABILITIES ACT OF 1989

THURSDAY, OCTOBER 12, 1989

House of Representatives,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10:22 a.m., in room 2141, Rayburn House Office Building, Hon. Jack Brooks (chairman of the committee) presiding.

Present: Representatives Jack Brooks, Robert W. Kastenmeier, Don Edwards, John Conyers, Jr., William J. Hughes, Mike Synar, Patricia Schroeder, Barney Frank, Bruce A. Morrison, Edward F. Feighan, Howard L. Berman, Harley O. Staggers, Jr., George E. Sangmeister, Hamilton Fish, Jr., Henry J. Hyde, F. James Sensenbrenner, Jr., Bill McCollum, George W. Gekas, Michael DeWine, William E. Dannemeyer, Howard Coble, D. French Slaughter, Jr., Lamar S. Smith, Chuck Douglas, and Craig T. James.

Also present: Representative Steny H. Hoyer.

Staff present: William M. Jones, general counsel; Robert H. Brink, deputy general counsel; Daniel M. Freeman, counsel; and Alan F. Coffey, Jr., minority general counsel.

OPENING STATEMENT OF CHAIRMAN BROOKS

Mr. Brooks. The committee will come to order.

I have called this morning's hearing of the full Committee on the Judiciary to receive the testimony of the Attorney General of the United States on the bill, H.R. 2273, the Americans with Disabilities Act [ADA]. The fact that this hearing is being held before the full committee underscores the importance of this legislation and the eminence of our witness this morning.

Over the past several decades, our Nation has made some measure of progress in protecting the rights of those with physical or mental conditions that limit their activities and full participation in our society.

The Rehabilitation Act of 1973, which outlaws discrimination in federally funded programs, and the Fair Housing Amendments Act of 1988, which was shaped by this committee, are important steps in the process of ensuring equitable treatment to the disabled.

Nevertheless, under current law, disabled Americans are not accorded the same protection against discrimination that the law provides to racial minorities, religious groups, or others who in the past have been denied the chance to participate on an equal basis in our society's activities.

The Americans with Disabilities Act is intended to redress this shortcoming in the law. It would prohibit discrimination against the disabled in the areas of employment, public transportation services, public accommodations, and telecommunications.

It is clear that there is a strong consensus in the Congress, in the executive branch, and in the Nation in favor of this legislation. The Senate passed S. 933, a companion version of the bill which is before us today, by a vote of 76 to 8 on September 7. The administration has announced its support of the measure as passed by the Senate. H.R. 2273 itself has 230 cosponsors.

As we work to move the ADA through the legislative process, it is important for us to put into place a structure that preserves this consensus in favor of the rights of the disabled, at the same time that it seeks to protect those rights.

In order to do this, we must ensure that the legislation we enact is as clear and precise as possible, so that those who are affected by its provisions understand what their duties are under the law and can comply with them.

This will be the focus of the testimony of our witness this morning, and the questions that the members of the committee pose to him. As the chief law enforcement officer of the Nation, it will ultimately be the Attorney General who bears the responsibility for ensuring that the Americans with Disabilities Act works effectively and consistently with the intent of Congress.

This is Attorney General Dick Thornburgh's second appearance before the committee during this session of Congress. As all of you know, this former Governor of Pennsylvania and former U.S. attorney is a lead player in some of the most important issues facing our Nation, including the war against drugs, our immigration policy, and our efforts to control street crime.

General, we welcome you and we appreciate your taking the time to meet with us this morning.

Now, I will yield to the distinguished ranking member from New York, Hamilton Fish.

Mr. FISH. Thank you, Mr. Chairman.

I want to join with you in welcoming the Attorney General, and particularly to thank him for his leadership role in this legislation, his important statements and letters going back to July, and more recently to newspapers, clarifying comments made about this legislation, have at all stages shown a thorough analysis and understanding and strong support for this legislation, which has meant a lot to its sponsors.

Thank you.

Mr. BROOKS. I also want to recognize the distinguished whip of the Democratic Party, Steny Hoyer from Maryland, who has graced us with his presence here this morning. He has been interested in this legislation.

Mr. HOYER. Thank you very much.

Mr. BROOKS. Mr. Attorney General, I want to assure you, I am going to stay here just as long as I can. But I believe we are going to have the flag bill on the floor this morning, and I will need to be over there to manage that bill.

Mr. THORNBURGH. What time does the flag go up?

Mr. BROOKS. I need to go over shortly. You can proceed.

Mr. THORNBURGH. I understand.

STATEMENT OF DICK THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

Mr. THORNBURGH. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of this committee, it is a great pleasure for me to be able to present to you the administration's views on the proposed Americans with Disabilities Act. It is exciting to be a part of a process which, this year, will see the passage of legislation that will extend the Nation's civil rights guarantees to Americans with disabilities.

Persons with disabilities have already made enormous contributions to American society, and can and will contribute even more as legislation goes forward in this Congress to increase their access into the social and economic mainstream of American life. We want America to be an opportunity society for all Americans, and that requires taking actions to make opportunities available to Americans with disabilities.

Despite the best efforts of all levels of government and the private sector, and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence.

Over 15 years have gone by since the Rehabilitation Act of 1973 conferred on Federal and federally assisted programs the responsibility to accommodate Americans with disabilities. In that time, the doors of opportunity have been opened to persons with disabilities.

Nevertheless, persons with disabilities are still too often shut out of the economic and social mainstream of American life. The unreasonable and, in most cases, unthinking failure to eliminate attitudinal, architectural, and communications barriers in employment, transportation, public accommodations, public services, and telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of American society.

The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

On June 22, 1989, I testified on the Americans with Disabilities Act before the Senate Committee on Labor and Human Resources. At that time, the administration endorsed the concept of comprehensive legislation in the disability rights area and viewed S. 933, the Senate analog to H.R. 2273, as the appropriate vehicle for such landmark legislation.

My testimony did, however, raise areas of concern that needed to be addressed before the administration could specifically endorse the Americans with Disabilities Act. During this past summer, representatives of the administration engaged in prolonged negotiations with the Senate on this bill. These discussions led to revisions in S. 933 and eventually to the bill that passed the Senate on September 7, 1989, with broad bipartisan support.

I am therefore pleased to reiterate the administration's support of the Americans with Disabilities Act. This bill is fair, balanced legislation. It will ensure that persons with disabilities in this country enjoy access to the mainstream of American life. It builds on an extensive body of statutes, case law and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply.

The administration asks that you consider the Americans with Disabilities Act expeditiously and the administration hopes that the bill will be signed into law before the end of this year.

President Bush has consistently supported efforts to bring persons with disabilities into the mainstream of American society. As Vice President, he stated that we must develop programs and policies that promote independence, freedom of choice, and productive involvement in our social and economic mainstream.

This means access to education, jobs, public accommodations, public services, and public transportation; in other words, full participation in and access to all aspects of society. This year, in his remarks to the joint session of Congress, the President reiterated this commitment.

We believe that S. 933 successfully incorporates the President's goals. It provides an effective means of combating discrimination and yet gives latitude to employers, public accommodation, and other entities covered by the bill to allow them the flexibility to achieve compliance without placing an undue burden on their operations.

The comprehensive scope of the Americans with Disabilities Act will fill serious gaps in the patchwork quilt of existing Federal laws protecting disabled persons. Perhaps the most glaring gap in the fabric of existing disability rights laws is that there is little in the Federal law that prohibits discrimination in employment in the private sector against those with disabilities.

While persons who work for the Federal Government, who work in federally assisted programs, or who work for certain Federal contractors are protected from discrimination on the basis of handicap, most other workers are not. Each year in this country, over 150,000 young men and women with disabilities complete their education under the Education of the Handicapped Act, some receiving high school diplomas, some receiving certificates of completion.

This education law has been one of our modern success stories in the disability area. But if our investment in the education of these students is to bear fruit, we must ensure that they face a labor market similarly free of discrimination on the basis of handicap.

The Americans with Disabilities Act wisely parallels in the disability area title VII of the Civil Rights Act of 1964, the landmark statute that prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion.

The Americans with Disabilities Act, as passed by the Senate, appropriately phases in its coverage. When they go into effect 2 years after enactment, the employment provisions will cover only those employers with 25 or more employees. Two years later, coverage will be extended to include all employers with 15 or more employees.

Under this phase-in approach, the more immediate burdens of compliance will fall on those larger businesses most able to bear them. We also believe that the 2-year implementation period will ease any initial confusion regarding compliance requirements by giving the administration adequate time to craft regulations and engage in wide-reaching technical assistance efforts.

Furthermore, the administration is pleased that the employment provisions of the Americans with Disabilities Act closely follow the standards provided by section 504 of the Rehabilitation Act of 1973, including the concept that nondiscrimination includes the requirement that an employer make reasonable accommodation to the known mental or physical impairments of qualified disabled persons as long as making the accommodation would not result in an undue hardship on the operations of the employer.

The fact that many of the employment provisions of the Americans with Disabilities Act are drawn directly and, in many instances, even taken verbatim from the Federal regulations, implementing section 504 represents a particularly wise choice. The section 504 standards are familiar to large segments of the private sector already covered by the Rehabilitation Act. Experience has shown that these standards do not result in undue costs or excessive litigation.

The administration is satisfied that the Senate-passed Americans with Disabilities Act is consistent with Federal drug-free workplace initiatives. I need not remind this committee of the scourge of illegal drug use in this country and its frightening impact on daily American life.

Under the Senate bill, individuals who are illegally using drugs are not included within the protections of the bill, and the legality of drug testing is not affected. The bill is fully consistent with this administration's commitment to the eradication of substance abuse in the workplace and elsewhere.

The inclusion of public accommodations in the Americans with Disabilities Act is a Federal recognition that an opportunity society provides access to the mainstream of everyday life. Just as title II of the Civil Rights Act of 1964 opened up hotels, restaurants and theaters to black Americans, the Americans with Disabilities Act promises to persons with disabilities the right to enjoy full participation in our American way of life.

The administration endorses the prohibition of discrimination on the basis of disability in public accommodations and its extension to a wide range of entities. Persons with disabilities should not be discouraged from attending concerts, going to restaurants, and attending movies. And they should not have to face insurmountable obstacles in accomplishing such vital tasks of daily life as grocery shopping or visiting a pharmacy or doctor's office, or going to the dry cleaners.

We recognize that imposing an unlimited requirement that public accommodations make themselves accessible to persons with mobility impairments and provide auxiliary aids to those with visual and hearing impairments could result in significant costs.

However, the ADA, as passed by the Senate, provides a series of limitations on compliance requirements. For example, physical barriers need only be removed when the removal is "readily achievable," and auxiliary aids must be provided only if they will not result in an undue burden.

Under the Americans with Disabilities Act, for example, a restaurant would not be required to provide menus in braille for blind patrons, if the waiters in the restaurant were willing to read the menu. The act also has minimal requirements for retrofitting existing facilities. In fact, the act's "readily achievable" standard requires that existing architectural barriers be removed when doing so is easily accomplishable or able to be carried out without much difficulty or expense.

As an essentially forward-looking bill, the legislation reserves the most rigorous accessibility requirements for new construction, resulting in an estimated increase of construction costs of no more than 1 percent. Even this new construction requirement has certain limitations that attempt to mitigate costs.

The Americans with Disabilities Act contains an exception for placing elevators in new or altered buildings, perhaps the most costly capital expense for making buildings accessible under the bill in its present form.

Any building that has less than 3,000 square feet per story or that is less than three stories in height need not be constructed with an elevator. The administration believes a more prudent course would make the requirement apply to new construction of buildings with more than three stories.

Only multistory shopping malls, professional offices of health care providers, and other categories of buildings designated by the Attorney General would be required to have elevators.

The administration also supports the Senate bill's exclusion of religious organizations and entities controlled by religious organizations from the reach of the public accommodations provisions. Places of worship and the activities of entities controlled by religious organizations have been prudently excluded from the bill.

The administration is well aware of the costs that litigation designed to test novel theories can impose on business in this country. In order to avoid unnecessary and costly litigation, the Americans with Disabilities Act, in most cases, rather than attempting to develop new terms and standards, incorporates terms and concepts from section 504, a law that now has a 16-year history.

We are pleased that the Americans with Disabilities Act, as passed by the Senate, does not create additional monetary incentives for private litigation. Earlier versions of the bill would have unduly encouraged private suits by offering the prospect of jury trials, large monetary awards, and punitive damages.

Under the Senate bill, the remedies available in suits by private litigants against public accommodations are limited to injunctive relief, attorneys fees, and court costs. Authority to seek monetary damages and civil penalties is given only to the Attorney General and, even then, only in pattern or practice cases or suits of general public importance.

The Department of Justice intends to limit its requests for monetary damages to compensation for out-of-pocket losses and would not include speculative damages or damages for pain and suffering.

In fact, it is only in the employment area that any monetary relief is available to private litigants, and that particular relief, in the form of back pay, has been available under other civil rights employment statutes for the last 25 years.

The provision of accessible transportation for persons with disabilities has been one of the most complex issues faced by Congress and the executive branch. Four statutes and a series of current Department of Transportation regulations present an interrelated, complicated set of obligations. Several Federal circuit courts have interpreted these statutes and rules.

The President agrees that additional legislation is needed to bring certainty to this area and believes that the Americans with Disabilities Act appropriately clarifies transit requirements.

Our goal, and yours, is to ensure that persons with disabilities have access to adequate transportation in this country. The Americans with Disabilities Act would, for the first time, guarantee that public bus systems in this country are accessible to persons with mobility impairments by requiring that all new public buses be accessible to persons with disabilities with the Department of Transportation empowered to grant waivers in the narrow circumstances where such buses are unavailable. No retrofitting of existing buses is required by the bill.

Requiring that all new buses be accessible is a major change in Federal transportation policy and a welcome one. The unavailability of accessible public transportation in areas served by public transit continues to be a major barrier to the employment of persons with disabilities and a significant factor in continuing their isolation from everyday American life. The administration views this provision of the Americans with Disabilities Act as a key component of the bill.

Approximately 35 percent of the buses used in urban mass transit in this country are already accessible. Because the average life of a bus is 12 years, accessible bus transportation would become a reality in this country in a relatively short period of time.

In addition, the administration is pleased that the Americans with Disabilities Act requires the provision of supplementary paratransit services. Approximately 75 percent of all transit agencies already provide paratransit services.

The Americans with Disabilities Act would permit paratransit services that supplement, rather than duplicate, the fixed-route bus service. Further, under the Americans with Disabilities Act, paratransit services need only be provided to those disabled persons who are unable to use mainline accessible transportation.

Thus, those persons whose physical or mental disability is so severe that they are unable to use the accessible mainline bus system will be eligible to gain access to their community through paratransit services.

Again, the Americans with Disabilities Act wisely recognizes the cost implications of paratransit service. If providing paratransit services at a level that is comparable to the accessible fixed route system is so costly that it results in undue financial burden on the local transit authority, the local government can provide a reduced level of services.

The Secretary of Transportation will issue regulations on what constitutes an undue financial burden and, in doing so, can use a "flexible numerical formula" that incorporates appropriate local characteristics.

In this era of fiscal constraints, the paratransit provisions of the Americans with Disabilities Act strike a responsible balance between providing accessible transportation and protecting the economic viability of local transit providers.

During negotiations between the Senate and the administration, the exact nature of the accessibility requirements for intercity bus services by private entities proved to be a thorny issue. The administration believes the indepth 3-year study to be done by the Office of Technology Assessment will provide valuable information on cost-effective ways to provide accessible intercity bus transportation and can provide a basis for further legislation in this difficult area.

Because there is substantial evidence of the financial fragility of private intercity bus operators, the administration expects that the study will provide detailed analyses and recommendations on a wide range of accessibility strategies and their relationship to the provision of bus service, particularly in rural areas.

We think that delaying the implementation of the Americans with Disabilities Act's requirement that new intercity buses be accessible until 7 years from the date of enactment for small providers—6 years for other bus service providers—is necessary.

The 3-year period between the completion of the OTA study and the effective date of the Americans with Disabilities Act's requirements will give more than ample time for the Department of Transportation and the Congress to make appropriate regulatory and statutory changes based on the study. Maintaining the act's accessible bus requirement during this interim period will act as a spur to the development of technological advances in this area.

On another matter, the administration strongly supports the Americans with Disabilities Act requirements mandating that our Nation's telecommunications system be made accessible to deaf persons. The inability to communicate by telephone renders the routine tasks of daily living—such as making a doctor's appointment or inquiring about a job opportunity—difficult or even impossible to accomplish. Establishment of a telecommunications relay service is clearly a vital step toward full integration of deaf persons into the mainstream.

The administration particularly endorses the technical assistance provisions in the Americans with Disabilities Act that were added to the bill in an amendment sponsored by Senator Dole. It is our belief that the entities covered by this landmark bill—employers, public and private transit agencies, State and local governments, telephone companies, and public accommodations—will comply with the law voluntarily. We, therefore, expect that Federal efforts to provide information on the law's requirements and on how to comply in a cost-effective manner will be well-received and reduce the total cost to society of complying.

We at the Department of Justice wholeheartedly share the goals of the Americans with Disabilities Act and commit ourselves to an effective program of enforcement of the act's provisions. We have begun the process of analyzing the Department's specific responsibilities under the bill and pledge that our enforcement effort will be fair and vigorous and that our technical assistance program will be thorough, creative, and cost-effective. In addition, the Department of Justice is currently reviewing the impact of the Americans with Disabilities Act on its resources and organizational structure.

As a parent, as a former Governor, and as Attorney General, I have witnessed the many faces of discrimination confronting persons with disabilities. About 40 million people in this country are disabled by reason of some physical or mental handicapping condition.

The mere existence of these handicapping conditions does not, for many of these individuals, prevent them from interacting freely with others in society, or from performing the same tasks that others perform on a daily basis.

But persons with disabilities are all too often not allowed to participate because of stereotypical notions held by others in society—notions that have, in large measure, been created by ignorance and maintained by fear.

It is precisely these sorts of antiquated attitudes that have blocked people with disabilities from entering the mainstream of American life. Certainly attitudinal changes cannot be simply commanded or even legislated out of existence. No particular court order or single piece of legislation can alone change longstanding perceptions or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process, however, is to increase contact between and among people with disabilities and their more able-bodied peers. And an essential component of that effort is the enactment of a comprehensive law that promotes the integration of people with disabilities into our communities, schools and work places.

Mr. Chairman, the Americans with Disabilities Act can be the vehicle that brings persons with disabilities into the mainstream of American life. We have a historic opportunity to move legislation through the Congress given the broad support for its purpose.

On behalf of the administration, I pledge to this committee and to the Congress our support to produce a bill that can be signed this year.

Thank you very much, Mr. Chairman.

Mr. EDWARDS [presiding]. Thank you very much, Mr. Attorney General.

[The prepared statement of Mr. Thornburgh follows:]

Prepared Statement of Dick Thornburgh, Attorney General of the United States of America

Mr. Chairman, distinguished members of the Committee, it is a great pleasure for me to be able to present to you the Administration's views on the proposed Americans with Disabilities Act. It is exciting to be a part of a process which, this year, will see the passage of legislation that will extend the Nation's civil rights guarantees to Americans with disabilities. Persons with disabilities have already made enormous contributions to American society, and can and will contribute even more as legislation goes forward in this Congress to increase their access into the social and economic mainstream of American life. We want America to be an opportunity society for all Americans, and that requires taking actions to make opportunities available to Americans with disabilities.

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence. Over fifteen years have gone by since the Rehabilitation Act of 1973 conferred on Federal and federally assisted programs the responsibility to accommodate Americans with disabilities. In that time, the doors of opportunity have been opened to persons with disabilities. Nevertheless, persons with disabilities are still too often shut out of the economic and social mainstream of American life. The unreasonable and, in most cases, unthinking failure to eliminate attitudinal, architectural, and communications barriers in employment, transportation, public accommodations, public services, and telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of American society. The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

On June 22, 1989, I testified on the Americans with Disabilities Act before the Senate Committee on Labor and Human Resources. At that time, the Administration endorsed the concept of comprehensive legislation in the disability rights area and viewed S. 933, the Senate analogue to H.R. 2273, as the appropriate vehicle for such landmark legislation. My testimony did, however, raise areas of concern that needed to be addressed before the Administration could specifically endorse the Americans with Disabilities Act. During this past summer, representatives of the Administration engaged in prolonged negotiations with the Senate on this bill. These discussions led to revisions in S. 933 and eventually to the bill that passed the Senate on September 7, 1989, with broad bipartisan support.

I am therefore pleased to reiterate the Administration's support of the Americans with Disabilities Act. This bill is

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fair, balanced legislation. It will ensure that persons with disabilities in this country enjoy access to the mainstream of American life. It builds on an extensive body of statutes, case law, and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply. The Administration asks that you consider the Americans with Disabilities Act expeditiously and the Administration hopes that the bill will be signed into law before the end of this year.

President Bush has consistently supported efforts to bring persons with disabilities into the mainstream of American society. As Vice President, he stated that we must develop programs and policies that promote independence, freedom of choice, and productive involvement in our social and economic mainstream. This means access to education, jobs, public accommodations, public services, and public transportation - in other words, full participation in and access to all aspects of society. This year, in his remarks to the Joint Session of Congress, the President reiterated this commitment.

We believe that S. 933, successfully incorporates the President's goals. It provides an effective means of combating discrimination and yet gives latitude to employers, public accommodations, and other entities covered by the bill to allow them the flexibility to achieve compliance without placing an undue burden on their operations.

The comprehensive scope of the Americans with Disabilities Act will fill serious gaps in the patchwork quilt of existing Federal laws protecting disabled persons. Perhaps the most glaring gap in the fabric of existing disability rights laws is that there is little in the Federal law that prohibits discrimination in employment in the private sector against those with disabilities. While persons who work for the Federal Government, who work in federally assisted programs, or who work for certain Federal contractors are protected from discrimination on the basis of handicap, most other workers are not. Each year in this country, over 150,000 young men and women with disabilities complete their education under the Education of the Handicapped Act, some receiving high school diplomas, some receiving certificates of completion. This education law has been one of our modern success stories in the disability area. But if our investment in the education of these students is to bear fruit, we must ensure that they face a labor market similarly free of discrimination on the basis of handicap.

The Americans with Disabilities Act wisely parallels in the disability area title VII of the Civil Rights Act of 1964, the landmark statute that prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The to large segments of the private sector already covered by the Rehabilitation Act. Experience has shown that these standards do not result in undue costs or excessive litigation.

The Administration is satisfied that the Senate-passed Americans with Disabilities Act is consistent with Federal drug-free workplace initiatives. I need not remind this Committee of the scourge of illegal drug use in this country and its frightening impact on daily American life. Under the Senate bill individuals who are illegally using drugs are not included within the protections of the bill and the legality of drug testing is not affected. The bill is fully consistent with this Administration's commitment to the eradication of substance abuse in the workplace and elsewhere.

The inclusion of public accommodations in the "Americans with Disabilities Act" is a Federal recognition that an opportunity society provides access to the mainstream of everyday life. Just as title II of the Civil Rights Act of 1964 opened up hotels, restaurants, and theaters to Black Americans, the Americans with Disabilities Act promises to persons with disabilities the right to enjoy full participation in our American way of life. The Administration endorses the prohibition of discrimination on the basis of disability in public accommodations and its extension to a wide range of entities. Persons with disabilities should not be discouraged

Americans with Disabilities Act, as passed by the Senate, appropriately phases in its coverage. When they go into effect two years after enactment, the employment provisions will cover only those employers with 25 or more employees. Two years later, coverage will be extended to include all employers with 15 or more employees. Under this phase-in approach, the more immediate burdens of compliance will fall on those larger businesses most able to bear them. We also believe that the two-year implementation period will ease any initial confusion regarding compliance requirements by giving the Administration adequate time to craft regulations and engage in wide-reaching technical assistance efforts.

Furthermore, the Administration is pleased that the employment provisions of the Americans with Disabilities Act closely follow the standards provided by section 504 of the Rehabilitation Act of 1973 -- including the concept that nondiscrimination includes the requirement that an employer make reasonable accommodation to the known mental or physical impairments of qualified disabled persons as long as making the accommodation would not result in an undue hardship on the operations of the employer. The fact that many of the employment provisions of the Americans with Disabilities Act are drawn directly and, in many instances, even taken verbatim from the Federal regulations implementing section 504 represents a particularly wise choice. The section 504 standards are familiar from attending concerts, going to restaurants, and attending movies. And they should not have to face insurmountable obstacles in accomplishing such vital tasks of daily life as grocery shopping or visiting a pharmacy or doctor's office, or going to the dry cleaners.

We recognize that imposing an unlimited requirement that public accommodations make themselves accessible to persons with mobility impairments and provide auxiliary aids to those with visual and hearing impairments could result in significant costs. However, the ADA, as passed by the Senate, provides a series of limitations on compliance requirements. For example, physical barriers need only be removed when the removal is "readily achievable," and auxiliary aids must be provided only if they will not result in an undue burden. Under the Americans with Disabilities Act, for example, a restaurant would not be required to provide menus in braille for blind patrons, if the waiters in the restaurant were willing to read the menu. The Act also has minimal requirements for retrofitting existing facilities. In fact, the Act's "readily achievable" standard requires that existing architectural barriers be removed when doing so is easily accomplishable or able to be carried out without much difficulty or expense.

As an essentially forward-looking bill, the legislation reserves the most rigorous accessibility requirements for new construction, resulting in an estimated increase of construction costs of no more than one percent. Even this new construction requirement has certain limitations that attempt to mitigate costs. The Americans with Disabilities Act contains an exception for placing elevators in new or altered buildings, perhaps the most costly capital expense for making buildings accessible. Any building that has less than 3,000 square feet per story or that is less than three stories in height need not be constructed with an elevator. The Administration believes a more prudent course would make the requirement apply to new construction of buildings with more than 3 stories. Only multistory shopping malls, professional offices of health care providers, and other categories of buildings designated by the Attorney General would be required to have elevators.

The Administration also supports the Senate bill's exclusion of religious organizations and entities controlled by religious organizations from the reach of the public accommodations provisions. Places of worship and the activities of entities controlled by religious organizations have been prudently excluded from the bill.

The Administration is well aware of the costs that litigation designed to test novel theories can impose on business in this country. In order to avoid unnecessary and costly litigation, the Americans with Disabilities Act, in most cases, Congress and the Executive Branch. Four statutes[1] and a series of current Department of Transportation regulations present an interrelated, complicated set of obligations. Several Federal circuit courts have interpreted these statutes and rules. The President agrees that additional legislation is needed to bring certainty to this area and believes that the Americans with Disabilities Act appropriately clarifies transit requirements.

Our goal, and yours, is to ensure that persons with disabilities have access to adequate transportation in this country. The Americans with Disabilities Act would, for the first time, guarantee that public bus systems in this country are accessible to persons with mobility impairments by requiring that all new public buses be accessible to persons with disabilities with the Department of Transportation empowered to grant waivers in the narrow circumstances where such buses are unavailable. No retrofitting of existing buses is required by the bill. Requiring that all new buses be accessible is a major change in Federal transportation policy and a welcome one. The unavailability of accessible public transportation in areas served by public transit continues to be a major barrier to the employment of persons with disabilities and a significant factor

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[1] Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1612(a); section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. § 142 note; and section 317(c) of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 1612(d).

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in continuing their isolation from everyday American life. The Administration views this provision of the Americans with Disabilities Act as a key component of the bill.

Approximately 35% of the buses used in urban mass transit in this country are already accessible. Because the average life of a bus is 12 years, accessible bus transportation would become a reality in this country in a relatively short period of time.

In addition, the Administration is pleased that the Americans with Disabilities Act requires the provision of supplementary paratransit services. Approximately 75% of all transit agencies already provide paratransit services. The Americans with Disabilities Act would permit paratransit services that supplement, rather than duplicate, the fixed-route bus service. Further, under the Americans with Disabilities Act, paratransit services need only be provided to those disabled persons who are unable to use mainline accessible transportation. Thus, those persons whose physical or mental disability is so severe that they are unable to use the accessible mainline bus system will be eligible to gain access to their community through paratransit services.

Again, the Americans with Disabilities Act wisely recognizes the cost implications of paratransit service. If providing paratransit services at a level that is comparable to the accessible fixed route system is so costly that it results in undue financial burden on the local transit authority, the local government can provide a reduced level of services. The Secretary of Transportation will issue regulations on what constitutes an undue financial burden and, in doing so, can use a "flexible numerical formula" that incorporates appropriate local characteristics. In this era of fiscal constraints, the paratransit provisions of the Americans with Disabilities Act strike a responsible balance between providing accessible transportation and protecting the economic viability of local transit providers.

During negotiations between the Senate and the Administration, the exact nature of the accessibility requirements for intercity bus services by private entities proved to be a thorny issue. The Administration believes that the in-depth three year study to be done by the Office of Technology Assessment will provide valuable information on cost-effective ways to provide accessible intercity bus transportation and can provide a basis for further legislation in this difficult area. Because there is substantial evidence of the financial fragility of private intercity bus operators, the Administration expects that the study will provide detailed analyses and recommendations on a wide range of accessibility strategies and their relationship to the provision of bus service, particularly in rural areas. We think that delaying the implementation of the rather than attempting to develop new terms and standards, incorporates terms and concepts from section 504, a law that now has a 16-year history.

We are pleased that the Americans with Disabilities Act, as passed by the Senate, does not create additional monetary incentives for private litigation. Earlier versions of the bill would have unduly encouraged private suits by offering the prospect of jury trials, large monetary awards, and punitive damages. Under the Senate bill, the remedies available in suits by private litigants against public accommodations are limited to injunctive relief, attorneys fees, and court costs. Authority to seek monetary damages and civil penalties is given only to the Attorney General and, even then, only in pattern or practice cases or suits of general public importance. The Department of Justice intends to limit its requests for monetary damages to compensation for out-of-pocket losses and would not include speculative damages or damages for pain and suffering. In fact, it is only in the employment area that any monetary relief is available to private litigants, and that particular relief, in the form of back pay, has been available under other civil rights employment statutes for the last 25 years.

The provision of accessible transportation for persons with disabilities has been one of the most complex issues faced by

Americans with Disabilities Act's requirement that new intercity buses be accessible until 7 years from the date of enactment for small providers (6 years for other bus service providers) is necessary. The three-year period between the completion of the OTA study and the effective date of the Americans with Disabilities Act's requirements will give more than ample time for the Department of Transportation and the Congress to make appropriate regulatory and statutory changes based on the study. Maintaining the Act's accessible bus requirement during this interim period will act as a spur to the development of technological advances in this area.

On another matter, the Administration strongly supports the Americans with Disabilities Act requirements mandating that our Nation's telecommunications system be made accessible to deaf persons. The inability to communicate by telephone renders the routine tasks of daily living -- such as making a doctor's appointment or inquiring about a job opportunity -- difficult or even impossible to accomplish. Establishment of a telecommunications relay service is clearly a vital step toward full integration of deaf persons into the mainstream.

The Administration particularly endorses the technical assistance provisions in the Americans with Disabilities Act that were added to the bill in an amendment sponsored by Senator Dole. It is our belief that the entities covered by this landmark bill

-- employers, public and private transit agencies, State and local governments, telephone companies, and public accommodations -- will comply with the law voluntarily. We therefore expect that Federal efforts to provide information on the law's requirements and on how to comply in a cost-effective manner will be well-received and reduce the total cost to society of complying.

We at the Department of Justice wholeheartedly share the goals of the Americans with Disabilities Act and commit ourselves to an effective program of enforcement of the Act's provisions. We have begun the process of analyzing the Department's specific responsibilities under the bill and pledge that our enforcement effort will be fair and vigorous and that our technical assistance program will be thorough, creative, and cost-effective. In addition, the Department of Justice is currently reviewing the impact of the Americans with Disabilities Act on its resources and organizational structure.

As a parent, as a former Governor, and as Attorney General, I have witnessed the many faces of discrimination confronting persons with disabilities. About 40 million people in this country are disabled by reason of some physical or mental handicapping condition. The mere existence of these handicapping conditions does not, for many of these individuals, prevent them from interacting freely with others in society, or from performing the same tasks that others perform on a daily basis. But persons with disabilities are all too often not allowed to participate because of stereotypical notions held by others in society -- notions that have, in large measure, been created by ignorance and maintained by fear.

It is precisely these sorts of antiquated attitudes that have blocked people with disabilities from entering the mainstream of American life. Certainly attitudinal changes cannot be simply commanded or even legislated out of existence. No particular court order or single piece of legislation can alone change longstanding perception or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process, however, is to increase contact between and among people with disabilities and their more able-bodied peers. And an essential component of that effort is the enactment of a comprehensive law that promotes the integration of people with disabilities into our communities, schools, and work places.

Mr. Chairman, the "Americans with Disabilities Act" can be the vehicle that brings persons with disabilities into the mainstream of American life. We have an historic opportunity to move legislation through the Congress given the broad support for its purpose. On behalf of the Administration, I pledge to this Committee and to the Congress our support to produce a bill that can be signed this year.

Mr. Edwards. As explained to you, the chairman is unavoidably detained on the floor to handle the American flag bill.

I was pleased to read in the paper when you first endorsed the ADA. As former chairman of the Americans for Democratic Action, does that include that ADA?

Mr. Thornburgh. I will take the fifth amendment on that.

Mr. Edwards. Mr. Attorney General, the chairman is very interested in asking you this question. Would you suggest that additional attention be given to providing more precise statutory definitions of such terms as "readily achievable" and "undue burden" in the law. That has caused some problems and whether or not that will open up different matters to lawsuits.

Mr. Thornburgh. Various Members in this House and the other House have raised this question with me, Mr. Chairman. I think it is important to note that most of the terms used in the Americans with Disabilities Act that prompt such inquiries, terms such as "reasonable accommodation," "undue hardship," "undue burdens," "fundamental alteration" derive from already existing legislation, section 504 of the Rehabilitation Act of 1972. The term "readily achievable" is fairly narrowly defined in the legislation, stating that retrofitting, for example, must be undertaken only where it is easily accomplishable and can be carried out without much difficulty or expense.

It seems to me that in the last case it would be difficult to provide a more precise definition of the term "readily achievable" than the act contains and which has been the subject of much discussion.

With regard to the others, what one might call "terms of art," they have acquired in the 15 years or 16 years that they have been part of the accepted meaning in the courts and through regulatory practices that ought to reduce any confusion or litigation to an absolute bare minimum.

Obviously, applying these terms to new factual situations is going to create new questions. But the notion that a whole flood of undefined terms is being loosed on an unsuspecting public, I believe it much exaggerated.

Mr. Edwards. Thank you. I believe we would like to send you some very specific questions in writing.

The committee will be operating under the 5-minute rule in order to give all the members the opportunity to question the Attorney General.

The gentleman from New York, Mr. Fish.

I believe we will have to go to vote on the floor before we get to that answer.

The committee will recess now to go vote.

[Recess.]

Mr. Edwards. The committee will come to order.

The gentleman from New York, Mr. Fish.

Mr. Fish. Mr. Attorney General, I am sure that you and I agree that this is the most important civil rights legislation of this session of Congress. As I said before, I certainly do appreciate your leadership role. We all do. It is incumbent on us as legislators, however, to do the best of our ability to assure that this comes out the way we want it and that it is clear, as you mentioned.

I would like to raise an issue in this spirit. The term "covered entity" means an employer, employment agency or joint labor management committee. In two major pieces of major legislation, the Immigration Control Act of 1986 and more recently, the Fair Housing Act, we get into this question.

The thought arises, shouldn't a "covered entity" be more site specific and the definition go to the facility rather than a general word like "employer?" What I am thinking is, of course, that as in all cases of discrimination you may have hundreds or thousands of business outlets that do their own hiring and their top management, the employer, would not really know about egregious conduct that may result in a suit by your Department.

So I just raise that issue about the covered entity being more precisely the hiring facility or hiring authority.

Going to the question of your remedies, I am dealing from the Senate bill, section 308, enforcement. It is 308(b), enforcement by the Attorney General: (1)(a), duty to investigate. "The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title." Now, the rest of this, injunctive relief, pattern and practice, it is language we are all familiar with.

But this particular part I read you was not in the House bill I introduced. It is obviously the Senate edition. It is a novel provision to me.

I wonder if you would comment on the meaning of it and your approval or disapproval of it. Once again, this does not have to be a matter, unless you are prepared to speak to now, it could be a matter like my first question that you could reserve judgment on.

Mr. THORNBURGH. Let me take a try at it, although I perhaps ought to reserve the right to give you a more precise response. In carrying out our responsibilities to see that the laws are obeyed, we sometimes are in a reactive posture and sometimes in a proactive posture.

I think that is what is contemplated by 308(b)(1)(a), investigating allegations which come to us in the normal course is one thing. Undertaking reviews of compliance is quite another where the initiation would come from the Department of Justice.

That I think is meant to round out the definition of our enforcement responsibilities to ensure that we are not like the Maytag repairman waiting for the phone to ring before we undertake some investigation of compliance. That would be the allegation side. But what this talks about is our own periodic reviews of the compliance with the act.

Mr. FISH. You may wish to think about it since this is a new measure that was not considered in the drafting of the House proposal. Your letter of July 26 to Senator Kennedy, in that you speak of using the pattern and practice authority given the Attorney General in the Fair Housing Act amendments as a model. The Attorney General should be given authority to seek civil penalties concerning egregious violations of the pattern and practice provision in the Senate bill is the usual remedy. I wondered if, well, I talked about A, duty to investigate, and that is the next section, "potential violation."

I wondered whether you felt that the terms "egregious and willful" should be in the statute, should be in the committee report.

Mr. THORNBURGH. Well, this, again, has been the subject of some discussion. I think the use of the term "issue of general public importance" is sufficient to provide adequate guidance to me or any successor in the Attorney General's Office as to the type of relief that should be sought. Obviously, under those guidelines trivial denials or violations would not be encompassed and probably in fact would be restricted to egregious and serious violations, but I am not sure that the addition of that language as a substitute for or in amplification of the issue of general public importance language would add something.

Mr. FISH. It is just that it is language in other laws that we have had in dealing with discrimination.

Mr. THORNBURGH. We have limited resources in this area, Congressman Fish. We obviously are going to be looking only at the most egregious cases. But I am a little worried about trying to put that into a statutory setting in this instance.

Mr. FISH. In the committee report, then, which I think is in the Immigration Act.

Mr. THORNBURGH. Yes, I don't have any problem with that.

Mr. FISH. I have one other question before I yield to my colleagues, who have lots of questions, I know. If I could refer you to section 303, called new construction in public accommodations, potential places of employment, this is just to direct your attention to this, and it says in section 303, "application of term as applied to potential place of employment, the term discrimination shall mean a failure to design and construct facilities for first occupancy later than 30 months after date of enactment of this act that are readily accessible to and usable by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards as set forth or incorporated by reference in regulations issued under this title."

This does not answer the question as to whether every part of a facility, new construction facility, is covered, or whether those parts that might lend themselves to a need for accessibility under the circumstances.

I know this question has been raised as to just a matter of clarifying exactly what we mean in terms of new construction.

Mr. THORNBURGH. Are you referring to the exception language, the term structurally impracticable?

Mr. FISH. Not really, because that I think is clear. That is something a structural answer will answer, whether or not it is structurally impracticable. But I am wondering what is meant, whether or not every single part of a new construction is to be made accessible; and if not, then failure would be a discrimination or whether there is some clarification needed here.

Mr. THORNBURGH. The existing design standards for new buildings talk about reasonable numbers of accessible entrances, toilets, those kinds of things. It doesn't mean that all parts of every building have to be accessible, if that is what you are pointing toward.

Mr. FISH. That is the term that has been raised, yes.

Mr. THORNBURGH. I am not quite sure what the concern is.

Mr. **Fish**. I suppose it is when you build any new construction, and depending what it is, it might have food services, maybe employment requirements in the job that would not lend themselves to somebody in a wheelchair, and therefore, you would not need to have accessible entrances.

I just presented you with some issues that have been raised by others.

Mr. **Thornburgh**. Well, I think the only answer to that is to look at it from the point of view of the standard of reasonableness which excludes the notion that every portion of every building, every service included within the building, must be accessible, under the standard of reasonableness.

If there are a reasonable number of those kinds of necessary components of the public accommodation that are accessible, that fulfills the requirements of the act as it is written.

Mr. **Fish**. I thank the gentleman.

Mr. **Frank** [presiding]. The chairman of the Subcommittee on Civil and Constitutional Rights, Mr. Edwards, had to go over to the floor, because he had management responsibility on the flag bill.

I want to read a statement Mr. Brooks wanted to put into the record. If there is no objection, I will read it and have it put in the record.

"A long-time friend of mine and the son of a former staff director of my subcommittee, Geoffrey M. Baynard, is here in the audience. Geoffrey suffered a head injury in an automobile collision caused by a drunk driver. He was unconscious for 5 weeks, but survived and made a miraculous recovery, though he has some residual disabilities. Geoffrey has prepared a statement on the Americans with Disabilities Act, which I would ask unanimous consent to insert in the hearing record at the appropriate point."

There being no objection, that will be put in the record.

[The prepared statement of Mr. Baynard follows:]

October 12, 1989

STATEMENT OF GEOFFREY M. BAYNARD BEFORE THE HOUSE JUDICIARY COMMITTEE ON THE PROPOSED AMERICANS WITH DISABILITIES ACT OF 1989 (ADA).

I am a thirty-five year old survivor of a very serious head injury. I received my injury when an unlicensed, uninsured drunk driver, with prior convictions, ran a red light while he was being pursued by police at a high rate of speed.

He was driving a Cadilac in excess of 70 miles per hour when he smashed into my compact car broadside, shearing off my door with me being thrown twenty feet landing on my head in the other lane of traffic.

My scalp was ~~was~~ split open from ear to ear. The massive blow to the head has caused permanent brain stem injury. I also had a fractured pelvis from knocking over a 4-by-4 inch sign post, and an exploded disc in the shoulder area of my back from landing on my head.

For five weeks I was unconscious with the doctors telling my family I had little chance to live and if I lived I would have little chance of walking, talking or even remembering my name. In other words, I would be a basket case. I was in a coma for five weeks and sure enough when I became conscious I couldn't walk at all, nor talk coherently.

So, for the first time in my life, I was a member of a minority group - I was now physically disabled. I was to become handicapped as well - not directly from my injuries but from alcohol, and more important, people's attitudes. My physical disabilities made me appear as though I were impaired by alcohol - by the way I walked and talked. I talked with a slur and walked with an uneven gait even when I had not been drinking.

The accident occurred in February, 1974, which was the virtual dark ages in the rehabilitation of the head injured because of the lack of awareness about the epidemic proportions of this type of injury in our Society. The staggering statistics are that one out of every 200 people in our population is directly affected or involved in some form of head injury.

Because of the absence of visible disability, i. e. braces, walkers or crutches, I have personally experienced more forms of discrimination than one would think possible. Most important, I have experienced discrimination in my efforts to obtain suitable employment.

My first experience with the federal government where persons are classified as "handicapped" regardless of whether they have a physical or mental impairment. I was given a job as a laborer and told to perform tasks which were beyond my physical capabilities. When I complained, I was told to be grateful for the subpar wage I received. Meanwhile, within the agency there were many positions that were within my physical capacities which were denied me because I was under the "handicapped" program.

I had to leave government to survive because I could not perform the physical tasks required for me to do. Then I did two things. I enrolled in college and applied for disability from Social Security. Satisfactory completion of two years of college work established that I have a "level" of capability, despite a permanent lesion on my brain stem..

In other words, I am not a complete dummie. Also, my long three and a half year battle with Social Security proved conclusively that I also have a serious spinal injury which limits my capacity to perform physical labor. As one bone specialist suggested, one of my shoulder vertebra looks like it been smashed with a sledge hammer.

But I say to you - this is not the whole story, for old fashioned frustration, having nothing to do with our injury, plays an important part.

First, of course, is the lack of effective state and federal programs to assist those of us with these problems. And then there is discrimination. Let me give you some examples.

In 1986. I applied for a job with the Commonwealth of Virginia in the Department of Rehabilitative Services working with newly head injured persons. The Commonwealth, in a masterpiece of bureaucratic splendor, simply withdrew the job announcement citing economic concern rather than employing a head injured survivor.

I have submitted more than fifty applications with the city of Alexandria. I have been interviewed only once. No jobs have been offered me.

In summary, in the years since my injury, I have applied for more than a thousand positions. I have only been interviewed for some ten or twenty. Because of strong political backing I was offered two in the federal government requiring strenuous labor and totally unsuitable for a person in my physical condition.

And then there has also been the attitude of people. As an example, recently at a foodstore checkout counter, I was treated in an awkward manner by the checkout clerk. After leaving the store, my companion expressed her outrage at the attitude of the clerk. As so often before, a slurred word or two and my uneven gait had lead to the conclusion that I was drunk. After 15 years of such treatment, I let such occurrences slide but my friend did not have as tough an attitude as I have developed - an attitude I have developed to protect myself from the discrimination that seems to come upon head injured and other disabled persons from every side.

What does all this have to do with the ADA - that is, the proposed Americans with Disabilities Act of 1989? The answer - everything. There is no equal opportunity employment except in the mind of the person that thought up this three word phrase. In the 1980's, as this country was trying to recover from an economic backslide, the disabled people took it on the chin and lost not only opportunity to work but opportunity to even move about freely in our Society. Furthermore, many disabled have ~~been~~ been denied the freedom they deserve because of the lack of public accommodations and services.

In my many years as a disabled person in contrast with my non-disabled life, I have learned that the disabled when deprived of the opportunity of freedom of movement and adequate accommodations often lose the respect of our fellow citizens. They are prisoners in an otherwise free Society - in practical terms as caged in as the criminal inmates in our highest security penal institutions.

Please reweave the safety net for disabled people by approving this legislation.

Mr. Frank. Mr. Sangmeister.

Mr. Sangmeister. I understand the provision to remove illegal drug users from the protection of the legislation. I have no doubt that you support that. Subsequently, I have been advised that an amendment was added that would grant protection to illegal drug users if they have some other recognized disability.

If the opportunity arises in the House to delete that language, would you support that?

Mr. Thornburgh. I think and I hope I made clear in my statement that this administration does not want to see legislation designed to deal with persons with disabilities becoming a loophole for providing protection to persons who are using illegal drugs or illegally using legal drugs.

To the extent that any ambiguity in that regard can be removed, we would certainly support a technical amendment, addressing the point that you raised.

Mr. Sangmeister. Thank you.

Mr. Frank. Mr. McCollum.

Mr. McCollum. Thank you, Mr. Chairman.

It is good to see you, Mr. Attorney General. I think all of us support the basic premise of this act. The ADA has been long needed in this country to establish civil rights for those who are handicapped. There have been numerous cases raised over the last few weeks, especially since the Senate passed what I think were improvements which I congratulate you for achieving.

I want to ask about a couple of them. One of the things the business community has been particularly concerned with has been in the public accommodations section. They have been very concerned that there is no exemption for small business there, as there has for small business in the employment section.

In title III, in other words, if you have 14 or 25 or fewer employees, you still have to abide by it. They give examples and say, despite the fact of undue hardship language and that sort of thing, it is not a very practical matter for little businesses that have, oh, a stand with teeshirts like you see in stores in the malls or shopping areas, they have very limited square footage, and you and I could not walk between the aisles, let alone somebody who is handicapped.

They suggest there ought to be a small business exemption altogether for small enough businesses, either by size of employers or another determination, or there ought to be a provision that allows a clear-cut, not litigable way to go about doing this, to help the handicapped, such as providing a separate area within the small store that they have for all the samples to be, or something like that, so somebody could come to that area.

Has there been thought given to that? Is that of any concern to you at all?

Mr. Thornburgh. There has been a great deal of thought given to that, Representative McCollum. Let me mention, first of all, one difficulty that was immediately encountered in talking about transporting the small business exemption in the employment section into the public accommodations section.

The small business exemption in the employment section, which we wholeheartedly support and which is consistent with title VII of the Civil Rights Act of 1964, results in the exemption of about 20 percent of the employers who would otherwise be subject to the act without the exemption.

That is the best figure that we can come up with. To use that same exemption in the public accommodations section, however, would result in the exemption of well over 90 percent of the public accommodations, and in certain categories such as doctors' and dentists' offices, drugstores, laundry and cleaning services, the very mainstream-oriented types of public accommodation that we are most concerned about, close to 100 percent of the establishments would be exempt.

Accordingly, the requirements with regard to public accommodations have been drafted to provide for minimizing the burden on small businesses. The barriers are required to be removed in a very narrow area of cases where that removal is readily achievable and can be carried out without much difficult or expense.

That, it seems to me, would be a very, very limited area where retrofitting or removal might be called for on occasion and is in recognition of the very points that you raised with regard to a number of small businesses.

Mr. McCollum. May I interrupt and suggest that despite the fact that I agree with you, the problem with using the same definition, if you have that little store where you can envision all those teeshirts in just two racks on a narrow lane and you squeeze between the two, there is no barrier to be removed. They would have to take out some of their stock.

I realize by regulation we can maybe do something. But there are a lot of folks concerned about that kind of situation. That has been raised to me.

Mr. Thornburgh. If it cannot be done easily or without difficulty or expense, it is not obliged to be done.

Mr. McCollum. There is expense, the cost to that little business. It may be that he takes out half his inventory, then.

Mr. Thornburgh. It seems to me the requirement that it be done without much difficulty or expense, if you are going to have to sacrifice half the room devoted to your inventory, that would constitute to me a substantial cost or expense or difficulty.

Mr. McCollum. I want to at least put that on the record that that is your view, so we have a way to interpret that, because I have a great concern in that area.

Mr. Thornburgh. You are grappling with the same types of problems we looked at in fashioning the legislation on the Senate side. It may deserve some study, but I think we felt that having found the transportation from one section to another of the exemption relating to employment, the number of employees was not a workable feature, so we tried to agree upon a way to otherwise minimize any prospective burden on these very small businesses.

Mr. McCollum. I realize my time has expired. I hope we will have a second round on this.

Mr. Frank. I will take my question now.

General, I want to express my very deep appreciation to the President and to yourself for taking such an active role on this legislation. I think it is extremely important. I think we ought to be very clear about what we are saying.

It is important to be honest about it. There will be, obviously when this is actually implemented, some slight additional cost, and what we are saying is that that additional cost distributed across the entire population will have, we believe, disproportionate benefits for a small number of our fellow citizens who have been in some ways unfortunately affected.

I think that is what we are talking about. I think it is a mark of social maturity of which we ought to be proud, that we accept that principle. I think your answers have helped make it clear that that is the principle that is going to guide you; that we are not going to be unreasonable and there is not going to be excess.

I think we have to be explicit about one other thing here. We are often told by the private sector that they want certainty. I understand that. We don't want to be subjected to arbitrariness. I think what we are saying in this case is that we are in a new area.

Although we have legislated here in the Fair Housing Act and in the immigration bill, we are talking about some areas that are somewhat new to us. It is important to have discretion.

I think what we are saying, I am hoping the majority of my colleagues will recognize the good faith and the intelligence with which you and your colleagues are prepared to administer that.

I think what you have said so far, and what you have done helps bear that out. We are often told that we should resist micromanagement. I think this is an important example of where we ought to be resisting micromanagement, that we ought to be accepting the fact that this is a difficult and socially very important task, we ought to accept the bona fides of yourself and the people working with you, and I think everything that has been done to date shows that.

The experience has been that people who have raised legitimate concerns have had them dealt with, going back to the Fair Housing Act, where many of us worked with homebuilders and worked out a set of rules which seem to be OK now.

I don't think there is any way not to give discretion. If we did not give a great deal of discretion, we would more likely overlegislate. Congress is not going away. People who are administering it, Congress says, well, we have confidence in the people administering, but what about the future group?

Congress is not going away. The people most concerned about this bill, the people who are themselves suffering from disabilities and the people who expect most to benefit from the broadening of opportunity here I think understand on the whole that it is to their interest to make sure that this is reasonably done.

The worst thing you can do from the standpoint of meeting the very legitimate request of people who are disabled in some way is to overdo this in ways that would impose a cost for too little benefit. Everything I have seen so far suggests that we have that kind of understanding.

I would hope that you would comment on that and tell me that in this case, I have got it right. If we are not prepared to legislate in that fashion, then I think we are going to have a very hard time.

Mr. **Thornburgh**. Let me add two additional comments in that regard, Mr. Chairman. One is that as I noted, there are lagtimes provided in certain sections of this bill that are designed to take into account what careful study and consideration of the more vexatious provisions, potentially vexatious provisions that can be dealt with.

Second, we propose to, as I indicated, carry forward an aggressive program of technical assistance, which will enable us to work hand in glove with those persons who are affected both in terms of their rights and their responsibilities to ensure that our administration is, in fact, sensible, reasonable, and consistent with the notion of balancing the cost imposed for compliance with the full recognition of the rights of the persons who are sought to be benefited.

Mr. **Frank**. Thank you.

I have one specific question which I have been asked by some groups. I had some requests from some people in the construction field. Are we sure that this legislation fits in well with preexisting legislation, for instance, Grove City and fair housing? Are there any possibilities that people are going to be subjected to conflicting mandates or different timetables?

Mr. **Thornburgh**. I hesitate to give you absolute assurance, but I think those have been attended to. If there are areas where that is not the case——

Mr. **Frank**. That is a better way to phrase it, which is, namely, it would be our intention if there were any glitches, that it would be our intention that no one would be subjected to conflicting or confusing, substantive or chronologically——

Mr. **Thornburgh**. I would certainly raise them.

Mr. **Frank**. We would invite any groups who feel there are any such conflicts to let us know about it, because it is important for us to work those out and have nobody subjected to that.

Mr. DeWine.

Mr. **DeWine**. Thank you.

Can you tell us the administration's position about the use of a tax credit for small business that has to comply with the requirements for this law?

Mr. **Thornburgh**. That has been suggested and asked in the course of the framing of the legislation before you for consideration, but because of—well, it has, I must acknowledge, an equitable appeal, but because of the fiscal situation and restraints, the administration at this time does not support any such provision.

Mr. **DeWine**. One could make the argument that the goals of this bill certainly are laudable and certainly I would hope are shared by all Americans, and that the question then is, who is going to pay for it?

It seems to me that the choice when you are dealing with a tax credit issue, the choice is between spreading the cost among everybody in this country or having the small businessmen and women in the country pay for it.

Can you react to that? Is that a fair characterization or not?

Mr. **Thornburgh**. I think that is a fair characterization, and from a point of view of simple equity, that may recommend itself for consideration. There is, under section 190 of the IRS Code, presently a deduction of up to $35,000 per year for taxpayers for expenses associated with removal of qualified architectural and transportation barriers.

My understanding is that Senator Dole intends to review this existing tax deduction provision in the context of the Americans with Disabilities Act, with particular attention to the problem that you suggest, and that is the obligations of small businesses.

It may well be that you want to communicate with Senator Dole or his staff in that regard. As I said, at the present time the administration does not support any additional tax benefits or credits.

Mr. **DeWine**. Let me ask you about the public safety issue. I wonder if you can comment in general terms on what your understanding of this bill is in regard to what it provides for a business person to make a decision based upon public safety.

Let me give you an example. It may not be a good example, but it is an issue that has been raised by some of my constituents over the last few years. That has to do with airlines that routinely assign blind people a certain space on the plane.

There has been a controversy for a long time. The airlines have said that they have to be located in a certain place. The other side would argue that that really has nothing to do with public safety at all, there is no evidence that the airlines have ever established that putting that blind person in one particular seat and not letting them go into the general assignment of seats has anything to do with public safety.

There has been no demonstrated need to do that. That has been an ongoing dispute for a number of years. I have heard both sides of the issue. What is your understanding of the public safety aspect of this and how business may or may not make that determination and then what is that criteria, who has the burden of proof on that and how are we going to deal with that problem?

We can all think of many examples but that is just one.

Mr. **Thornburgh**. First of all, my understanding is that the provision for blind persons in aircraft is currently the subject of regulations being drafted by the Department of Transportation under the Air Carrier Access Act and is unresolved.

They are not final, although I believe the view the FAA and the Department of Transportation expresses is the one you expressed concern about. But as a general matter, it seems to me obvious that safety considerations should be taken into account in making public accommodations accessible and precisely how that applies to particular cases is obviously going to call for some recognition of common sense.

But the notion that public accommodation requirements should ignore safety considerations I find to be inadmissible. I think what we want to be careful to avoid is that the judgments that are made about public accommodations, accessibility, don't provide on the basis of stereotypical presumptions, that they, in fact, relate to real situations and the problems of people with particular disabilities.

How you can be more precise in that regard, I cannot suggest. But clearly safety considerations have to be a part of the factoring in of these requirements for accessibility.

Mr. **DeWine**. Thank you.

Thank you, Mr. Chairman.

Mr. **Edwards** [presiding]. The gentleman from California, Mr. Dannemeyer.

Mr. **Dannemeyer**. Thank you.

Mr. Attorney General, good morning.

Mr. **Thornburgh**. Good morning.

Mr. **Dannemeyer**. There is no question in my mind that the vast majority of the American people recognize the goals of this act. I do. Our hearts go out to anyone who was born with a defect or as a result of an accident in life described by our chairman, Mr. Brooks, for his friend deserves the recognition of society that we need to make adjustments in accommodations.

My questions this morning, Mr. Attorney General, relate to a matter of concern that I have for my constituents: Is it sound public policy to include within the definition of disabilities persons who have engaged in intentional conduct and as a result of that intentional conduct now claim to be disabled, drug addicts, alcoholics and persons with a communicable disease who acquired the disease when they knew the consequences when they engaged in that conduct.

I am not sure whether the people who read this legislation have thought through the consequences of what the adoption of this legislation will do in terms of the impact on Federal spending. I am speaking specifically about HIV carriers that we have probably, nobody knows, maybe 3 million in America, as the legislation is pending before the House, it probably will follow that upon its adoption these HIV carriers will come within the definition of disability and accordingly will be eligible for D.I.

After 2 years on D.I., they are eligible for Medicare. Now, for our society to say to persons who have intentionally engaged in activities that result in the acquisition of a fatal disease, HIV carriers, that we are going to provide this kind of coverage, I think in the minds of a lot of the public raises questions about what we are about.

So my first question is: Would you support an amendment that would say to a person who acquired a communicable disease such as HIV positive status that we would limit those who are HIV carriers within the definition of disability to those who receive that status as a result of a blood transfusion, were born to a mother with AIDS, or were a hemophiliac who got that status as a result of acquiring blood in the blood supply, in other words, somebody who I would classify as not having acquired the status from intentional conduct.

This would exclude the coverage of disability to those who are drug addicts or homosexuals who have engaged in conduct and acquired this status as a result of intentional misconduct?

Mr. **Thornburgh**. I think in response to your concerns I have to first note that illegal drug use, that is the use of illegal drugs or the illegal use of legal drugs, does not constitute a handicap the way the ADA is drafted.

With regard to contagious disease, the act adopts the standard that has been applied in cases arising under section 504 of the Rehabilitation Act. The Supreme Court in the *Arline* case held that people with contagious diseases are entitled to protection afforded by section 504 and that in those cases where an individual poses a significant risk of communicating an infectious disease to others in the workplace, that coverage and the benefit of that act would be denied unless a reasonable accommodation would eliminate that risk.

But the holding of the *Arline* case interpreting section 504, the recommendations of the Presidential Commission chaired by now Secretary of Energy, Admiral Watkins, and the views of the Surgeon General are the views of the President.

The current language and the current posture of the treatment of these situations as they are set forth in the present draft of the act are supported by the administration.

Mr. **Dannemeyer**. Our time has just about expired. The *Arline* decision presented the applicant in that case with tuberculosis. I am not aware that TB is something that is acquired as a result of conduct whereby the person who acquires it knows when they engage in the conduct they are going to get TB.

The decision of the AIDS Commission, to which you referred, was not unanimous. It was an 8-to-5 decision.

I question the whole *Arline* decision itself was not a unanimous decision of the U.S. Supreme Court. I question the public policy statement that a society is going to go down the road of extending disability status with all the protection it entails to somebody who intentionally engages in misconduct and as a result of that misconduct acquires a communicable disease.

It is not unlike a young man who kills both parents and then throws himself on the mercy of the court because he is an orphan. Is this what we seek to do for our society?

Mr. **Thornburgh**. I can only respond, Congressman Dannemeyer, with the administration's view.

The President has made a pledge to support legislation against AIDS discrimination based on the findings of the Watkins Commission. I think that it is not always easy to prove how AIDS in particular was acquired and that the kinds of rules which you suggest——

Mr. **Dannemeyer**. We know statistically that nationally about 70 percent of the cases are male homosexuals and about 23 percent are intravenous drug users.

That was made clear to us. Is it sound public policy for a society to give disability status and all the protection that it entails to individuals in our culture who have intentionally engaged in conduct where going in they knew they were engaging in activity to put them at risk? That is the question.

I have some other questions. I realize my time has probably expired.

Mr. **Edwards**. The gentleman from Virginia, Mr. Slaughter.

Mr. **Slaughter**. I have no questions, Mr. Chairman.

Mr. **Edwards**. The gentleman from Florida, Mr. James.

Mr. **James**. I am sympathetic with the rights of people who are disabled and I think this is a great move in the direction of these people, to protect their rights. Thank you so much for your testimony. It has been very enlightening and allays some of the fears that I had with some of the specific language.

There are some questions that have been asked of me. Maybe you have covered them but I am not sure I have the answers.

For example, in retail stores is there anything in this act that suggests that you now have to change the height of all displays in all grocery stores, et cetera, to where it would be—in other words, for someone in a wheelchair to be able to reach all goods in a store.

Could that be a reasonable interpretation to put on this act?

Mr. **Thornburgh**. Not as a blanket requirement.

Mr. **James**. Is the position that this statute could be used for this purpose to say that all shelving could not be more than three feet in height so that you could reasonably reach the shelves? Would that be a possible interpretation under the act or not?

Mr. **Thornburgh**. No. I think what you are talking about are reasonable accommodations. If you have the precedents of section 504 to look to and carry those standards forward into ADA, any kind of blanket requirement that those specific undertakings be entered into by a retail store would, to my view, be unthinkable.

Reasonable requirements without undue burdens, it seems to me, would exclude the notion of going into a store and saying you have to lower every shelf to accommodate someone who comes in in a wheelchair.

Mr. **James**. Could the businessman look to any precedent to define these?

Mr. **Thornburgh**. They are defined under section 504, the regulation and cases interpreted over the last 16 years. It is for that reason that I feel confident in recommending them to the Congress because they, as I indicated earlier, are not made up out of the whole cloth. There is a body of law that can provide guidance to an individual.

Mr. **James**. Then your testimony is that it would be unreasonable to require that.

Mr. **Thornburgh**. It sounds unreasonable to me.

Mr. **James**. You think the law would require that?

Mr. **Thornburgh**. I think it would be imposing an undue burden.

Mr. **James**. Your lawyers have told you that?

Mr. **Thornburgh**. Yes.

Mr. **James**. Have they said that?

Mr. **Thornburgh**. A man who acts as his own lawyer has a fool for a client.

Mr. **James**. I have heard that said, but the Attorney General——

Mr. **Thornburgh**. Even Attorneys General.

Mr. **James**. I believe the Attorney General is my lawyer in many instances.

Mr. **Thornburgh**. I hope that you don't have a fool for a lawyer.

Mr. **James**. Indeed, we both hope that. For new establishments, it will be a different standard, would it not?

Mr. **Thornburgh**. Yes.

Mr. **James**. My same question is posed for new establishments, under section 504, under the law pursuant to the advice or research of the Attorney General's Office, what would my answer be then to people who would ask me will the height limitation be changed on new store construction or the grocery story, hardware stores, clothing stores, et cetera. Do you have an answer for that type of thing?

Mr. **Thornburgh**. Once again, you are relying upon standards of reasonableness and a desire to avoid undue burdens.

Mr. **James**. I understand that. Let's pretend you are my lawyer. I come in and I say to you as my attorney and I am a businessman, I want to build a new store and I want—my shelves are going to be designed x height limitation, that will be the normal height, whatever they are in the store without consideration of this act.

What would the Attorney General's advice be to me as to height on a new store if he were my lawyer, understanding reasonableness is not what I am asking. I want to be reasonable but the question is what is the reasonable height.

Mr. **Thornburgh**. I think, again, you have thrown back on precedent—the ATBCB—I remember the acronym, but not the name, the Access Board will look at those kinds of standards but the simple answer to the particular case you have described is that if there is a clerk there who is willing to assist an individual who might be using a chair, for example, that that is the kind of accommodation that can be made at very little cost and fulfill the reasonable requirements of the act, it seems to me.

These are regulations that will be used to flesh out the bill once passed, but passed in the form that it is presently, I can't conceive of a requirement that would—in particular, the answer to the first question it seems unthinkable that you would cause someone to have to sacrifice half their inventory space to lower the shelves to that level.

In new buildings, I think by that time people will be aware of their obligations under the act and in the case of a person using a chair in the store, saying I want to see something on that shelf, there would be someone to assist them.

If they refuse and say they are not going to make reasonable accommodations, there might be a violation but that seems to me to be unreasonable on the part of the individual who is in charge of this.

Mr. **James**. On existing establishments—the reason I asked the question is on existing establishments there is a different standard and I can imagine all stores now having a totally different elevation for clothing racks, dropping them a foot. To the extreme if that were required.

Apparently, you don't feel that it is.

Mr. **Thornburgh**. I am not an extremist.

Mr. **James**. You don't think there is a new standard for shelf elevation for new stores, is what you are saying?

Mr. **Thornburgh**. I understand that we have a period of time during which regulations would be prepared and drafted and promulgated available for public comment. We intend to carry out aggressive public information and technical advice.

We want to help people comply with the act, not prosecute them for not complying with the act.

Mr. **Edwards**. The time of the gentleman has expired.

Mr. Fish has assigned his time to Mr. McCollum.

Mr. **McCollum**. I want to clarify some things because there are three or four committees looking at this in the House and our leadership, Democrats and Republicans have looked at clarifying language. I assume that you have no problems with some of the types of things that the leadership has been considering for clarifying when a new clean bill is introduced.

One of them, for example, is the contagious disease area where we have talked about the fact that you don't have to comply if you are hiring a handicapped person if they have a contagious disease and they pose a direct threat to somebody's health—in the Senate, I understand in the report language they equated that to the language of significant risk and it was our intent at the present time to encourage substitution of the word "significant risk" for direct threats, since that seemed to be more simple language.

Mr. **Thornburgh.** That is the language that the Supreme Court used in the *Arline* case.

Mr. **McCollum.** Second, there was a concern that undue hardship was not always clearly linked to reasonable accommodations. In other words, there are any number of places here we talk about reasonable accommodations and we also talk about undue hardship, but there is a question technically whether or not we really tied that down.

I assume that an undue hardship exception for wherever a reasonable accommodation is a requirement and it would not be a problem if we made that clear.

Mr. **Thornburgh.** Those are section 504 terms and have developed an accepted meaning over the years and for that reason I think are useful rather than introducing a different and more detailed definition.

Mr. **McCollum.** I think there was concern as to what else we might add to undue hardship, but there was simply some concern that the undue hardship language be linked throughout all of this for fear that this would be more litigated than 504.

Two or three substantive concerns. I have been asked by people and I have never gotten a good answer, though I have listened to people argue it a few times, saying basically it is already in 504 and it is no problem and there must be somebody out there covered by it, but in the disability definition, we have three parts, (a) physical or mental impairment of substantial limits of one or more of the major life activities of such individual (b) a record of such an impairment or (c) being regarded as having such an impairment.

A lot of my disabled community said we don't know why you need being regarded as having such an impairment since they can't imagine a case where there wouldn't actually be a physical or mental impairment and that would actually be covered, you have it or you don't have it.

Isn't that excess language just to appease somebody who is worried that we have to have everything but the kitchen sink and we might overlook something? Is there an example where that comes into play?

Mr. **Thornburgh.** It draws, as you note, on section 504, and I think probably the best reason for that is in the *Arline* case, where the court said, "By amending the definition of handicapped individual to include not only those who are actually physically impaired, but also those who are regarded as impaired and who as a result are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapped as are the physical limitations that flow from actual impairment."

Mr. **McCollum.** But I can't imagine, Mr. Attorney General, even though that is true, that we acknowledge that, that we can do that in a sense of Congress where you would have a case where somebody could be regarded as, and that would be the handicap, when they didn't have a handicap already. In other words, it is a myth or a fear, but it presents a lot of heartburn to people looking at this, not knowing what might some day be litigated over this, even though we have had language on the books for 10 years and nobody has done it.

Mr. THORNBURGH. I don't suggest that heartburn is disabling or gives rise to being regarded as impaired, but certainly cancer does. Someone may have cancer, they are perfectly capable of doing the job, but there may be persons who think they cannot do it because of this disease.

A person with a limp may not be handicapped in any substantial way, but people, because of the myths and misunderstandings and fears that have grown up about this whole aspect of our culture and the desire, I think that the court has stressed that is embodied in section 504 is aimed at buttoning up these kinds of cases where a disability may not meet the first two——

Mr. MCCOLLUM. I understand——

Mr. THORNBURGH. Major life activities definitions——

Mr. MCCOLLUM. I understand where you are coming from. I haven't been able to see it myself. The question we have had as to essential functions comes from concerns businesses have with regard to who is going to decide the qualifications of an individual with a disability, whether or not that person can perform the essential functions of the employment position.

I know that language is in 504, and there are a couple of cases on what essential functions mean. My concern is that with the broad sector of the public, rather than just Government contractors having the law apply, there is likely to be a lot of litigation over individual cases, because essential functions can be in dispute.

A lot of folks can disagree on what the essential functions of a job are. In a restaurant business, somebody could be the busboy or whatever. Does everybody have to have a job description that includes every conceivable thing when they are hired? Businessmen say we don't want to have to do that, we don't do that now.

If somebody is going to come over our shoulder afterwards and say that the guy can do the essential functions of this job, and we decided what those functions were, somebody else is going to disagree what they are. How do we answer that? And do we need regulations to specifically spell this out, or can we better refine it in law—what do you think?

Mr. THORNBURGH. I think that some of the people who raise questions of this kind are suspicious of the Congress and the executive branch as seeking to foist some kind of unreasonable requirement upon them.

I don't happen to think that there is anything inherently potentially harassing in the use of the term "performing essential functions." The Supreme Court has made it clear in a whole line of cases dealing in this area that they don't want to engage in a wholesale second-guessing of employers regarding what is demanded by a particular job, and I can certainly subscribe to that.

We have enough today dealing with the egregious type of situation that was referred to earlier on, patterns and practices where someone on a wholesale basis decides they are simply not going to hire people with handicaps.

I would—certainly you have to take a look at each of these phrases and terms, and I don't mean to denigrate their importance, but I think the notion that we in the Department of Justice are going to support any kind of harassing or second-guessing of employers in this regard, I think the vast majority, the overwhelming majority of employers are perfectly willing to consider people with disabilities who can perform a job, and those that aren't deserve a nudge in the right direction, and will get it from this legislation.

I just—I am afraid I don't fear the, what I would characterize as sometimes hypertechnical assessments of some of these terms. I understand them, but don't——

Mr. McCollum. The only reason I raised this one as opposed to others is I have heard it more than anything else.

Mr. Thornburgh. These acquire a life of their own.

Mr. McCollum. If litigation really takes hold in this area, we will both be second-guessing them. One other thing I would like to ask, and I would like to submit questions for details, in the broad policy question area, intentional versus unintentional.

That runs throughout the questioning of the business community, the pattern of practice is here, but there is a great concern expressed over the fact that somebody can do a lot of this unintentionally and get just as much punishment as someone who does it intentionally.

Shouldn't there be more punishment for the guy who says, "I know what the rule is, but I am going to refuse to remove the barrier?" Why should you have a $50,000 fine——

Mr. Thornburgh. As a practical matter, the only one subject to a $50,000 fine is going to be the intentional egregious violator. We don't support the concept that legislation should lay traps for the unwary. That person needs guidance on how to comply, not a crackdown due to some——

Mr. McCollum. But the law does allow you to?

Mr. Thornburgh. It does. It allows me to act unreasonably. I think I would have to answer to you and your colleagues and my boss if I were to do so, but I hope Representative Frank's characterization didn't fall on deaf ears, that we have an intention of seeing that this law, a new law——

Mr. McCollum. You have reassured me, and I believe you, but this law is going to be around for a lot of Attorneys General and other administrations?

Mr. Thornburgh. Probably some more reasonable than I.

Mr. Fish. Would the gentleman yield?

I think this is an appropriate place in the record, Mr. Attorney General, to state that the discussion that you two have had has been very helpful and being regarded as having an impairment as the third prong of the term "disability" is discussed in some detail on pages 23 and 24 of the Senate report, and where it gives examples such as a severe burn victim or somebody who might be discriminated against in employment with controlled diabetes or epilepsy or wearing a hearing aid or somebody refused entry into a restaurant because of having cerebral palsy.

Thank you.

Mr. **Edwards**. We thank the Attorney General for helpful testimony today, and we congratulate the Department and administration on its affirmative attitude on this legislation. I know that no member wants to miss the vote on the flag.

Further questions can be submitted to you in writing, Mr. Attorney General, and thank you again.

The committee is adjourned, and in about 5 minutes, the subcommittee handling this matter will be called to attention for further hearings on the ADA.

[Whereupon, at 12:20 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

AMERICANS WITH DISABILITIES ACT OF 1989

THURSDAY, OCTOBER 12, 1989

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:30 p.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, F. James Sensenbrenner, Jr., and Craig T. James.

Also present: Stuart J. Ishimaru and Ivy L. Davis, assistant counsels; and Colleen Kiko, minority counsel.

Mr. Edwards. The subcommittee will come to order.

This afternoon, the subcommittee continues hearings on the Americans with Disabilities Act. Just moments ago, the full committee heard testimony from the Attorney General in full support of the bill, as passed by the Senate.

Yesterday, the subcommittee heard testimony from a number of groups who were concerned about the bill. I believe that most of their concerns can be accommodated within the confines of the bill, and I look forward to working with them to clear up any uncertainties.

Without objection, I would like to place in the record statements from the Associated General Contractors of America and from Prof. Stephen Fawcett and Barbara Bradford of the University of Kansas.

[The prepared statements follow:]

STATEMENT BY
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO
THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF
THE HOUSE JUDICIARY COMMITTEE

ON
H.R. 2273
THE AMERICANS WITH DISABILITIES ACT OF 1989
OCTOBER 2, 1989

SKILL RESPONSIBILITY INTEGRITY

AGC is:

- More than 32,500 firms, including 8,000 of America's leading general contracting firms, responsible for the employment of 3,500,000-plus employees;
- 102 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

The Associated General Contractors of America (AGC) welcomes the opportunity to comment on H.R. 2273, "The Americans with Disabilities Act of 1989." AGC supports the goals of this bill, and its Senate companion, S. 933. AGC cannot, however, lend its support to all of the specific provisions of the proposed legislation, because some provisions could have a negative impact on the construction industry's effort to stop unlawful drug use, and to ensure jobsite safety. AGC is also concerned that vague language will waste resources on litigation.

DRUG USE

First, AGC believes that it remains important to ensure that the legislation will not hinder the business community's efforts to discourage unlawful drug use. The construction industry has found that drug users not only cut productivity, but also increase accident rates.

Recent studies reveal that as many as 23% of all American workers use drugs on the job, and that drug use may account for over half of all accidents in the workplace. Some AGC members have found that 30% to 50% of their job applicants cannot pass pre-employment drug tests. One AGC member recently found that 40% of its employees tested positive for drug use after workplace accidents. Responding to its members' concern, AGC has adopted a "zero tolerance" policy that does not tolerate any level of unlawful drug use by anyone in the construction industry.

S. 933 appears to protect the employer's right to test for unlawful drug use, but H.R. 2273 does not. AGC urges the members of the subcommittee to take the Senate's approach, in order to avoid the problem that the Rehabilitation Act of 1973 has created for federal contractors and certain others. Within the last month, a federal court has held that the 1973 statute forbids the Immigration and Naturalization Service to discharge a drug-addicted attorney arrested for cocaine use and possession of narcotics paraphernalia. Nisperos v. Buck, Case No. CC-88-4039-WWS (N.D. Cal. September 12, 1989).

CONSTRUCTION JOBSITES

AGC's second concern is that the proposed legislation will compromise sound employment decisions made in the interest of jobsite safety. The unique nature of the temporary construction jobsite, with its ever-changing structure, makes it impractical, if not impossible, to guarantee the safety and health of all disabled Americans who might seek employment on construction jobsites.

The proposed definition of "disability" is extremely broad. The U.S. Supreme Court has held that elementary school teachers with contagious tuberculosis fit within the similar definition in the 1973 statute. Nassau County School Board v. Arline, 480 U.S. 273 (1987). More importantly, the courts have held that construction workers with congenital back anomalies fit within that definition, even though they risk injury from routine lifting, and other physical work required on construction jobsites. E.E. Black, Ltd. v. Marshall, 497 F.Supp. 1088 (D. Haw. 1980). The construction industry simply cannot afford to employ a helper for everyone susceptible to physical injury from lifting or other work required on construction jobsites.

Most employers have at least the opportunity to amortize the cost of accommodating a disabled individual over a long period of time, or to build the cost into their price structure. Construction employers, however, have neither of these advantages. Construction employers have to amortize the cost of making an accommodation over the short time available to complete a particular project. Construction employers cannot build the cost into their price structure because the cost is not foreseeable at the time when bids are due.

Other terms used in the proposed legislation, such as "reasonable accommodation" and "undue hardship," are simply too vague to assist construction employers in their efforts to comply with the law. These terms are subjective, and will tend to waste resources on litigation.

AGC is cognizant of the recent colloquy between Senator Hatch and Senator Harkin on "reasonable accommodation" and "undue hardship." On September 7, 1989, during the Senate debate on S. 933, Senator Hatch questioned whether that bill takes "the nature of a particular industry into account," and Senator Harkin responded that "each industry, and indeed each separate business, may be unique in the type of accommodation employers are able to provide without significant difficulty or expense." Senator Harkin later stated that "[c]onstruction is unlike manufacturing, and most other types of industries, in that an employer is usually confronted with monitoring multiple worksites at remote locations...."

AGC appreciates this effort to clarify the vague terms in the proposed legislation, but believes that the House of Representatives must do more. The statutory language still invites case-by-case determinations, on specific facts, and without objective guidance.

CONCLUSION

In closing, AGC would like to thank the subcommittee for the opportunity to express these views. AGC strongly supports the cause of the many disabled Americans who simply seek their rightful place in the American workplace. AGC believes that all citizens should be, and are committed to, equal opportunity for all in our society, and in every respect. With that said, AGC urges the subcommittee to exercise the utmost care in the drafting of this legislation to ensure that, unlike recent legislation enacted by Congress, extended debate and corrective legislation does not become necessary later to correct mistakes that maximum care can now avoid.

PREPARED STATEMENT OF STEPHEN B. FAWCETT, PH.D., PROFESSOR OF HUMAN DEVELOPMENT AND RESEARCH ASSOCIATE OF THE RESEARCH AND TRAINING CENTER ON INDEPENDENT LIVING [RTCIL] and Barbara Bradford, Training Associate, RTCIL, University of Kansas, Lawrence, KS

We and our colleagues have conducted a study, now 8 years in running, of the concerns of people with physical disabilities. The study captures disabled citizens' ideas for improving the communities in which we all live. This research information provides a perspective of how people with disabilities themselves see the issues and options that affect their independence. Accordingly, it may be helpful to your deliberations about the Americans with Disabilities Act.

Using our Concerns Report Method, we have collected data from over 17,000 people with physical disabilities in 12 states. Participants were drawn from entire states, such as Indiana and Iowa, large urban areas, such as Los Angeles and Orange County, California, and many small rural communities. Survey participants included people with all types and severities of impairments. Their living conditions are consistent with the Harris poll sample; about two thirds are unemployed and have incomes below poverty guidelines.

Unique surveys were developed by local groups of disabled citizens. They identified the top problems and strengths in each community. Consumers discussed the issues in town meetings and generated their own ideas about what could be done to improve things.

We have attached, for the record, a copy of the latest edition of the summary report on this research, a document entitled Common Concerns of Disabled Americans: Issues and Options. We will draw on this report in our testimony.

Imagine: People from places as different as Anaheim, CA; Des Moines, IA; the Missouri Ozarks, and the Arapaho-Shoshone reservation in Wyoming saying quite similar things about the barriers that affect their personal independence. This representative group of over 17,000 disabled citizens says, with a united voice, and many times over, that they face limited opportunities and discrimination in employment, work disincentives, unwillingness of employers to provide reasonable accommodation, and lack of access to public transportation, streets and sidewalks, and commercial and public buildings.

Disabled citizens spoke about public accommodations issues through specific survey questions and comments at the town meetings. The data support retaining, and perhaps even expanding, the scope of coverage as it now reads.

Our concerns data on access to commercial services show an average rating of 87% on importance (very high), with a satisfaction rating of only 47%. Issues of public access had a high importance rating of 81% and a relatively low satisfaction rating of 48%. What if a corporation like McDonald's conducted a similar survey and found that satisfaction with its fries was only 48%? We can bet that there would be more than symbolic action.

What people really seem to care about is access to stores, local restaurants, public buildings, banks, utility companies, and service agency offices: those places necessary for the everyday conduct of all of our lives. Can I get to the grocery store or discount shopping center? And, if I can get there, can I get in it and around it?

To restrict the coverage of the bill to motels, hotels, places of entertainment, and the offices of health care providers leaves out many of the places necessary for the everyday conduct of people's lives. Also, since the majority of people with disabilities are poor, access to fine hotels and restaurants is something many can only hope to enjoy some day.

It is essential that hotels, motels, and recreational facilities be accessible on an equal basis, and critical that access to health care is available to all Americans. But, to restrict the scope of the ADA to these places ignores the basic rights and needs of the great majority of disabled Americans, leaving them socially isolated in their homes, and still barred from equal participation in society. People are calling for their rights to access to the everyday places in their own neighborhoods and towns.

To summarize, we found substantial and widespread dissatisfaction with an array of access issues by this representative group of the 36 million disabled Americans. And, with the imminent passage of the ADA, Congress has demonstrated its responsiveness.

But, what about implementation? How can this important civil rights legislation be implemented in places as diverse as Bismark, North Dakota and Los Angeles? How can it be done in a way that minimizes litigation by angry consumers and limits unjustified claims of "undue burden" by businesses?

A successful implementation strategy must balance potentially conflicting interests: the rights to equal access and opportunity and the responsibility to avoid placing an undue burden on those public and private entities accountable for making changes.

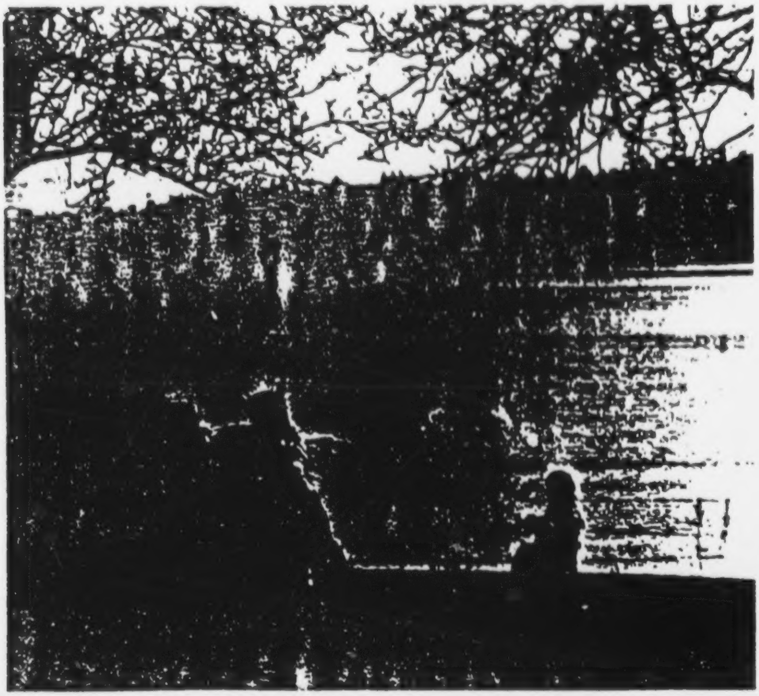
The town meetings provided an insight that may be helpful. In gathering after gathering, disabled citizens stood ready to take significant responsibility for ensuring that their basic rights are met. There was a consistent theme of self-help: what we ourselves can do to make things better.

We recommend that the technical assistance amendments for the ADA encourage self-help initiatives. Consumers should be involved in setting access goals in local communities. Disability Ambassadors programs might be established to promote person-to-person contact between local consumer representatives and businesspeople, and to negotiate reasonable accommodations. Self-help micro-grants might be awarded to encourage citizen involvement in setting goals, working for their implementation, and monitoring goal attainment. Local implementation scorecards might be used to make public each community's progress in implementing the ADA. The national network of over 300 independent living centers could play a role in supporting these self-help initiatives and negotiating differences in the successful implementation of the ADA.

We hope that this testimony contributes to your discussion about this, one of the most important pieces of civil rights legislation of our times. Maximum involvement by disabled citizens in the law's implementation can help bring down the barriers of discrimination. Our collective actions should help bring us a step closer to the long-awaited dream of full access for all our citizens.

Common Concerns of Disabled Americans: Issues and Options

by Yolanda Suarez de Balcazar, Barbara Bradford, and Stephen B. Fawcett



Social Policy, 1988, 19 (2), 29-35.

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The hallmark value of the disabilities rights and independent living movements is the assurance of equal access to all activities society offers, both work- and leisure-related. Over 30 million people with disabilities accept responsibility for their work, family, and individual lives. Their substantial contribution to society can be attributed both to personal competence and to the strengths of those communities that foster and support attempts to live independently. However, there are still many physical and social barriers that limit adequate jobs, housing, accessible transportation, and other needed services. These community problems thwart even the most heroic personal attempts to pursue a full life.

This article outlines the major problems in communities that limit independence. It also provides alternatives for action from the perspective of people with disabilities. It summarizes quantitative data from nearly 13,000 people with disabilities in 319 communities in 10 states and provides qualitative information about the issues and options they identified during local town meetings and public forums. This compendium presents common concerns of people with disabilities and their insights into what actions would help assure equality of opportunity.

Questionnaires were administered to all identified citizens with disabilities in the local community or state. Sponsoring organizations included independent living centers, state vocational rehabilitation agencies, and consumer advisory committees. Average scores for importance and satisfaction were used to identify relative strengths (i.e., items of high importance and high satisfaction) and possible problems (i.e., items of high importance and low satisfaction). Finally, qualitative information was obtained when the results of each survey were discussed in town meetings. Disabled citizens discussed major issues, identifying specific dimensions of issues and generating possible solutions.

YOLANDA SUAREZ DE BALCAZAR is research associate and BARBARA BRADFORD is training associate at the Research and Training Center on Independent Living, University of Kansas, where STEPHEN B. FAWCETT is research associate and professor in the department of human development. This article is adapted from a Research and Training Center publication.

MAJOR PROBLEMS IDENTIFIED BY DISABLED AMERICANS

This section provides a summary of 18 issues identified as major problems, which are organized alphabetically by category headings. Under each category, problematic aspects are noted as well as the total number of participants who responded to surveys in which that issue was chosen as a top problem. The overall average importance and satisfaction ratings for all respondents are also presented.

Assistive Devices: Affordability and Availability

The issue of assistive devices (e.g., wheelchairs) involves aspects such as affordability, availability of financial assistance, cost of services and repair, cost of rental, and price. Six related survey items were chosen by consumers and responded to by 6,355 people with disabilities in 6 different surveys. The issues received consistently high importance ratings, an average of 80 percent, and relatively low satisfaction ratings, an average of 42 percent.

Consumer-Identified Dimensions:

- Assistive devices, such as wheelchairs, are very expensive. Most people with disabilities do not have enough money to purchase devices.
- Rental of assistive devices is almost nonexistent. If rental is possible, consumers don't know where to go or get needed information.
- Medicaid and Medicare do not cover all assistive devices.

Consumer-Generated Alternatives:

- Change legislation regarding Medicaid and Medicare to cover purchase and repair of assistive devices.

Commercial Services: Accessibility

The issue of accessibility of businesses, particularly public restrooms, has been selected as a problem in three different surveys. Two related survey items were responded to by 299 consumers. The issues were rated with an average importance of 87 percent and an average satisfaction rating of 47 percent.

Consumer-Identified Dimensions:

- In many businesses and restaurants, the restrooms are inaccessible.
- The restroom doors are too hard to push, and the stalls are too narrow.

Consumer-Generated Alternatives:

- Make a list of accessible and responsive businesses.
- Survey businesses and provide feedback and suggestions.
- Write letters to local businesses about upgrading facilities.
- Consumers should keep informed about and review access plans and permits for new construction in the community.

Commercial Services: Availability of Discounts

A second issue related to commercial services and identified as a problem is the availability of special rates for disabled consumers. This issue was selected in one survey involving 1,185 respondents, with an importance rating of 82 percent and a satisfaction rating of 35 percent.

Consumer-Identified Dimensions:

- Disabled people do not get the same discounts and shopping privileges as senior citizens. Most disabled people are on a very low fixed income.

Consumer-Generated Alternatives:

- Independent living centers can sell discount cards to consumers for use with participating merchants, as was done by Westside CIL in Los Angeles.
- Have a group of disabled people discuss a proposal with local merchants.

Community Support and Responsiveness

This category includes issues related to family, community and government support in meeting the needs of persons with disabilities. Five somewhat related items were chosen by 1,914 consumers in six surveys. They received consistently high importance ratings, with an average of 86 percent, and relatively low satisfaction ratings, with an average of 46 percent.

Consumer-Identified Dimensions:

- Families and communities do not encourage disabled members to be independent.
- The community does not provide opportunities or assistance for disabled

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people to live independently.

- There are not enough support groups available for people with disabilities and their families.
- Sexuality counseling for people with disabilities is not available.
- Local governments are unresponsive to disability issues, especially if solutions cost money. For example, disabled citizens are discouraged from registering and voting by inaccessible registration sites, polling places, and lack of transportation.

Consumer-Generated Alternatives:

- Encourage community groups to organize support groups and events to involve disabled people and their families.
- Encourage churches to work with support groups, and include disabled people and their families in church activities.
- Use local media to feature stories about including people with disabilities in community activities.
- Ask city councils for help in organizing programs that will encourage independence for disabled people and their families.
- Independent living centers should provide training for their staff counselors in sexuality counseling or bring in professional counselors for a workshop and provide materials.
- Consumer groups should represent themselves at city council and county court meetings, become familiar with city budgets, and advocate for funds for access improvements and disability programs.
- Consumer groups should encourage and assist disabled citizens to register to vote.
- Use the American Civil Liberties Union to enforce existing access and registration laws.

Disability Rights and Advocacy

Issues related to involving disabled citizens in advocacy activities, increasing their knowledge about their rights, and training in self-advocacy were selected in four different surveys. Three related questions were chosen by 2,430 people with disabilities. They received an average importance rating of 88 percent and an average satisfaction rating of 45 percent.

Consumer-Identified Dimensions:

- People with disabilities are unaware of their legal rights.
- Most people with disabilities are unaware of what pending legislation at state and national levels they should support or oppose.
- People with disabilities need training in forming advocacy organizations.

Consumer-Generated Alternatives:

- Professionals and independent living centers can foster local and state leadership within the disabled community.
- People with disabilities need to inform themselves and attend advocacy meetings at all levels, get on mailing lists for disability groups involved in legislation, and obtain names, addresses, and numbers of elected officials.
- Disabled consumers should organize locally around identified issues and connect with state and national groups.
- Training in advocacy skills should be provided.

Employment Accommodations, Disincentives, and Training

Five survey items related to job accommodations in the workplace, work disincentives, and quality of job assistance and training programs were identified by 9,118 consumers as relative problems in six surveys. They received an average importance rating of 83 percent and an average satisfaction rating of 42 percent.

Consumer-Identified Dimensions:

- Many businesses do not provide reasonable accommodations in the workplace.
- Work disincentives still exist within the social security system. In addition to loss of economic benefits are losses or reductions in medical benefits, housing subsidies, food stamps, attendant services, etc.
- Disabled job hunters lack basic job-seeking skills and are unaware of incentives to employers and laws prohibiting discrimination.
- Blind people have lost their tax credit; other disability groups were never eligible.
- People with disabilities do not know where to go for job training or assistance in finding a job.

Consumer-Generated Alternatives:

- Consumer groups need to form a coalition to lobby legislators at federal and state levels for tax credits.
- VR could offer training in job-seeking skills.
- Consumer groups should develop guidelines on what constitutes reasonable accommodation in the workplace.
- Disseminate information about where to go for job training skills and job-related assistance.

Employment Discrimination

Two survey items related to job discrimination were identified by 9,314 consumers as top problems in eight surveys. They received an average importance rating of 86 percent and an average satisfaction rating of 41 percent.

Consumer-Identified Dimensions:

- People with disabilities are discriminated against because of their disability.
- Qualified disabled individuals are not given the same opportunity as nondisabled people.

Consumer-Generated Alternatives:

- Consumers need to teach disabled job seekers about proper attitudes and how to develop a businesslike demeanor when dealing with a potential employer. Disabled people must sell an employer on their abilities and not rely on sympathy.
- If a specific employer is perceived as insensitive, invite a representative of that company to speak to a disability group about employment.
- Independent living centers and advocacy groups need to encourage and assist disabled job applicants and employees to enforce laws and regulations prohibiting discrimination.
- Disabled individuals can contact the Job Accommodations Network or similar resources for help in locating jobs and training, marketing themselves to prospective employers, and obtaining reasonable accommodation.

Employment Opportunities

Two survey items related to employment opportunities were identified by 9,412 consumers as relative problems in 11 surveys. They received an average importance rating of 84 percent and an average satisfaction rating of 40 percent.

Consumer-Identified Dimensions:

- Job opportunities for people with disabilities are very limited.
- If there is a nondisabled person and a disabled individual applying for a

job, employers prefer to hire the nondisabled person.

Consumer-Generated Alternatives:

- Consumers should educate employers in tax credits, reasonable accommodation, and advantages of hiring disabled employees.
- Disability groups must keep a coalition going at the national level to lobby for reduction of work disincentives.
- Job placement people should know which employers routinely hire disabled applicants.
- Use publicity to inform the community about job needs, interests, and capacities of disabled people, similar to TV spots from Job Service on specific jobs.
- Talk with industries to design programs for people with disabilities similar to programs designed for immigrants.

Handicapped Parking

One survey item related to the issue of enforcement of parking ordinances was identified as a major problem by 8,607 people in 13 surveys. The item received an average importance rating of 83 percent and an average satisfaction rating of 41 percent.

Consumer Identified Dimensions:

- There are not enough handicapped parking places close to shopping and workplaces.
- Many spaces are not wide enough to unload wheelchairs or put down van lifts.
- Some spaces are not well-marked with an upright sign.
- Police do not ticket violators as often as they should.
- Courts are lax in enforcing handicapped parking laws.

Consumer-Generated Alternatives:

- Review local statutes, seek state uniformity. Include private as well as public zones.
- Ask local mayors to publicize local ordinances.
- Consumer groups can conduct public awareness campaigns and letter-writing campaigns to local officials.
- Develop rapport with several police officers to assure better enforcement.
- Conduct study sessions with police, courts, and consumer groups to promote enforcement.
- Consumers can monitor violations and use data to advocate for compliance.
- Consumers can discuss parking problems with merchants where they shop.
- Consumer groups can distribute stickers to violators.
- Consumers can attend city council meetings and voice concerns to get adequate legislation.
- Consumers can advise businesses about adequate spaces and upright signs.
- Consumer groups can patronize businesses who provide and enforce handicapped spaces.
- Publicize how to get parking IDs.
- Increase fines to over $25 to put teeth into the law.
- Form coalitions among groups needing access and parking.
- Provide consumer consultation in design of spaces.
- Put parking places on end of row for van lifts. In Anderson, IN, violators get a "candid camera" treatment. In a cooperative effort between local consumers and the town's newspaper, a photo and brief statement by violators appeared on the front page of the local section.
- Some police departments have deputized local disabled consumers to ticket handicapped parking violators, paying their salaries from fines.

Health Care: Affordability and Availability

Six survey items were selected relevant to the availability and affordability of health care, including whether hospitals accept Medicaid and Medicare, regulations for Medicaid and Medicare, and sensitivity of health care providers to consumers. Items were identified as relative problems by 3,485 consumers in seven surveys. They received an average importance rating of 88 percent and an average satisfaction rating of 48 percent.

Consumer-Identified Dimensions:

- Increasing numbers of doctors are refusing to take Medicaid or Medicare, because payment is very late and inconsistent.
- There is no respite care for families caring for disabled and elderly family members.
- People with disabilities often cannot afford regular, nonemergency medical care and medications.
- Transportation to medical appointments is difficult, especially regular long-distance transportation, and transportation for rural citizens who go to large cities for dialysis or cancer treatment.
- Medical professionals are often insensitive in dealing with disabled patients, preferring to deal with family members rather than communicate directly with the disabled patient as a responsible adult.
- Medical professionals are often unaware of special medical or physical assistance needs imposed by a disability. Thus, discomfort and temporary setbacks can result or even life-threatening situations.
- The general public is unaware that existing programs do not provide adequate medical care for people with disabilities.
- Disabled consumers are often unaware of medical aspects of their own disabilities or good self-care habits. This occurs because they accept the public's definition of themselves as sick and needing to be cared for rather than healthy human beings responsible for their own well being.
- Another problem is attendant care. If no state attendant care program is available (Wyoming has no Medicaid waiver or state-funded program), there is no paid attendant care for low-income disabled consumers. They must depend on family and friends or live in nursing homes.

Consumer-Generated Alternatives:

- Use local media to describe health problems of people with disabilities and solicit suggestions to solve these problems.
- Organize local volunteers, church and civic groups for medical transportation.
- Consumer groups should educate medical professionals about the special needs of disabled patients. The Association for Retarded Citizens does this for people with developmental disabilities.
- Invite medical professionals to speak to meetings of consumers to increase their own sensitivity and educate consumers at the same time.
- Provide inservice training for medi-

cal professionals in the dignified, courteous treatment of persons with disabilities. This should be conducted by consumer groups and consumer-run agencies.

- Provide education to consumers in how they can advocate for themselves with health care providers.
- Form coalitions with other consumer groups to work on common health care objectives.
- Form a protection and advocacy organization to help disabled patients in cases of unfair treatment by health care providers.
- Educate medical professionals about treating different disabilities as part of medical and nursing school curricula.
- Use mutual support groups, counselors, and self-education to encourage good medical habits, nutrition, exercise, and prevention of illness.
- Locate sources of health care for persons with disabilities; make a directory of these resources.
- Arrange local medical fitness centers for people with disabilities. Provide outreach to commercial fitness centers and provide transportation to them for people with disabilities.
- Place people with disabilities as employees of health care providers (i.e., as social workers and patient advocates).
- Involve independent living centers in training and advocacy.
- Consumer groups at the state level could conduct a survey of health care facilities that covers disabilities served, access to offices and parking, acceptance of Medicaid and Medicare, and sources for financial assistance. This could be conducted through state medical and dental societies and updated periodically.
- Educate consumers about medical aspects of their own disabilities. Train them to advocate for themselves with medical professionals, and teach them to take personal responsibility for educating health care providers about their own appropriate treatment and needs.
- Write government and elected officials about health care issues.
- Attend city council meetings, and petition for city funds to help with medical expenses.
- Seek establishment of adult day care and home health services. Develop directory of doctors who accept Medicaid and Medicare payments for treatment of people with disabilities.
- Provide toll-free legal advice about legal matters relating to nonacceptance of Medicaid and Medicare or refusal of treatment to disabled consumers.
- Advocate for program changes to facilitate more timely and consistent payment of Medicaid and Medicare.
- Advocate for cooperative living arrangements with shared attendant care for those who need help.
- Consumer groups need to present need for attendant care and cost effectiveness data to state legislature.
- Support national groups lobbying for national attendant care programs.

Housing Affordability, Availability, and Accessibility

Six survey items related to the affordability, availability, and accessibility of housing have been identified as major problems by 4,127 consumers in 12 surveys. They received an average importance rating of 86 percent and an average satisfaction rating of 37 percent.

Consumer-Identified Dimensions:

- There is an extreme shortage of accessible, affordable housing for people with disabilities.
- Eligibility requirements and regulations keep some disabled consumers, especially the nonelderly who live with family members or attendants, from living in public or subsidized housing.
- Builders do not comply with existing laws, where laws exist, that require a certain percentage of accessible units.
- Builders are unaware of laws, access codes, and modifications necessary for accessibility.
- Managers and directors of public housing are unaware of, and often indifferent to, the needs of disabled tenants.

Consumer-Generated Alternatives:

- Talk to owners if the manager is uncooperative.
- Disabled and low-income people should lobby social service agencies for housing assistance.
- Disabled consumers should educate city officials on housing needs of people with disabilities.
- Local consumer groups can bring complaints to local housing authorities.
- Consumers can be educated to be aware of tenant rights and raise money to finance suits when necessary.
- Disabled residents should become familiar with codes, where to file complaints where codes don't exist, and how to introduce legislation.
- Groups can obtain 202 and other HUD loans for accessible housing and manage the housing units themselves.
- Examine eligibility requirements for subsidized housing, use net, not gross income.
- A consumer group in Los Angeles located two HUD projects in good neighborhoods, the Telephone Pioneers donated money and labor to upgrade the structure.
- Establish subsidized housing administered by occupants. Provide income subsidy within housing cooperatives.
- Some communities in Minnesota provide vouchers to subsidize rent for housing anywhere in the community.
- Establish a referral network for accessible, affordable housing.
- Enforce existing laws setting aside a certain number of units for people with disabilities.
- Consumers need to educate building professionals and make information available.
- Advocate for statewide legislation to encourage adaptability of units.
- Consumers need to lobby elected officials on lack of accessible housing.
- Disabled community members need to get on housing boards.
- Educate disabled homeowners about programs to help modify their homes for access and safety.

Insurance for Auto, Life, and Liability

This issue refers to the availability and affordability of auto, life, and liability insurance for people with disabilities. This item was selected as a major problem by 2,355 people completing two surveys. It received an average importance rating of 89 percent and an average satisfaction rating of 35 percent.

Consumer-Identified Dimensions:

- Insurance premiums are more expensive for people with disabilities.

- Insurance companies discriminate based on disability.

Consumer Generated Alternatives:

- Have a group of disabled people discuss possible solutions with insurance companies regarding adequate prices.

Insurance for Health Care

One survey question related to the affordability of health insurance was identified as a problem by 5,624 consumers in two surveys. It received an average importance rating of 86 percent and an average satisfaction rating of 38 percent.

Consumer-Identified Dimensions:

- Disabled consumers cannot buy health insurance because of their disability and/or pre-existing conditions.
- Disabled consumers cannot afford health insurance.
- Health insurance often does not cover supplies, equipment, regular medications, or therapies used by disabled consumers.
- Inability to purchase individual health insurance and exclusion from some group policies are serious disincentives to individuals with disabilities looking for work.

Consumer-Generated Alternatives:

- Consumer groups can advocate for national health insurance.
- Disabled consumers can set up health insurance cooperatives as they did in Los Angeles.
- Shared risk insurance is an option so consumers with disabilities and pre-existing conditions can get group insurance.
- Educate consumers about supplemental insurance available through groups such as AARP, professional associations, and credit card holders.
- Publicize the fact that laws in some states (such as Missouri and Kansas) prohibit insurance companies from discriminating against persons with disabilities.
- Independent living centers can train and assist consumers in filling out forms, challenge actions and policies of Medicaid, Medicare, and insurance companies, and assist in advocacy, complaints, and appeals processes.
- Get information from and make use of the state insurance commissioner's office.

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Media Portrayal and Public Information

Three survey items related to media portrayal of people with disabilities and their access to information about services, benefits, and programs were selected as problems by 7,547 consumers in three surveys. The items received an average importance rating of 81 percent and an average satisfaction rating of 39 percent.

Consumer-Identified Dimensions:

- The media do not provide enough information about what is available for disabled citizens.
- The media portray people with disabilities in a negative and unrealistic way, preferring the sensational or pitiful to the everyday and human side of disability.

Consumer-Generated Alternatives:

- Consumer groups should bring accessibility and independent-living issues to the attention of the press.
- Consumers should monitor coverage of disability issues.
- Consumers should educate the media to correct negative portrayals and terminology.
- Consumer groups should meet with service providers about developing a directory of services and programs for people with disabilities that could be disseminated through the media.

Public Access

Issues related to safe access to public places, including availability of curb cuts, accessible entrances, and snow removal, have been selected as major problems. Two related survey items were chosen by 204 consumers in two different surveys, with an average importance rating of 81 percent and an average satisfaction rating of 48 percent.

Consumer-Identified Dimensions:

- Disabled citizens are forced to stay home or use the street, because curb cuts and sidewalks are absent or inadequate, or in some instances, snow is not removed promptly.
- Many public buildings are totally inaccessible or technically accessible with inadequate or unsafe access.

Consumer-Generated Alternatives:

- Discuss among disabled consumers key areas that need to be made accessible.
- Make up an annual priority list of access and safety issues.
- Describe problems in newsletters and solicit opinions from other disabled community members.
- Offer modification assistance to owners of inaccessible buildings and appropriate government and social agencies.
- Offer assistance to government agencies on ways to increase the safety of streets and sidewalks.

Social Services

Four survey items related to information social agencies provide to consumers about services and legal issues were selected as major problems in six surveys. A total of 3,581 consumers responded to these questions, with an average importance rating of 88 percent and an average satisfaction rating of 51 percent.

Consumer-Identified Dimensions:

- Social service agencies fail to inform disabled consumers about all services available to them through their own agency, other agencies, or the community.
- Benefits or services from one agency can limit benefits or services from another agency.
- Most social service agencies are unaware of services available at other agencies.
- Disabled people are referred from one agency to another, often encountering agencies unable to serve them or refusing services.
- Forms and policies of social service agencies are confusing.

Consumer-Generated Alternatives:

- Organize a consumer group to review forms used by social service agencies.
- Form a consumer network for information and referral.
- Create more support groups for mutual assistance.
- Provide corrective feedback and information to social service agencies that fail to inform clients about benefits to disabled consumers.
- Provide social service agencies with training on benefits available to disabled consumers.
- Consumers should demand that VR cases be reopened, if they have not been fully informed about all benefits

available.

- Independent living centers should train consumers in what benefits are available and how to access them effectively.
- Independent living centers or consumer groups could organize regular cooperative meetings involving representatives of all social service agencies in the community, or if such an organization exists, become active and advocate for services to people with disabilities.
- If consumers are referred to an agency unable to serve them, they should contact the referring agency and tell them the referral was inappropriate and why.
- Educate consumers to use the state CAP agency, Legal Aid, and other available legal help when services are unjustly refused.
- Set up courses in self-reliance that teach consumers to use social services such as the one used by the CIL in Anaheim, Calif.

Transportation: Availability and Affordability

Three survey items related to the availability and affordability of accessible transportation services were identified as major problems by 4,008 consumers in nine surveys. They received an average importance rating of 83 percent and an average satisfaction rating of 40 percent.

Consumer-Identified Dimensions:

- Disabled citizens are segregated from the rest of the community and forced to remain at home because of lack of transportation.
- In most areas, public transportation is not wheelchair-accessible, and paratransit is expensive or nonexistent. In rural areas, accessible transportation is available infrequently.
- Lack of transportation is the primary barrier to community participation, education, employment, recreation, adequate medical care, and independent living for people with disabilities.
- Weekend and evening transportation is a problem.
- Transportation between neighboring cities and from rural areas to cities is a problem.
- Ideally, a city should have accessible mainline transportation for those who can use it and paratransit for those who need it.
- Recreational events and facilities are sometimes inaccessible. Transportation to recreational events is unavailable.

Consumer-Generated Alternatives:

- Consumer groups need to work with existing community recreational facilities to make them accessible and usable for people with disabilities.
- Contact organizers of recreational events for transportation for disabled participants.
- People with disabilities need to become involved in the planning of community recreational events and active in interest groups.
- Form a local task force on transportation, decide what local consumers need and want, then fight for it.
- It is against federal law for paratransit to cost more than mainline transportation. Educate consumers about this law, how to make complaints, and how to ensure its enforcement.
- Develop a share-a-fare system as they did in Kansas City, MO, where 900 wheelchair users a month participate.
- Give testimony to state legislatures on transportation funding.
- Have lift buses operate at fixed rates and schedules as they do in Denver, a city with almost 100 percent accessible buses.
- Slow transit schedules to accommodate disabled riders. Drivers should call out stops ahead of time.
- Include disabled drivers in existing driver training programs.
- Develop car pools.
- Conduct public education on varied modes of transportation needed by disabled citizens.
- Submit formal complaints to transportation authorities concerning mainline wheelchair-accessible buses.
- Develop creative rural and small city alternatives. Examples include merging existing systems serving disabled riders (Morgantown, W.V.), ownership of a lift van by a consumer group or cooperative (Cuba, MO), and use of idle church or school lift-equipped buses.

Utility Bills

One survey question related to the affordability of utility bills was identified as a major problem in four surveys. A total of 1,611 consumers answered this survey item, with an average importance rating of 89 percent and an average satisfaction rating of 34 percent.

Consumer-Identified Dimensions:

- Disabled consumers on a fixed income cannot afford inconsistent and high utility bills.
- Because of their medical needs, many disabled consumers cannot survive without water, gas for heat, and electricity to operate their equipment.

Consumer-Generated Alternatives:

- Obtain help to establish programs for weatherization.
- Encourage landlords to weatherize units.
- Educate landlords and disabled homeowners about tax credits for weatherizing and solar installation.
- Encourage consumers to join annualized level payment plans.
- Consumer groups should maintain a list of agencies that help pay utility bills.
- Call local consumer affairs office for help if utilities are shut off.
- Consult local phone company about discounts for disabled consumers.
- Write elected officials describing problems with utility bills and ask for legislative solutions and assistance programs.

This report represents the comments and suggestions of thousands of Americans with disabilities. They have identified specific community features that inhibit independent living, including inadequate job opportunities, job discrimination, insufficient accessible and affordable housing, inaccessible public places, and unavailable and unaffordable service options. These community problems are counterproductive to achieving society's goal of independence.

The common concerns outlined here frame an agenda for public, private, and self-help initiatives. These consumer-generated alternatives feature many practical steps that can be taken at local, state, and national levels. Taken together, these issues and options pose a challenge to all who believe that justice requires equal opportunities to achieve independence. ■

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Common Concerns of Disabled Americans: Issues and Options

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Preface

The hallmark of the disability rights and independent living movements is the assurance of equal access to all activities society offers, both work and leisure-related. Over 30 million people with disabilities accept responsibility for their work, family, and individual lives. Their substantial contribution to society can be attributed both to personal competence and to the strengths of those communities that foster and support attempts to live independently. However, there are still many physical and social barriers that limit adequate jobs, housing, accessible transportation, and other needed services. These community problems thwart even the most heroic personal attempts to pursue a full life.

This report outlines the major problems in communities that limit independence. It also provides alternatives for action from the perspective of people with disabilities. This report summarizes quantitative data from over 17,000 people with disabilities in 12 states and provides qualitative information about the issues and options they identified during local town meetings and public forums. Thus, this report is a compendium of common concerns of people with disabilities and their insights into what actions would help assure equality of opportunity.

The Concerns Report Method

This report on Common Concerns of Disabled Americans is based on research conducted by the Research and Training Center on Independent Living using the Concerns Report Method. The Concerns Report Method provides quantitative data about community features and issues that affect people with disabilities. It also yields qualitative information about consumers' local experiences with these issues and their suggested alternatives for improvement.

This report summarizes information generated from the three group processes that make up the Concerns Report Method: the working group, the Concerns Survey, and the town meeting. Local working groups--composed of people with representative disabilities--reviewed a menu of possible concerns. They then selected approximately 30 issues to appear on each of the 21 unique Concerns Surveys. Each survey item asked for ratings of importance on an issue and satisfaction with that issue (See Appendix 1 for an example and computational formulas). Questionnaires were administered to all identified citizens with disabilities in the local community or state. Average scores for importance and satisfaction were used to identify relative strengths (i.e., items of high importance and high satisfaction) and possible problems (i.e., items of high importance and low satisfaction). Finally, qualitative information was obtained when the results of each survey were discussed in town meetings. Disabled citizens discussed major issues, identifying specific dimensions of issues and generating possible solutions.

Appendix 2 provides a demographic profile of respondents by disability type, age, income, percentage of registered voters, and educational level.

To date, 17,039 people with disabilities have completed one of 21 different surveys using the Disabled Citizens Concerns Report Method. Participants came from 487 communities in 12 different states. Sponsoring organizations included independent living centers (ILCs), state vocational rehabilitation agencies (VR), and consumer advisory committees. Local surveys were developed in California, Kansas, Michigan, Minnesota, Missouri, and Montana. Statewide applications occurred in Indiana, Iowa, Kansas, North Dakota, Oklahoma, South Dakota, and Wyoming. This summary report is based on a review of work conducted during the past 7 years.

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Major Problems Identified by Disabled Americans

This section provides a summary of issues identified as major problems. Problems are organized alphabetically under category headings, such as housing or transportation. Under each category, problematic aspects are noted as well as the total number of participants who responded to surveys in which that issue was chosen as a top problem. The overall average importance and satisfaction ratings (where 100% is highest and 0% is lowest) for all respondents are also presented. Appendix 1 presents the specific survey items in each category, the community or state survey in which they were selected, the number of respondents, and the average importance and satisfaction ratings for each survey.

Summaries follow for each of 19 issue categories: assistive devices, commercial services (accessibility), commercial services (discounts), community support and responsiveness, disability rights and advocacy, education, employment (accommodations, disincentives, and training), employment discrimination, employment opportunities, handicapped parking, health care (affordability and availability), housing (affordability, availability, and accessibility), insurance for auto, life, and liability, insurance for health care, media portrayal and public information, public access, social services and benefits, transportation (availability and affordability), and utility bills.

ASSISTIVE DEVICES: AFFORDABILITY AND AVAILABILITY

The issue of assistive devices (e.g., wheelchairs) involves aspects such as affordability, availability of financial assistance, cost of services and repair, cost of rental, and price. Six related survey items were chosen by consumers and responded to by 8,409 people with disabilities in 8 different surveys. The issues received consistently high importance ratings, an average of 81%, and relatively low satisfaction ratings, an average of 41%.

Consumer-Identified Dimensions

- Assistive devices, such as wheelchairs, are very expensive. Most people with disabilities do not have enough money to purchase devices.
- Rental of assistive devices, such as wheelchairs, is almost nonexistent. If rental is possible, consumers don't know where to go or have needed information.
- Medicaid and Medicare do not cover all assistive devices.

Consumer-Generated Alternatives

- Change legislation regarding Medicaid and Medicare to cover purchase and repair of assistive devices.

COMMERCIAL SERVICES: ACCESSIBILITY

The issue of accessibility of businesses, particularly public restrooms, has been selected as a problem in 3 different surveys. Two related survey items were responded to by 299 consumers. The issues were rated with an average importance of 87% and an average satisfaction rating of 47%.

Consumer-Identified Dimensions

- In many businesses and restaurants, the restrooms are inaccessible.
- The restroom doors are too hard to push, and the stalls are too narrow.

Consumer-Generated Alternatives

- Make a list of accessible and responsive businesses.
- Survey businesses and provide feedback and suggestions.

- Write letters to local businesses about upgrading facilities.

- Consumers should keep informed about and review access plans and permits for new construction in the community.

COMMERCIAL SERVICES: AVAILABILITY OF DISCOUNTS

A second issue related to commercial services and identified as a problem is the availability of special rates for disabled consumers. This issue was selected in one survey involving 1,185 respondents, with an importance rating of 82% and a satisfaction rating of 35%.

Consumer-Identified Dimensions

- Disabled people do not get the same discounts and shopping privileges as Senior Citizens. Most disabled people are on a very low fixed income.

Consumer-Generated Alternatives

- Independent living centers can sell discount cards to consumers for use with participating merchants. This was done by Westside CIL in Los Angeles.

- Have a group of disabled people discuss a proposal with local merchants.

COMMUNITY SUPPORT AND RESPONSIVENESS

This category includes issues related to family, community, and government support in meeting the needs of persons with disabilities.

Five somewhat related items were chosen by 1,914 consumers in 6 surveys. They received consistently high importance ratings, with an average of 86%, and relatively low satisfaction ratings, with an average of 46%.

Consumer-Identified Dimensions

- Families and communities do not encourage disabled members to be independent.

- The community does not provide opportunities or assistance for disabled people to live independently.

- There are not enough support groups available for people with disabilities and their families.

- Sexuality counseling for people with disabilities is not available.

- Local governments are unresponsive to disability issues, especially if solutions cost money. In the issue of voting sites, for example, disabled citizens are discouraged from registering and voting by inaccessible registration sites, polling places, and lack of transportation.

Consumer-Generated Alternatives

- Encourage community groups to organize support groups and events to involve disabled people and their families.

- Encourage churches to work with support groups, and include disabled people and their families in church activities.

- Use local media to feature stories about including people with disabilities in community activities.

- Ask city councils for help in organizing programs that will encourage independence for disabled people and their families.

- Independent living centers should provide training for their staff counselors in sexuality counseling or bring in professional counselors for a workshop and provide materials.

- Consumer groups should represent themselves at city council and county court meetings, become familiar with city budgets, and advocate for funds for access improvements and disability programs.

- Consumer groups should encourage and assist disabled citizens to register to vote.

- Use the American Civil Liberties Union to enforce existing access and registration laws.

DISABILITY RIGHTS AND ADVOCACY

Issues related to involving disabled citizens in advocacy activities, increasing their knowledge about their rights, and training in self-advocacy were selected in 4 different surveys. Three related questions were chosen by 2,430 people with disabilities. They received an average importance rating of 88%

and an average satisfaction rating of 45%.

Consumer-Identified Dimensions

- People with disabilities are unaware of their legal rights.
- Most people with disabilities are unaware of what pending legislation at state and national levels they should support or oppose.
- People with disabilities need training in forming advocacy organizations.

Consumer-Generated Alternatives

- Professionals and independent living centers can foster local and state leadership within the disabled community.
- People with disabilities need to inform themselves and attend advocacy meetings at all levels; to get on mailing lists for disability groups involved in legislation; and to obtain names, addresses, and numbers of elected officials.
- Disabled consumers should organize locally around identified and prioritized issues and form connections with state and national groups.
- Training in advocacy skills should be provided.

EDUCATION

Most consumers responding to the consumer concerns survey are adults speaking for their own issues. Accordingly, issues relating to the education of disabled children and youth emerge less frequently than they might if parent/advocates or consumers under 18 were more involved. However, two survey items relating to public education about disability and transition services for young adults were chosen as issues by 2,534 consumers in 2 surveys, with an average importance rating of 83% and a satisfaction rating of 49%.

Consumer-Identified Dimensions

- Disabled students are isolated from social interaction with nondisabled students.

- Nondisabled students are not educated abut disabilities and reach adulthood unaware of people with disabilities and disability issues.
- Disabled students end up on waiting lists for transition services for several years following high school graduation, resulting in loss of skills, knowledge, and motivation during the waiting period.

Consumer-Generated Alternatives

- Increase mainstreaming of disabled students.
- Recruit teachers and school employees with disabilities.
- Independent living centers should work with schools.
- Transition activities should be incorporated into the school curriculum for disabled students and not wait until after high school.

EMPLOYMENT ACCOMMODATIONS, DISINCENTIVES, AND TRAINING

Six survey items related to job accommodations in the workplace, work disincentives, and quality of job assistance and training programs were identified by 11,172 consumers as relative problems in 8 surveys. They received an average importance rating of 84% and an average satisfaction rating of 42%.

Consumer-Identified Dimensions

- Many businesses do not provide reasonable accommodations in the workplace.
- Work disincentives still exist within the Social Security system. In addition to loss of economic benefits are loss or reduction in medical benefits, housing subsidies, food stamps, attendant services, etc.
- Disabled job hunters lack basic job-seeking skills and are unaware of incentives to employers and laws prohibiting discrimination.
- Blind people have lost their tax credit; other disability groups were never eligible.
- People with disabilities do not know where to go for job training or assistance in finding a job.

Consumer-Generated Alternatives

- Consumer groups need to form a coalition to lobby legislators at federal and state levels for tax credits.
- VR could offer training in job-seeking skills.
- Consumer groups should develop guidelines on what constitutes reasonable accommodation in the workplace.
- Disseminate information about where to go for job training skills and job-related assistance.

EMPLOYMENT DISCRIMINATION

Two survey items related to job discrimination were identified by 13,136 consumers as top problems in 10 surveys. They received an average importance rating of 85% and an average satisfaction rating of 42%.

Consumer-Identified Dimensions

- People with disabilities are discriminated against because of their disability.
- Qualified disabled individuals are not given the same opportunity as nondisabled people.

Consumer-Generated Alternatives

- Consumers need to teach disabled job seekers about proper attitudes and how to develop a businesslike demeanor when dealing with a potential employer. Disabled people must sell an employer on their abilities and not rely on sympathy.
- If a specific employer is perceived as insensitive, invite a representative of that company to speak to a disability group about employment.
- Independent living centers and advocacy groups need to encourage and assist disabled job applicants and employees to enforce laws and regulations prohibiting discrimination.
- Disabled individuals can contact the Job Accommodations Network or similar resources for help in locating jobs and training, marketing themselves to prospective employers, and obtaining reasonable accommodation.

EMPLOYMENT OPPORTUNITIES

Two survey items related to employment opportunities were identified by 13,617 consumers as relative problems in 14 surveys. They received an average importance rating of 83% and an average satisfaction rating of 46%.

Consumer-Identified Dimensions

- Job opportunities for people with disabilities are very limited.
- If there is a nondisabled person and a disabled individual applying for a job, employers prefer to hire the nondisabled person.

Consumer-Generated Alternatives

- Consumers should educate employers in tax credits, reasonable accommodation, and advantages of hiring disabled employees.
- Disability groups must keep a coalition going at the national level to lobby for reduction of work disincentives.
- Job placement people should know which employers routinely hire disabled applicants.
- Use publicity to inform the community about job needs, interests, and capacities of disabled people, similar to TV spots from Job Service on specific jobs.
- Talk with industries to design adoption programs for people with disabilities similar to programs designed for immigrants.

HANDICAPPED PARKING

One survey item related to the issue of enforcement of parking ordinances was identified as a major problem by 8,607 people in 13 surveys. The item received an average importance rating of 83% and an average satisfaction rating of 41%.

Consumer-Identified Dimensions

- There are not enough handicapped parking places close to shopping and workplaces.
- Many spaces are not wide enough to unload wheelchairs or put down van lifts.

- Some spaces are not well-marked with an upright sign.
- Police do not ticket violators as often as they should.
- Courts are lax in enforcing handicapped parking laws.

Consumer-Generated Alternatives

- Review local statutes; seek state uniformity. Include private as well as public zones.
- Ask local mayors to publicize local ordinances.
- Consumer groups can conduct public awareness campaigns and letter-writing campaigns to local officials.
- Develop rapport with several police officers to assure better enforcement.
- Conduct study session with police, courts, and consumer groups to promote enforcement.
- Consumers can monitor violations and use data to advocate for compliance.
- Consumers can discuss parking problems with merchants where they shop.
- Consumer groups can distribute stickers to violators.
- Consumers can attend city council meetings and voice concerns to get adequate legislation.
- Consumers can advise businesses about adequate spaces and upright signs.
- Consumer groups can reinforce businesses who provide and enforce handicapped spaces.
- Publicize how to get parking IDs.
- Increase fines to over $25 to put teeth into the law.
- Form coalitions among groups needing access and parking.
- Provide consumer consultation in design of spaces.
- Put parking places on end of row for van lifts. In Anderson, IN, violators get a "candid camera" treatment. In a cooperative effort between local consumers and the town's newspaper, a photo and brief statement by violators appeared on the front page of the local section.

- Some police departments have deputized local disabled consumers to ticket handicapped parking violators, paying their salaries from fines.

HEALTH CARE: AFFORDABILITY AND AVAILABILITY

Six survey items were selected relevant to the availability and affordability of health care, including whether hospitals accept Medicaid and Medicare, regulations for Medicaid and Medicare, and sensitivity of health care providers to consumers. Items were identified as relative problems by 3,485 consumers in 7 surveys. They received an average importance rating of 88% and an average satisfaction rating of 48%.

Consumer-Identified Dimensions

- Increasing numbers of doctors are refusing to take Medicaid or Medicare, because payment is very late and inconsistent.
- There is no respite care for families caring for disabled and elderly family members.
- People with disabilities often cannot afford regular, nonemergency medical care and medications.
- Transportation to medical appointments is difficult, especially regular long-distance transportation, and transportation for rural citizens who go to large cities for dialysis or cancer treatment.
- Medical professionals are often insensitive in dealing with disabled patients, treating them in a patronizing manner or preferring to deal with family members rather than communicate directly with the disabled patient as a responsible adult.
- Medical professionals are often unaware of special medical or physical assistance needs imposed by a disability. Thus, discomfort and temporary setbacks can result or even life-threatening situations.
- The general public is unaware that existing programs do not provide adequate medical care for people with disabilities.

- Disabled consumers are often unaware of medical aspects of their own disabilities or good self-care habits. This occurs because they accept the public's definition of themselves as sick and needing to be cared for rather than healthy human beings responsible for their own well being.

- Another problem is attendant care. If no state attendant care program is available (example Wyoming has no Medicaid waiver or state-funded program), there is no paid attendant care for low-income disabled consumers. They must depend on family and friends or live in nursing homes.

Consumer-Generated Alternatives

- Use local media to describe health problems of people with disabilities and solicit suggestions to solve these problems.

- Organize local volunteers, church, and civic groups for medical transportation.

- Consumer groups should educate medical professionals about the special needs of disabled patients. The Association for Retarded Citizens does this for people with developmental disabilities.

- Invite medical professionals to speak to meetings of consumers to increase their own sensitivity and educate consumers at the same time.

- Provide inservice training for medical professionals in the dignified, courteous treatment of persons with disabilities. This should be conducted by consumer groups and consumer-run agencies.

- Provide education to consumers in how they can advocate for themselves with health care providers.

- Form coalitions with other consumer groups to work on common health care objectives.

- Form a Protection and Advocacy Organization to help disabled patients in cases of unfair treatment by health care providers.

- Educate medical professionals about treating different disabilities as part of medical and nursing school curricula.

- Use mutual support groups, counselors, and self-education to encourage good medical habits, nutrition, exercise, and prevention of illness.

- Locate sources of health care for persons with disabilities; make a directory of these resources.

- Arrange local medical fitness centers for people with disabilities. Provide outreach to commercial fitness centers and provide transportation to them for people with disabilities.

- Place people with disabilities as employees of health care providers (i.e., as social workers and patient advocates).

- Involve independent living centers in training and advocacy.

- Consumer groups at the state level could conduct a survey of health care facilities that covers disabilities served, access to offices and parking, acceptance of Medicaid and Medicare, and sources for financial assistance. This could be conducted through state medical and dental societies and updated periodically.

- Educate consumers about medical aspects of their own disabilities. Train them to advocate for themselves with medical professionals, and teach them to take personal responsibility for educating health care providers about their own appropriate treatment and needs.

- Write government and elected officials about health care issues.

- Attend city council meetings, and petition for city funds to help with medical expenses.

- Seek establishment of adult day care and home health services. Develop directory of doctors who accept Medicaid and Medicare payments for treatment of people with disabilities.

- Provide toll-free legal advice about legal matters relating to nonacceptance of Medicaid and Medicare or refusal of treatment to disabled consumers.

- Advocate for program changes to facilitate more timely and consistent payment of Medicaid and Medicare.

- Advocate for cooperative living arrangements with shared attendant care for those who need help.

- Consumer groups need to present need for attendant care and cost effectiveness data to state legislature.

- Support national groups lobbying for national attendant care programs.

HOUSING: AFFORDABILITY, AVAILABILITY, AND ACCESSIBILITY

Six survey items related to the affordability, availability, and accessibility of housing have been identified as major problems by 4,510 consumers in 13 surveys. They received an average importance rating of 86% and an average satisfaction rating of 37%.

Consumer-Identified Dimensions

- There is an extreme shortage of accessible, affordable housing for people with disabilities.
- Eligibility requirements and regulations keep some disabled consumers, especially the nonelderly who live with family members or attendants, from living in public or subsidized housing.
- Builders do not comply with existing laws, where laws exist, that require building a certain percentage of accessible units.
- Builders are unaware of laws, access codes, and modifications necessary for accessibility.
- Managers and directors of public housing are unaware of, and often indifferent to, the needs of disabled tenants.

Consumer-Generated Alternatives

- Talk to owners if the manager is uncooperative.
- Disabled and low-income people should be able to rely on social service agencies for housing assistance.
- Cities need more feedback from disabled consumers on housing needs of people with disabilities.
- Local consumer groups can bring complaints to local housing authorities.
- Consumers can be educated to be aware of tenant rights and raise money to finance suits when necessary.
- Disabled residents should become familiar with codes, where to file complaints where codes don't exist, and how to introduce legislation.
- Groups can obtain 202 and other HUD loans for accessible housing and manage the housing units themselves.
- Examine eligibility requirements for subsidized housing. Use net, not gross income, as they did in Los Angeles.
- A consumer group in Los Angeles located two HUD projects in good neighborhoods to lessen the likelihood of crime and improve surroundings. The Telephone Pioneers donated money and labor to upgrade the structure.

- Establish subsidized housing administered by occupants. Provide income subsidy within housing cooperatives.

- Some communities in Minnesota provide vouchers to subsidize rent for housing anywhere in the community.

- Establish a referral network for accessible, affordable housing.

- Enforce existing laws, setting aside a certain number of units for people with disabilities.

- Consumers need to educate building professionals and make information available.

- Advocate for statewide legislation to encourage adaptability of units.

- Consumers need to lobby elected officials on lack of accessible housing.

- Disabled community members need to get on housing boards.

- Educate disabled homeowners about programs to help modify their homes for access and safety.

INSURANCE FOR AUTO, LIFE, AND LIABILITY

This issue refers to the availability and affordability of auto, life, and liability insurance for people with disabilities. This item was selected as a major problem by 2,355 people completing two surveys. It received an average importance rating of 89% and an average satisfaction rating of 35%.

Consumer-Identified Dimensions

- Insurance premiums are more expensive for people with disabilities.

- Insurance companies discriminate based on disability.

-Consumer-Generated Alternatives

- Have a group of disabled people discuss possible solutions with insurance companies regarding adequate prices.

INSURANCE FOR HEALTH CARE

One survey questions related to the affordability of health insurance was identified as a relative problem by 5,624 consumers in 2 surveys. It received an average importance rating of 86% and an average satisfaction rating of 38%.

Consumer-Identified Dimensions

- Disabled consumers cannot buy health insurance because of their disability and/or pre-existing conditions.
- Disabled consumers cannot afford health insurance.
- Health insurance often does not cover supplies, equipment, regular medications, or therapies used by disabled consumers.
- Inability to purchase individual health insurance and exclusion from some group policies are serious disincentives to individuals with disabilities looking for work.

Consumer-Generated Alternatives

- Consumer groups can advocate for national health insurance.
- Disabled consumers can set up health insurance cooperatives as they did in Los Angeles.
- Shared risk insurance is an option so consumers with disabilities and pre-existing conditions can get group insurance.
- Educate consumers about supplemental insurance available through groups such as AARP, professional associations, credit card holders' benefits, etc.
- Publicize the fact that laws in some states (such as Missouri and Kansas) prohibit insurance companies from discriminating against persons with disabilities.
- Independent living centers can: train and assist consumers in filling out forms; challenge actions and policies of Medicaid, Medicare, and insurance companies; and assist in advocacy, complaints, and appeals processes.
- Get information from and make use of the state insurance commissioner's office.

MEDIA PORTRAYAL AND PUBLIC INFORMATION

Three survey items related to media portrayal of people with disabilities and their access to information about services, benefits, and programs were selected as problems. They were selected as problems by 7,547 consumers in 3 surveys. The items received an average importance rating of 81% and an average satisfaction rating of 39%.

Consumer-Identified Dimensions

- The media do not provide enough information about what is available for disabled citizens.
- The media portray people with disabilities in a negative and unrealistic way, preferring the sensational or pitiful to the everyday and human side of disability.

Consumer-Generated Alternatives

- Consumer groups should bring accessibility and independent living issues to the attention of the press.
- Consumers should monitor coverage of disability issues.
- Consumers should educate the media to correct negative portrayals and terminology.
- Consumer groups could meet with service providers about developing a directory of services and programs for people with disabilities that could be disseminated through the media.

PUBLIC ACCESS

Issues related to safe access to public places, including availability of curb cuts, accessible entrances, and snow removal, have been selected as major problems. Two related survey items were chosen by 204 consumers in 2 different surveys, with an average importance rating of 81% and an average satisfaction rating of 48%.

Consumer-Identified Dimensions

- Disabled citizens are forced to stay home or use the street, because curb cuts and sidewalks are absent or inadequate, or in some instances, snow is not removed promptly.
- Many public buildings are totally inaccessible or technically accessible with inadequate or unsafe access.

Consumer-Generated Alternatives

- Discuss among disabled consumers key areas that need to be made accessible.
- Make up a priority list of access and safety issues for each year.
- Describe problems in newsletters, and solicit opinions from other disabled community members.
- Offer modification assistance to owners of inaccessible buildings and appropriate government and social agencies.
- Offer assistance to government agencies on ways to increase the safety of streets and sidewalks.

SOCIAL SERVICES AND BENEFITS

Five survey items related to information social agencies provide to consumers about services and legal issues were selected as major problems in 7 surveys. A total of 3,964 consumers responded to these questions, with an average importance rating of 88% and an average satisfaction rating of 50%.

Consumer-Identified Dimensions

- Social service agencies fail to inform disabled consumers about all services available to them through their own agency, other agencies, or the community.
- Benefits or services from one agency can limit benefits or services from another agency.
- Most social service agencies are unaware of services available at other agencies.
- Disabled people are referred from one agency to another, often encountering agencies unable to serve them or refusing services.

- Forms and policies of social service agencies are confusing.

Consumer-Generated Alternatives

- Organize a consumer group to review forms used by social service agencies.
- Form a consumer network for information and referral.
- Create more support groups for mutual assistance.
- Provide corrective feedback and information to social service agencies that fail to inform clients about benefits to disabled consumers.
- Provide social service agencies with training on benefits available to disabled consumers.
- Consumers should demand that VR cases be reopened, if they have not been fully informed about all benefits available.
- Independent living centers should train consumers in what benefits are available and how to access them effectively.
- Independent living centers or consumer groups could organize regular cooperative meetings involving representatives of all social service agencies in the community, or if such an organization exists, become active and advocate for services to people with disabilities.
- If consumers are referred to an agency unable to serve them, they should contact the referring agency and tell them the referral was inappropriate and why.
- Educate consumers to use the state CAP agency, Legal Aid, and other available legal help when services are unjustly refused.
- Set up courses in self-reliance that teach consumers to use social services, such as the one used by the CIL in Anaheim, CA.

TRANSPORTATION: AVAILABILITY AND AFFORDABILITY

Five survey items related to the availability and affordability of accessible transportation services were identified as major problems by 8,213 consumers in 12 surveys. They received an average importance rating of 80% and an average satisfaction rating of 42%.

Consumer-Identified Dimensions

- Disabled citizens are segregated from the rest of the community and forced to remain at home because of lack of transportation.

- In most areas, public transportation is not wheelchair-accessible, and paratransit is expensive or nonexistent. In rural areas, accessible transportation is available infrequently.

- Lack of transportation is the primary barrier to community participation, education, employment, recreation, adequate medical care, and independent living for people with disabilities.

- Weekend and evening transportation is a problem.

- Transportation between neighboring cities and from rural areas to cities is a problem.

- Ideally, a city should have accessible mainline transportation for those who can use it and paratransit for those who need it.

- Recreational events and facilities are sometimes inaccessible. Transportation to recreational events is unavailable.

Consumer-Generated Alternatives

- Consumer groups need to work with existing community recreational facilities to make them accessible and usable for people with disabilities.

- Contact organizers of recreational events for transportation for disabled participants.

- People with disabilities need to become involved in the planning of community recreational events and active in interest groups.

- Form a local task force on transportation, decide what local consumers need and want, then fight for it.

- It is against federal law for paratransit to cost more than mainline transportation. Educate consumers about this law, how to make complaints, and how to ensure its enforcement.

- Develop share-a-fare, as they did in Kansas City, MO, where 900 wheelchair users a month use that system.

- Give testimony to state legislatures on transportation funding.

- Have lift buses operate at fixed rates and schedules as they do in Denver, a city with almost 100% accessible buses.

- Slow transit schedules to accommodate disabled riders. Drivers should call out stops ahead of time.

- Include disabled drivers in existing driver training programs.

- Develop car pools.

- Conduct public education on varied modes of transportation needed by disabled citizens.

- Submit formal complaints to transportation authorities concerning mainline wheelchair-accessible buses.

- Develop creative rural and small city alternatives. Examples include merging existing systems serving disabled riders (Morgantown, W. VA), ownership of a lift van by a consumer group or cooperative (Cuba, MO), and use of idle church or school lift-equipped buses.

UTILITY BILLS

One survey question related to the affordability of utility bills was identified as a major problem in 4 surveys. A total of 1,611 consumers answered this survey item, with an average importance rating of 89% and an average satisfaction rating of 34%.

Consumer-Identified Dimensions

- Disabled consumers on a fixed income cannot afford inconsistent and high utility bills.

- Because of their medical needs, many disabled consumers cannot survive without water, gas for heat, and electricity to operate their equipment.

Consumer-Generated Alternatives

- Obtain help to establish programs for weatherization.

- Encourage landlords to weatherize units.

- Educate landlords and disabled homeowners about tax credits for weatherizing and solar installation.

- Encourage consumers to join annualized level payment plans.

- Consumer groups can keep list for referral of agencies that help pay utility bills.

- Call local consumer affairs office for help, if utilities are shut off.

- Consult local phone company about discounts for disabled consumers.

- Write elected officials describing problems with utility bills, and ask for legislative solutions and assistance programs.

Summary Comments

This report represents the comments and suggestions of thousands of Americans with disabilities. They have identified specific community features that inhibit independent living. Some of these features include: inadequate job opportunities, job discrimination, insufficient accessible and affordable housing, inaccessible public places, and unavailable and unaffordable service options. These community problems are counterproductive to achieving society's goal of independence.

The common concerns outlined here frame an agenda for public, private, and self-help initiatives. These consumer-generated alternatives feature many practical steps that can be taken at local, state, and national levels. Taken together, these issues and options pose a challenge to all who believe that justice requires equal opportunities to achieve independence.

Appendix 1

Information about the formulas used to compute importance ratings, satisfaction ratings, problem scores, and major problems are addressed in this appendix. They are followed by a listing of all major problems identified by previous Concerns Report Surveys.

Concerns Report Ratings and Formulas

Each survey asked respondents to rate the importance of and satisfaction with each issue. Each item was rated on a 5-point scale. The following example on media portrayal illustrates the format used on each survey.

	How important is it that...					How satisfied are you that..				
	Not				Very	Not				Very
Local media portray disabled persons in a positive way.	0	1	2	3	4	0	1	2	3	4

Average satisfaction and importance ratings were computed for each item. These ratings were converted to percentage scores using the following formula: (Where N is the total number of respondents and n_4 is the number of 4 ratings, n_3 is the number of 3 ratings, and so on).

$$\frac{4(n_4) + 3(n_3) + 2(n_2) + 1(n_1) + 0(n_0)}{4N} \times 100$$

Thus, the highest possible rating is 100%, and the lowest is 0%. Next, a problem score was computed for each item. An item rating high in importance but low in satisfaction indicated the existence of a problem. Problem scores were computed using the following formula:

$$\frac{\text{Mean Importance Score X (100 - Mean Satisfaction Score)}}{100}$$

An issue was defined as a major problem, if its problem score was at least 1 standard deviation above the mean for that survey. Approximately 20% of the survey items on each survey were so designated.

Appendix 2

DEMOGRAPHIC PROFILE OF CONSUMER CONCERNS REPORT RESPONDENTS

Although each survey had its own different demographic page, the questions were similar enough to permit calculation of a general profile. This demographic information was computed based on information from all 21 surveys

DISABILITY CATEGORY

Blind or visually impaired	25%
Deaf or hearing impaired	20%
Mobility impaired	53%
Mental or cognitive disability	37%

AGE

Fifty-five or older	33%

INCOME

Jncome of less than $10,000.00	66%

REGISTERED TO VOTE

Registered voters	70%

EDUCATION

Less than a high school education	34%
High school education	36%
More than a high school education	24%

NOTE: Per cents may not add up to 100% (e.g., education), since not all respondents answered every demographic question, and some questions (e.g., disability), had multiple answers.

Appendix 3

Consumer Ratings of Importance and Satisfaction by Concerns Category, Survey Question, and Community/State

The following lists specific survey items, the communities or states in which surveys were conducted, the number of people (N) who responded, the average importance ratings, and average satisfaction ratings.

ASSISTIVE DEVICES: AFFORDABILITY AND AVAILABILITY	N	Importance	Satisfaction
Reasonably priced assistive devices are available to purchase.			
Lansing, MI	383	83%	36%
Montana counties (Billings, Butte, Helena, Great Falls)	145	84%	52%
North Dakota statewide	1,339	81%	58%
Financial assistance is available to rent or purchase assistive devices.			
Los Angeles, CA	201	85%	36%
Shawnee County, KS	51	94%	52%
Financial assistance is available for assistive devices that are not covered by Medicare or Medicaid.			
Iowa statewide	1,671	86%	48%
Montana counties	145	70%	31%
Services and repair of assistive devices are available at an affordable cost.			
Montana counties	145	79%	45%
Financial assistance is available to adapt personal transportation.			
Harvey County, KS	10	68%	17%
Assistive devices are reasonably priced.			
Indiana statewide	4,609	75%	41%

COMMERCIAL SERVICES: ACCESSIBILITY	N	Importance	Satisfaction
Public restrooms are accessible to you.			
Viburnum, MO	59	83%	59%
Restaurant restrooms are accessible to all customers			
Kansas City, KS	75	90%	42%
Kansas City, MO	165	87%	41%

COMMERCIAL SERVICES: AVAILABILITY OF DISCOUNTS	N	Importance	Satisfaction
Discounts are available to disabled persons on the same basis as they are to senior citizens.			
Orange County, CA	1,185	82%	35%

COMMUNITY SUPPORT AND RESPONSIVENESS	N	Importance	Satisfaction
Your local government responds to your needs in the community.			
Douglas County, KS	47	83%	44%
Orange County, CA	1,185	89%	41%
Community members understand the needs of disabled residents.			
Douglas County, KS	47	80%	40%
Montana counties (Butte, Billings, Helena, Great Falls)	145	82%	48%
Your state is responsive to your needs.			
Wichita, KS	468	85%	52%
Families and communities encourage disabled members to be independent.			
Viburnum, MO	59	87%	63%
Support groups are available for people with disabilities and their families.			
Harvey County, KS	10	93%	36%

DISABILITY RIGHTS AND ADVOCACY	N	Importance	Satisfaction
You know your rights as a disabled citizen.			
Northwest Minnesota	235	89%	51%
Wyoming statewide	1,015	86%	45%
Disabled consumers are actively involved in advocacy activities.			
Harvey County, KS	10	86%	47%
Training in self-advocacy is available.			
Oklahoma statewide	1,170	90%	36%

EDUCATION	N	Importance	Satisfaction
As part of the school curriculum, all students are educated and made sensitive to attributes and lifestyles of persons with disabilities.			
South Dakota statewide	2,151	83%	52%
Coordinated services to help disabled young adults move from school to adult life are available and adequate.			
Lansing, MI	383	85%	35%

EMPLOYMENT ACCOMMODATIONS DISINCENTIVES AND TRAINING	N	Importance	Satisfaction
Employers are willing to assist and accommodate disabled employees so they can perform job duties.			
Iowa statewide	1.671	87%	49%
Northwest Minnesota	235	89%	52%
Wyoming statewide	1,015	85%	43%
A person with a disability can earn enough money at a job to make up for loss of disability benefits.			
Kansas statewide	1.753	85%	37%
Lansing, MI	383	83%	33%
North Dakota statewide	1.339	79%	39%
Northwest Minnesota	235	86%	38%
Wyoming statewide	1,015	86%	36%
Adequate job training programs are available for persons with disabilities.			
Ann Arbor, MI	167	93%	40%
Indiana statewide	4,609	77%	46%
Current job training programs prepare you to be occupational-competitive with nondisabled persons.			
Indiana statewide	4,609	76%	46%
Local agencies assist disabled persons in finding interesting and worthwhile jobs.			
Indiana statewide	4,609	74%	42%
The Department of Vocational Rehabilitation provides adequate employmrnt services for individuals with severe disabilities.			
Lansing, MI	383	82%	33%

EMPLOYMENT DISCRIMINATION	N	Importance	Satisfaction
Employment agencies and prospective employers focus on the strengths and abilities rather than the deficits and disabilities of a disabled applicant.			
Douglas County, KS	47	79%	39%
Indiana statewide	4,609	78%	42%
Kansas statewide	1,753	83%	41%
Oklahoma statewide	1,170	91%	30%
Shawnee County, KS	51	94%	46%
Wichita, KS	468	83%	49%
Employees with disabilities have the same chances for advancement and promotion as nondisabled employees.			
Iowa statewide	1,671	87%	47%
Los Angeles, CA	201	91%	40%
South Dakota statewide	2,151	83%	47%
Wyoming statewide	1,015	87%	44%

EMPLOYMENT OPPORTUNITIES	N	Importance	Satisfaction
Adequate employment opportunities are available.			
Indiana statewide	4,609	76%	40%
Kansas City, KS	75	84%	34%
Kansas City, MO	165	86%	31%
Lansing, MI	383	85%	34%
Missoula County, MT	140	84%	48%
Montana counties	145	74%	34%
North Dakota statewide	1,339	78%	47%
Northwest Minnesota	235	85%	45%
Oklahoma statewide	1,170	92%	27%
Shawnee County, KS	51	92%	42%
South Dakota statewide	2,151	81%	46%
Qualified disabled and nondisabled are given the same opportunities at any available jobs.			
Iowa statewide	1,671	87%	46%
Kansas City, KS	75	88%	37%
Kansas City, MO	165	84%	30%
Missoula County, MT	140	85%	53%
South Dakota statewide	2,151	83%	47%
Wichita, KS	468	83%	46%
Wyoming statewide	1,015	86%	42%

HANDICAPPED PARKING	N	Importance	Satisfaction
Handicapped parking ordinances are strictly enforced.			
Ann Arbor, MI	167	92%	36%
Douglas County, KS	47	76%	31%
Harvey County, KS	10	89%	50%
Indiana statewide	4,609	78%	43%
Kansas City, KS	75	91%	26%
Kansas City, MO	165	86%	32%
Los Angeles, CA	201	88%	32%
Missoula, MT	140	76%	46%
Montana Counties	145	78%	36%
North Dakota statewide	1.339	80%	53%
Orange County, CA.	1,185	85%	39%
Viburnum, MO	59	81%	58%
Wichita, KS	465	83%	48%

HEALTH CARE: AFFORDABILITY AND AVAILABILITY	N	Importance	Satisfaction
Good medical care is available to you.			
Kansas City, MO	165	90%	38%
Affordable health care is available to you.			
Douglas County, KS	47	84%	46%
Kansas City, KS	75	89%	36%
Los Angeles, CA	201	90%	40%
Doctors and hospitals accept Medicaid and Medicare when you need it.			
Viburnum, MO	59	90%	67%
Health care providers are sensitive to the needs of disabled consumers.			
Viburnum, MO	59	91%	66%
Medicaid and Medicare regulations adequately provide for durable medical equipment and medications to disabled consumers.			
Viburnum, MO	59	84%	60%

Medicaid and Medicare provide adequate preventive care, adaptive equipment, and independent living services to prevent increased disability and dependence.			
Kansas statewide	1,753	86%	46%
Orange County, CA	1,185	89%	38%

HOUSING: AFFORDABILITY, AVAILABILITY, AND ACCESSIBILITY	N	Importance	Satisfaction
Accessible housing is available at an affordable cost.			
Los Angeles, CA	201	89%	29%
Accessible public housing units are affordable.			
Orange County, CA	1,185	81%	33%
Accessible housing is affordable.			
Ann Arbor	167	91%	26%
Montana counties	145	79%	42%
Northwest Minnesota	235	86%	51%
Affordable housing is available to all types of disabled residents.			
Harvey County, KS	10	97%	41%
Kansas City, KS	75	87%	36%
Kansas City, MO	165	86%	31%
Kansas statewide	1,753	87%	45%
Lansing, MI	383	85%	41%
Shawnee County, KS	51	96%	46%
Building professionals are knowledgeable about adaptive housing modifications necessary for maximum accessibility.			
Harvey County, KS	10	75%	19%
Los Angeles, CA	201	87%	38%
Missoula, MT	140	79%	51%
Landlords will make moderate changes to make their rental units safe and barrier-free.			
Ann Arbor, MI	167	90%	37%

INSURANCE FOR AUTO, LIFE, AND LIABILITY	N	Importance	Satisfaction
Auto, life, and liability insurance is available to disabled consumers on the same basis as it is to nondisabled consumers.			
Orange County, CA	1,185	84%	39%
Oklahoma statewide	1,170	94%	30%

INSURANCE FOR HEALTH CARE	N	Importance	Satisfaction
Health care insurance is affordable.			
Indiana statewide	4,609	84%	44%
Wyoming statewide	1,015	87%	31%

MEDIA PORTRAYAL AND PUBLIC INFORMATION	N	Importance	Satisfaction
Newly disabled people have adequate access to information regarding services and programs available to them.			
Kansas statewide	1,753	88%	46%
Orange County, CA	1,185	88%	36%
The media inform you about benefits for which you qualify.			
Indiana statewide	4,609	75%	40%
Orange County, CA	1,185	82%	33%
The media inform you about recreational and cultural programs planned for people with disabilities.			
Indiana statewide	4,609	72%	42%

PUBLIC ACCESS	N	Importance	Satisfaction
City streets and sidewalks provide safe and easy access to you.			
Montana counties	145	83%	47%
Viburnum, MO	59	80%	59%

Sidewalk snow removal is adequate.			
Montana counties	145	79%	37%

SOCIAL SERVICES AND BENEFITS	N	Importance	Satisfaction
Social service agencies inform all clients about all services available in the community.			
Kansas statewide	1,753	84%	45%
Shawnee County, KS	51	95%	53%
Social agencies inform you about legal issues related to disability and independent living services.			
Northwest Minnesota	235	85%	49%
Wyoming statewide	1,015	83%	43%
Social agencies are aware of the benefits available to disabled consumers.			
Viburnum, MO	59	93%	65%
Social agencies work to assure that disabled consumers are useful and vocal members of the community.			
Wichita, KS	468	85%	53%
Two single people receiving disability benefits can marry without their combined benefits being reduced.			
Lansing, MI	383	79%	27%

TRANSPORTATION: AVAILABILITY AND AFFORDABILITY	N	Importance	Satisfaction
Transportation services are available to any disabled consumer whenever needed.			
Ann Arbor, MI	167	90%	28%
Kansas City, MO	165	81%	29%
Kansas statewide	1,753	83%	41%
Lansing, MI	383	84%	38%
Missoula, MT	140	79%	53%
Montana counties	145	76%	34%

Adequate public transportation is available.			
Douglas County, KS	47	78%	38%
Iowa statewide	1,671	83%	51%
North Dakota statewide	1,339	81%	59%
Affordable transportation services are available as needed.			
Los Angeles, CA	201	85%	33%
Shawnee County, KS	51	96%	47%
Adequate public transportation from city to city is available.			
Iowa statewide	1,671	79%	46%
South Dakota Statewide	2,151	78%	46%
Transportation to and from events is available on holidays and Sundays.			
Iowa statewide	1,671	74%	33%

UTILITY BILLS	N	Importance	Satisfaction
Utility bills are affordable.			
Kansas City, KS	75	89%	34%
Kansas City, MO	165	87%	27%
Los Angeles, CA	201	89%	39%
Oklahoma statewide	1,170	89%	37%

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Mr. Edwards. Our first two witnesses will sit as a panel. First is Mr. Paul A. Roth, representing the National Association of Theatre Owners. Mr. Roth is president of the Roth Cos., Silver Spring, MD, and serves as chairman of the Government Relations Committee of the National Association of Theatre Owners.

I will introduce Mr. Lynch when he makes his statement. Without objection, all of the statements in full will be made part of the record, and we welcome Mr. Roth.

STATEMENT OF PAUL A. ROTH, PRESIDENT, THE ROTH COS., SILVER SPRING, MD, AND CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF THEATRE OWNERS, NORTH HOLLYWOOD, CA

Mr. Roth. Thank you, sir.

Good afternoon. My name is Paul Roth, and I am president of the Roth Cos. of Silver Spring, MD. I am a member of the board of directors of the National Association of Theatre Owners and chairman of NATO's Government Relations Committee in years gone by. I have previously served as president of the National Association of Theatre Owners.

Many of you are familiar with the connection between the name Roth and the motion picture theater industry. I have been involved in design, construction and operation of motion picture theaters in Maryland, Virginia, North and South Carolina for almost 40 years.

Before me, my father and uncle operated theaters beginning in the twenties. Our company grew from a small theater in a converted store in Harrisonburg, VA, to over 100 screens, and we are proud of that, and proud to be a part of the motion picture industry.

Since the first theater in this country opened in 1902, we have seen an evolution from flickering silent films shown on bed sheets in storefronts to massive, modern, computer-driven, high-tech, multiscreen facilities with 10 or more auditoriums.

There are now over 22,000 screens in this country. Our industry and our art form has had its ups and downs caused by everything from radio to night baseball and videocassettes.

However, one thing has remained constant, that the motion picture theater is the place in the community where everyone goes for affordable entertainment. The young, old, rich and poor and in between escape and enjoy the movies, whether the fond memories of Saturday matinees when we were kids or the memory of a fine motion picture that we saw last weekend, Americans have a love affair with feature films, and the motion picture theaters in which they are best seen and heard.

Attendance continues to grow and this year, over a billion people will enjoy movies in American theaters. Relative to other types of entertainment, movies will remain a bargain. As a theater operator and as a member of the community, I have always tried to make our theaters accessible to everyone.

In recent years, every theater that we built included ramps, special parking, bathrooms, drinking fountains and telephones designed to meet the requirements of disabled persons, wheelchair

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seating and some type of audio support system for the hearing impaired.

My efforts were certainly not unique. I know that theater owners all across the country have included the same type of requirements in new construction for many years.

A great deal of what we do is required by law and code and regulation, because we are considered by those codes, laws and regulations to be places of public assembly, so we have already had to accommodate the able and the disabled to a greater or lesser degree in all of our facilities.

Since we are so concerned about having large numbers of people of all ages in a semidarkened auditorium, I believe that our employees, our midlevel management, is well trained in handling the potential emergency, with the handicapped and children who are left by their parents, and older people who have difficulty adjusting their eyes to the semidarkness when they come out of the bright daylight, and a variety of other conditions.

So, for NATO and as an individual, I certainly support the goals of the Americans with Disabilities Act of 1989, but I must tell you that the loose language in this legislation causes great concern for even the most caring, concerned and involved people in our industry.

Let me give you a few brief examples. Section 302(1)(b) requires that seating for patrons in wheelchairs be integrated within an auditorium. Depending on how far you go with the definition of integration, that becomes impractical and potentially unsafe.

Wheelchair bases really are best and most practical and safest when they are located on a level surface, as close as possible to an entrance or an exit. The usual theater auditorium floor slopes at the rate of 1 foot to 1 inch to provide sight lines to the screen so that you can see over the patrons in front of you.

Placing wheelchairs on a slope creates the danger that the chair unexpectedly will slide forward, and the discomfort of the wheelchair patron when tilted down against the floor slope and trying to look up in the designed line of sight.

The average back-to-back placement of a row of theater chairs is 36 inches, and the seats average approximately 23 inches in width. In 36 inches back to back, and 23 inches side to side, it is simply impossible to accommodate the turning radius of a wheelchair for ingress and egress, and it is very difficult for non-chair-ridden patrons to get past that chair to go in or to go out.

Practical problems demand practical solutions. In many instances, exits are required at the screen end of the theater to compensate for the floor slope. Today's typical auditorium contains 250 to 400 theater seats. Using the slope of an inch to a foot in a depth of 60 to 100 feet of the auditorium, we can be talking about 5 to 7 feet of incline, which may have to be compensated for at the screen end of the theater with stairs.

Well, obviously, if we have a wheelchair patron 80 feet from the entrance to the auditorium seated in the screen end of the theater and the only way out is up seven steps, we could have a great deal of difficulty.

We also think that it is important that wheelchair patrons be able to get themselves easily to the restrooms, the water fountains and the refreshment facility, and I have a number of friends who are in wheelchairs.

It is difficult at best for some of them to roll a chair up that incline in the semidarkness. The point I am making, sir, is that we want to do what is best for all of our patrons, those in chairs, those in walkers, the old, the young, the what-have-you, but we don't want to be the victims of vague wording which would serve only to confuse us, architects, enforcement officials at the local and Federal level, and our patrons, and we want to be able to evacuate the auditorium as quickly and as safely as possible in the event of an emergency or false alarm, such as a bomb scare, which we have from time to time, and we are concerned that neither the changes in the legislation since the original version or the legislative history are terribly clear on a number of these matters.

Another example is to remind you that new construction is one thing, but existing facilities are a different matter. Many theaters, in rural communities or inner cities, are not new. These theaters provide lower-income areas with one of the few sources of entertainment for their children and senior citizens.

In many cases, these theaters offer films at bargain prices. They are low volume and low priced. Many a community or municipality has taken unusual steps to keep its theater in operation.

Unfortunately, if compliance with this act is not made clearer and easier, many of these theaters will close. They do not have the time, staff or resources to determine or argue, perhaps before a regulatory agency or in a courtroom, what is reasonable, readily achievable or an undue hardship or financial burden.

Another matter, S. 933, requires existing construction be readily accessible. We have been told this just means installing a wooden ramp or widening a door. That sounds easy, but wooden ramps will not pass muster with fire marshals, and widening doors can become a major construction problem.

So, we are back to reasonable. We have been told that if the company which operates this limited market theater in the inner city or in a small rural community is large enough, the expense of compliance will not be a burden.

We submit that a large company is already running the theater as an accommodation to the community. Given the prospect of the time-consuming, expensive rehabilitation, that theater will close, serving no one's interest, not the community's, the patrons' or employees'.

We want to know in plain language what is required and how we can comply. We do not want to add amorphous Federal regulations to the existing maze of laws, codes and ordinances to which we are already subject.

We want to provide affordable entertainment for as many people as possible. NATO's representatives attended a briefing on this bill at the White House on 22 September this year. Dr. Roper of the White House staff introduced representatives of the Department of Justice which has responsibility for writing the regulations for the public accommodations section of this bill.

Those representatives from the Justice Department were asked on 22 September to clarify certain sections of the statute. They were asked who is financially responsible for the installation of elevators in a shopping center, the landlord or the tenant, a requirement which, of course, affects theaters, restaurants, retailers.

The gentleman from the Department of Justice said, we don't know. If they don't know, how do we and our landlords and our other merchants know, and where in that nonknowledge can we take comfort? One final example, if I may.

There are at least three jobs in the theater which require employees to work in a limited area to reach and to live: Cashiers, refreshment attendants and projectionists. Ticket issuing machines, particularly the computerized ones that we are now using, are too high counter type, too deep from back to front that a person in a wheelchair could not efficiently operate them.

They can't reach the equipment, much less can they reach across the equipment to receive the money from the patron and to return the tickets as they are dispensed. The same is true of concession attendants, they must operate in a confined area between the counter and the back bar. Turning the wheelchair in that area would be difficult if not impossible, not to mention having access to the various pieces of equipment which dispenses popcorn, soda, candy and other items. Envision a person in a wheelchair trying to reach into the sizzling hot kettle of the popcorn popper and put the popping oil and corn in and when the popping is done, get it out without the possibility of some severe damage.

And the natural problems of being able to reach across the counter with the merchandise and back across the counter with the payment and the change. We show motion picture film at a standard rate of 90 feet a minute, which means that to show you a 2-hour feature we require approximately 2 miles of 35 millimeter film.

When that film arrives at the theater, it is in two bulky steel containers and it is on reels that only contain 18 minutes of film out of possibly six to seven times that much. That is in the feature.

It is necessary for a projectionist to get that film out of those cans, off those shipping reels and onto what we call projection platters, which are approximately 5 feet in diameter, depending on whether they are three or five tiers.

They could be as high as 5½ feet off the ground compounding the projection problem. You have to take the film off, take it up on rollers and thread it through the top of the projector.

These are tasks that we do not feel can be performed by people in wheelchairs, on crutches and with walkers with a variety of other problems. Since sound is so critical to the audience and focus is so critical to the audience, it becomes important that the projectionist be able accurately to read the sound level and the quality and to look out the projection port to be sure the picture is in frame on the screen and in focus. These would be difficult, if not impossible, tasks for persons with a variety of handicaps.

The bottom line, the facts to me in the operation of a theater are clear. My problem is the law is not clear. We want to hire people who can do the job, take pride in doing it, who can advance in our organization and reflect credit on themselves and their fellow workers and their employers.

If you can do the job, you ought to have the job. If you cannot do the job, it should be clearly exempted from the law and we should be responsible for working with you to find you a job that you can fill with pride, dignity and courtesy.

We are, the motion picture industry, eager and willing to entertain and employ as many as possible of those 43 million persons with some sort of physical or mental disabilities. We want them as moviegoers and we want them as movie workers. We support S. 933 but we desperately seek clarification of legislation which is at present vague and ambiguous so that no one, including in some cases the drafters, know what it means.

We stand ready to help, but we need your eyes, your ears, your attention to avoid the waste that will surely come from haste.

Thank you, sir.

Mr. EDWARDS. Thank you, Mr. Roth.

[The prepared statement of Mr. Roth follows:]

PREPARED STATEMENT OF PAUL A. ROTH, PRESIDENT, THE ROTH COS., SILVER SPRING, MD, AND CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF THEATRE OWNERS, NORTH HOLLYWOOD, CA

The members of the National Association of Theatre Owners (NATO) operate more than 12,000 motion picture theatre screens in all 50 states. NATO includes the very largest chains in the nation as well as hundreds and hundreds of independent theatre owners.

NATO members provide entertainment that is available to all. Last year over one billion people went to the movies in the United States. Truly, everyone enjoys motion pictures. The young, the old, the highly educated and less highly educated, the wealthy and the economically less fortunate, all have an opportunity to seek out a motion picture that meets their interests and usually for a price of less than $6. Unlike the Broadway theatre, the big city concert or professional sports, where tickets can cost $50 each, motion picture theatres offer entertainment that is economically available to most Americans. The 12,000 NATO motion picture theatre screens are geographically diversified so that almost everybody has a choice of several theatres within a reasonable distance of his or her home.

Motion picture theatre owners are experienced at moving a large number of people into and out of semi-darkened auditoriums, rapidly and safely. Although motion picture theatre staffs have traditionally included a large proportion of young first time job holders and an increasingly large number of senior citizens, the industry trains its employees to be able to deal with a large number of people in a relatively confined space. Theatre staff members are trained to deal with normal conditions and emergency conditions. Whenever one has a large number of people in a limited physical space, it is essential that preparations be made to deal with the worst case scenario and the theatre industry has accepted this responsibility. Our staff has to be able to move quickly should the need arise. This situation has caused NATO members to spend much time considering the special problems of the disabled both as patrons and employers.

The motion picture theatre industry has been a leader in facilitating innovations in construction to insure that disabled individuals have access to the nation's motion picture theatres. Handicapped parking spaces, ramps to assist in accessing lobbies and auditoriums, and drinking fountains, phones and restrooms designed for disabled users are all innovations offered early on by Exhibitors. Many theatres provide seating for the disabled in specially designated areas with fixed seating next to wheelchair spaces so disabled persons may sit with their non-disabled friends and family.

Theatre owners have led the way in the implementation of assistive listening systems (ALS), special in-theatre devices designed to allow the hearing-impaired to enjoy the motion picture experience. NATO is currently working to link hearing-impaired moviegoers to facilities already utilizing ALS via a national hard-of-hearing database.

The National Association of Theatre Owners supports legislation designed to prohibit discrimination on the basis of disabilities but at the same time NATO recommends that Congress recognize that there are certain rules of reason that must be followed in connection with this legislation.

I. ACCESS TO PUBLIC ACCOMMODATIONS

A. New Construction.

NATO supports the concept that new construction should be carefully engineered to insure full access for disabled persons. Theatres should include ramps to permit access to the auditoriums. Seating for persons in wheelchairs should be provided in close proximity to exits within each facility. NATO has compiled data which shows the number of persons in wheelchairs, on crutches, or using walkers, that attend theatres on a theatre per week basis in various areas of the country.

For example, a wheelchair count was conducted in 28 theatres in Maryland, Virginia, and Pennsylvania from December 1987, through March, 1988. The results of the survey showed that there was very little usage of the spaces for disabled persons available. Although many of our theatres provide two to four wheelchair positions, the theatres surveyed averaged one to two wheelchair patrons per week.

A similar survey conducted in 10 theatres with a total of 53 screens in the state of Massachusetts shows that in a typical week the theatres served approximately 66,000 patrons. Among these patrons, there were an average of 38 persons in wheelchairs, 48 persons on crutches, and 28 persons using walkers.

NATO will be glad to share these data with the Congress.

There has been some discussion as to whether the Americans with Disabilities Act of 1989 permits wheelchair seating to be limited to the front and back of a motion picture theatre auditorium as distinguished from being integrated throughout the entire auditorium. We contend that it is not only reasonable, but it is essential from a safety standpoint that wheelchair patrons be seated near an exit.

Today the typical motion picture theatre auditorium is much smaller than it has been in the past. Auditoriums with 200 to 300 seats are typical. In such a facility, every seat offers an excellent view of the screen. Motion picture theatres do not have price differentials for preferred seating. Attending a motion picture can be distinguished from attending a play or concert where seating prices vary based on location within the auditorium.

There is no discrimination in placing wheelchair seating in the front and rear of a motion picture theatre. By contrast, in the environment of a motion picture theatre, placing a wheelchair in the center of the auditorium and away from an exit can create a significant safety hazard. In the rare event of a fire, the theatre staff is trained to quickly enter the auditorium and assist disabled individuals. If such individuals are close to an exit, the theatre employee can effectively assist the disabled patron. If the disabled patron was seated in the middle of the theatre far from an exit, theatre employees would have difficulty in getting to the disabled individual. Furthermore, other patrons of the theatre would be impeded in exiting rapidly as may be required by the situation. For these reasons, state fire marshals have uniformly indicated that seating for disabled persons should be placed near an exit and not in the middle of an auditorium.

We recommend that whatever legislation is adopted by the Congress, recognition must be given to the fact that wheelchair patrons of theatres should be seated near an exit.

The proposed legislation would not only cover wheelchair theatre patrons but also patrons with other disabilities. As we indicated before, the motion picture theatre industry is now including audio equipment for the hearing impaired in many existing theatres as well as in newly constructed theatres. The proposed legislation also discusses the need for special equipment for the visually impaired. It is our understanding that some equipment is available for such individuals but that the equipment would only meet the needs of a small number of individuals. We would recommend that in order to comply with the Americans with Disabilities Act, businesses should be encouraged to provide these auxiliary aids for the disabled through incentives. Incentives will also alleviate a portion of the costs associated with making modifications. Currently, Section 190 of the Internal Revenue Code permits a maximum deduction of $35,000 for making structural alterations to accommodate the disabled. The cap should be removed and the deduction should be broadened to apply to non-structural alterations such as the installation of assistive listening systems in motion picture theatres.

B. Existing Facilities.

Many motion picture theatres are located in the inner city, in buildings that are quite old. These locations are often of marginal profitability and have great difficulty in competing with modern theatres located in suburban shopping malls. The shift in the movie going population from the city to the suburb can be easily documented by analyzing new theatre construction. In our industry, it is unusual to find significant new theatre construction in downtown areas.

Due to the age of these inner city theatres and the marginal profitability, it is not feasible to require substantial expenditures for renovating such facilities to meet the needs of disabled individuals. However, we think it is reasonable to include in the statute a provision that where an existing facility is substantially renovated, the plans for the renovation require adequate facilities to insure that disabled individuals can use the renovated theatre comfortably.

The bill sets forth requirements for the readily achievable removal of architectural barriers and for the alteration and major structural alteration of facilities. It fails, however, to indicate when the readily achievable removal of an architectural barrier would be considered an alteration. It also fails to indicate the point at which an alteration becomes a major structural alteration, thereby triggering the requirement not only for the readily accessibility of the actual area but also the accessibility of the route to the altered area. A revision based on Pennsylvania law would solve this problem. It would provide that alterations that cost up to 30% of the value of the building should require the readily accessibility of the altered area; alterations that cost 30-50% of the building's value should also require an accessible route to the actual area; and that alterations that cost more than 50% of the value of the building should require readily accessibility and usability of the entire facility. NATO would support this concept.

II. DISCRIMINATION IN EMPLOYMENT.

NATO supports legislation that would eliminate discrimination in employment on any basis whether race, religion, national origin, sex or disability. Our industry has been in the forefront of those promoting equal opportunity for all. However, we believe that it is necessary to again apply a rule of reason when evaluating specific job classifications. We would like to present three examples for consideration:

A. Motion picture theatre ticket seller.

Today's motion picture theatres are equipped with high technology computerized ticket booths. The equipment used in these booths has not been designed for persons in wheelchairs. A person in a wheelchair sitting behind a typical ticket booth counter could not reach from the wheelchair to the counter and certainly could not reach the money being proffered by the customer or return a ticket to the customer. Due to the mechanical limitations of this type of equipment and the size limitations of existing ticket booths, it is unreasonable to require that motion picture theatres owners offer this job to all disabled individuals if in fact such individuals could not physically perform the job under the structural limitations of the ticket booth.

B. Food concession operator.

The food concession operator in a motion picture theatre is required to move back and forth down a walkway behind a food service counter, reach and obtain the various items selected by the customer, dispense certain items, i.e., popcorn and soft drinks, and obtain payment and make change. Certain types of disabled individuals can perform this function efficiently. Persons in wheelchairs would have obvious difficulties. NATO recommends the rule of reason be applied to this job classification and the employer be required to determine whether the disabled individual in question can physically perform the task in light of existing job conditions. If in fact the person cannot perform the tasks under existing conditions, it should not be considered discriminatory for an employer to refuse to hire such an individual for this job.

C. Projection operator.

The projection operator in a motion picture theatre must be able to move easily in and out of the projection booth and must be able to pick up heavy disks of film and lift the film and insert it onto the projection platter. This activity requires not only access to the facility but certain manual dexterity, upper body strength and reach. Projection booths generally are extremely limited in space. Persons in wheelchairs would have difficulty moving around within the confines of such booths and will probably be unable to lift the film and place it in the projection equipment. Motion picture projection booths are often designed so that one booth services multiple screens. A person in a wheelchair would have great difficulty moving from one work station to another. Thus, this job classification is not one which can be reasonably engaged in by a person in a wheelchair.

Again, NATO urges that a rule of reason be applied in evaluating whether an individual with a particular disability can perform in this job classification. It could well be that individuals with limited disabilities could perform efficiently as a projectionist. However, an individual with a severe disability such as a paraplegic, could not perform as a projectionist.

NATO believes that whatever legislation is passed, clear recognition must be give to the proposition that before a finding of discrimination can be made, it must be determined whether the individual claiming discrimination is in fact capable of doing the job in question within the physical limitations that may be established by the disability and the limitations that may be established by the nature of the employer's facility.

III. CONCLUSION.

The proposed legislation continually refers to a "reasonable" standard and includes a restriction that no undue burdens shall be placed on owners of public accommodations or employers. We have provided specific examples with regard to our industry to indicate standards of "reasonableness" and "undue burden" that we think appropriate. We suggest that these examples be included in the legislative history supporting this Act.

We also recommend that when drafting regulations, the agencies in question be directed to develop specific facts to prove that the acts and practices required by the regulations will effectively meet the underlying objectives of the statute. Ultimately the increased costs required by the legislation will be paid by the public. It is senseless to require that the public pay the cost of regulatory action that does not meet its intended purposes. Use data should be developed on an industry by industry basis that will clearly show that the regulations that apply to such industry will actually result in more jobs for the disabled and increased use of public facilities by persons with such disabilities.

NATO supports the concept of elimination of all discrimination. NATO supports the concept of federal legislation to specifically eliminate discrimination based on disability. NATO believes that antidiscrimination legislation should establish general guidelines but permit sufficient latitude to enable employers, employees, state and local officials, educators and the public, to work together to promote reasonable standards to eliminate job discrimination based on disability.

We will be glad to provide any additional information requested.

Respectfully submitted,

Paul A. Roth

Paul A. Roth
Chairman, Government Relations

Mr. **Edwards**. We will have some questions and some reassurances, I believe, after Mr. Lynch testifies.

Robert Dale Lynch represents the American Institute of Architects. He is an architect from Coraopolis, PA, has been active in designing accessible buildings for the disabled.

During our consideration of the fair housing amendments last year, the AIA was very helpful in providing expert advice about the requirements to provide accessibility in new construction for individuals with disabilities.

We look forward to working again with the AIA to work out a strong provision in the ADA bill and because of more votes coming up, we are going to have to respectfully request the witnesses to try to limit their testimony to about 10 minutes but, however, the full statements will be made a part of the record.

Mr. Lynch, welcome and you may proceed.

STATEMENT OF ROBERT DALE LYNCH, AIA, AMERICAN INSTITUTE OF ARCHITECTS, WASHINGTON, DC

Mr. **Lynch**. Thank you, Mr. Chairman. I very much enjoy the opportunity to be here today. I am going to summarize my statement and submit a corrected copy for the record. A page was placed out of order in the copies that we submitted earlier.

Mr. Chairman, as you already know, my name is Robert Dale Lynch, AIA, a member of the American Institute of Architects, and I have my practice near Pittsburgh, PA. I should say Coraopolis. It doesn't pronounce the way it looks on paper——

Mr. **Edwards**. I have heard San Jose pronounced La Jolla.

Mr. **Lynch**. Today I represent an organization of about 56,000 members which represents architects across this country and we are this year celebrating our 132nd anniversary.

Ending the isolation of people who have disabilities, and expanding their opportunities for fulfillment have been part of AIA public policy for a long time.

The Americans with Disabilities Act recognizes the human resource in and affirms the humanity of citizens with disabilities. The AIA supports the intent of the legislation and we support congressional action to accomplish it.

Because we do, we want this legislation to work. Its requirements must be clear, understandable and achievable, or else it fails. Civil rights law trapped for years in costly litigation denies justice and opportunity for the very people it is designed to uplift.

Since the ADA bill would reach into so many aspects of national life, its effects are profound and complex. Unfortunately, the lack of clarity and the uncertainty of several important provisions would compound its complexity, would unfairly erect barriers to compliance by people who undertake to comply in good faith, and could significantly increase liability for a profession already beset by liability burdens.

The AIA is concerned principally with certain provisions of title II, which applies to public services, and of title III, which covers public accommodations and privately provided services.

I will leave our comments on title II to the written testimony so that I can confine my time to the limit requested.

In title III concerning alterations and major structural alterations, the legislation provides for alterations and major structural alterations. An alteration must make the altered area readily accessible and usable. In the case of major structural alterations, the path of travel to the altered area must be made accessible, too.

The AIA supports the distinction between the two alteration forms as necessary to encourage renovations by preventing small projects from burgeoning into costly, complex ones solely due to the need to provide an accessible route to the altered area.

Unfortunately, the ADA fails to do this clearly. It tries to make the distinction between the two types of alterations on the basis of structural changes rather than the value of the alterations.

As a result, a building owner who simply drops a ceiling in a small office could also be required to undertake more costly complicated projects to make the path of travel to that office accessible.

We suggest the legislation provide for alterations and major alterations and establish a renovation value to building value ratio to distinguish one for the other. This is a formula that we have currently been working on in Pennsylvania.

I helped to draft our new accessibility law in Pennsylvania, which was passed into law and signed by Governor Casey last December and we feel that we have come up with a pretty workable system that way.

The AIA is concerned that the ADA bill does not adequately take into account the special nature of historic properties. The Uniform Federal Accessibility Standards [UFAS] in section 4.17, sets forth standards for historic properties. It allows the Advisory Council on Historic Preservation to determine whether accessibility requirements of UFAS would "threaten or destroy" the historic integrity of a qualified building or facility. If so, then special accessibility rules would apply. The ADA bill should require a standard of this type for all qualified properties including those listed on or eligible for the National Register of Historic Places, or designated historic by a State statute or local ordinance.

Concerning new construction, the legislation imposes requirements for new construction, which apply to facilities open for first occupancy more than 30 months after the date of enactment.

Although the legislation attempts to accommodate projects already in the design process by delaying their effective date of compliance, there will be serious transition problems for some projects that are or will be under contract for design prior to the effective date of the bill. These projects must comply by the effective dates. They will, therefore, be subjected to costly, often complicated redesign, yet architects will not know with any certainty what they must do to comply. In its section estimating the bills cost for State and local government, the Senate report acknowledges the significant added costs of redesign.

One way to handle this problem is to retain the effective dates in the legislation for alteration and new construction, but have the law apply only to those projects that receive a contract for design after the date of enactment. This is similar to the new Pennsylvania Act 166.

Onto a matter that is of personal interest to architects is that of providing what we call a safe harbor, particularly necessary during the transition from enactment to final regulations. The legislation should provide in the statute language that compliance with requirements of the American National Standards Institute for ANSI standard A117.1, 1986 edition or an equivalent standard should be sufficient, though not necessary for compliance with the legislation.

ANSI A117.1 is a national model accessibility standard adopted throughout the country and known to many architects.

It has been around since 1961 and was the basis of the new Uniform Federal Accessibility Standards, as well.

Onto the matter of enforcement. The Senate bill also provides that courts should consider a good faith effort to comply when hearing complaints brought against a covered entity or individual. We support a stronger provision.

State or local building officials should be able to certify that an architect has complied with the act.

Certification by such officials that an architect has complied should then constitute a strong defense against complaints of discrimination. This can be accomplished by permitting the Department of Justice to certify on the application of a State or locality that its building code complies with or exceeds the Federal standard established by the ADA.

When the building official of a jurisdiction with a DOJ certified statute inspects a renovation or new construction project covered by ADA, his or her enforcement of the State or local statute would ensure compliance with the ADA. Under technical assistance—and this is something that I feel is very important because architects do not receive any formal education in what we call, some people have called barrier free design, what I would like to call universal design—there is not one architect in practice today who has ever received formal education in this area and it is a problem.

We can't really depend upon standards like the ANSI standards to educate architects because those are the minimum standards and without a good knowledge of what the nature of individuals' disabilities are they can often be misinterpreted and misused.

The AIA, therefore, urges that the technical assistance program give major attention and resources to the education of architects in the new law and in design for universal accessibility. I want to stress that not only architects in practice but we ought to consider the possibility of putting formal parts of the educational process into the universities.

Of the five universities in Pennsylvania that teach architecture, not one teaches a course in barrier free design or universal design.

I would like to close by saying that we architects, the designers and builders of the environment of man, must broaden our spectrum of design parameters to help improve the quality of life for those who cannot walk or talk or see or hear.

Our creative skills must be applied as well to design for the small and the tall, those who are frail or spastic, or those who are head-injured or mentally challenged. It is a modern day and unique challenge we should engage with unique vigor and we conclude our testimony with the enthusiastic support of the intent of this bill and we stand ready as the gentleman beside me said, to support in helping to make this as perfect as we can.

Thank you.

Mr. **Edwards**. Thank you very much, Mr. Lynch and, Mr. Roth, of course. The committee appreciates the attitudes of both witnesses. You have a lot of good will that we appreciate.

[The prepared statement of Mr. Lynch follows:]

Prepared Statement of Robert Dale Lynch, Architect, American Institute of Architects, Washington, DC

Mr. Chairman, my name is Robert Dale Lynch, AIA, an architect with my own practice near Pittsburgh, Pennsylvania. I have served on numerous state and local boards and commissions addressing accessibility problems for persons with disabilities, and have 15 years experience in this design field. I am today representing The American Institute of Architects (AIA). The AIA is the professional association of 56,000 members which represents the nation's architects. This year, the AIA celebrates its 132nd anniversary. We commend you for holding this hearing and appreciate the opportunity to appear.

American architects are not strangers to the challenges of disability. The architectural profession seeks to serve the diverse needs of people through the buildings and other structures they occupy and use. The design of each of these places should be sensitive to the problems of people with special needs. Too many people live isolated and unfulfilled lives because too many places fail to accommodate their disabilities. As technology has advanced, as society has paid more attention to the rights of disabled citizens, and as law has increasingly specified standards to guarantee those rights, architects have had to meet the ever greater design challenges that disabilities pose.

Ending the isolation of people who have disabilities, and expanding their opportunities for fulfillment have been part of AIA public policy for a long time. Such a policy makes sense not only from a humanitarian standpoint but from an economic one as well. Our nation's population is aging, and between now and the end of the century we face the likelihood of serious labor shortages. The 43 million Americans with disabilities can swell the ranks of workers and enlarge the pool of consumers--both essential to economic prosperity--but only if we expand their access to workplaces and public accomodations.

The Americans with Disabilities Act (ADA) recognizes the human resource in and affirms the humanity of citizens with disabilities. It seeks the same opportunity for them to secure a job, enter a workplace, use transportation, or visit a park that able-bodied people enjoy. The AIA supports the intent of the legislation and we support Congressional action to accomplish it. Because we do, we want this legislation to work. Its requirements must be clear, understandable, and achievable, or else it fails. Civil rights law trapped for years in costly litigation denies justice and opportunity for the very people it is designed to uplift.

Since the ADA bill would reach into so many aspects of national life, its effects are profound and complex. Unfortunately, the lack of clarity and the uncertainty of several important provisions would compound its complexity, would unfairly erect barriers to compliance by people who undertake to comply in good faith, and could significantly increase liability for a profession already beset by liability burdens. Given the increasing tendency of the Supreme Court to discount report language and legislative history, it is not sufficient to leave so many of the legislation's policy specifics to the regulatory process.

Because we expect that the Senate-passed bill, rather than the House bill as introduced, will form the basis for House deliberations, my remarks pertain to the provisions of S. 933 as approved by the Senate.

The AIA is concerned principally with certain provisions of Title II, which applies to public services, and of Title III which covers public accomodations and privately provided services. Let me review the AIA's specific concerns with this measure and suggest revisions to improve the bill's chances of accomplishing its purpose.

Existing Facilities and Key Stations

The AIA is concerned that the sections of Title II covering alterations for existing facilities and for rail stations are confusing, leaving in doubt what is required. It appears that separate requirements are set forth for existing facilities and for stations. Neither is defined in the legislative language, and so the distinction is unclear. To compound the confusion, the Senate report in Title III defines facilities to encompass stations.

It appears that alterations and "major structural alterations", as in Title III, are not required upon enactment, but if undertaken, then the altered area must be made readily accessible and usable. In the case of major structural alterations, the path of travel to the altered area must be made accessible, too. The AIA supports the distinction between the two alteration forms as necessary to encourage renovations by preventing small projects from burgeoning into costly, complex ones solely due to the need to provide an accessible route to the altered area. The legislation, however, provides no way of determining when an alteration becomes a major structural alteration, leaving the decision to the Attorney General. We also believe that the ADA's use of the term "structural" is inconsistent with the legislation's intent as described in the report. Major structural alteration implies major building support elements such as columns, beams and load-bearing walls, yet the report makes it clear that other alterations which are equally significant, though not structural in nature, are also within the scope of the legislation's intent. Suspended ceilings, partitions, and doorways, for example, are not deemed major structural elements by the architectural and engineering community. The inconsistency can be eliminated by referring only to "major alterations".

Later on, the legislation demands that all intercity rail stations and key stations for other rail types be made readily accessible and usable by people with disabilities, as soon as practicable. The Secretary of Transportation may delay the requirement for up to three years in some cases, and for up to 20 years in others, with extraordinary cost of compliance a factor in the length of delay for key stations. Is the legislation providing that alterations for facilities other than stations and key stations are voluntary, but that rail stations must be made readily accessible and usable following enactment? It is unclear. If that is the requirement, then the legislation ought to say so, with proper definitions of the terms "facilities" and "key stations", and logical structuring of the sections.

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Title III also suffers from problems with clarity.

Readily Achievable Removal of Architectural Barriers

The legislation requires that public accommodations remove architectural barriers, effective upon enactment, if the removal is "readily achievable". "Readily achievable" is described as "easily accomplishable and able to be achieved without much difficulty or expense". Additional criteria for determining whether the removal is readily achievable include the size and type of the operation and the number of its employees and facilities. The provision fails to distinguish clearly between the cost and difficulty of removing a single barrier, and many barriers of the same type in a single facility. For example, the Senate report concludes that the installation of grab bars fits the readily achievable standard. The absence of a grab bar in a bathroom is evidently a barrier. The installation of a grab bar in a single bathroom is not much of a problem, but the installation of many grab bars in many bathrooms in a large office or hotel is a different matter entirely. The legislation should provide that if a facility has many architectural barriers that singly aren't difficult or costly to remove, the removal of all these barriers should either be phased in, or should occur when the facility is renovated.

Alterations and Major Structural Alterations

Title III also contemplates "alteration" of a facility which is more expensive and complex than the readily achievable removal of an architectural barrier. The legislation indicates that an alteration occurs at the choice of the facility owner. Title III does a better job than Title II in handling the distinction between accessibility improvements required upon enactment in existing facilities, and those that take place only when owners choose to initiate them. The legislation still suffers from the recurring problem of no clear distinction between a readily achievable removal of an architectural barrier and an alteration of a facility. Also, as in Title II, the legislation gives no clue as to what differentiates a major structural alteration from an alteration. The reason the legislation contains two types of alterations was so that a small or inexpensive alteration would not impose more costly renovation of an accessible route through the building. The legislation implies that changes to windows or to partitions, but not load-bearing walls could trigger the requirement for an accessible path of travel. This doesn't make any sense.

State laws already in existence provide better guidance. Pennsylvania law, for example, adopted in December 1988, provides that alterations valued less than 30 percent of the worth of a building must make only the altered area readily accessible and usable. Alterations valued at 30 to 50 percent of the building's worth must also include an accessible route to the altered area. Alterations valued more than 50 percent of the worth of the building must make the entire facility readily accessible and usable. For example, if the threshold for a major "structural" alteration is set too low, then many owners may simply delay or even refuse renovations in situations where building values are low. Referring again to the new Pennsylvania law, I believe it can be a useful guide in clarifying terms and distinguishing between major and

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minor renovations. A copy of Pennsylvania's Act 166 of 1988 has been submitted to the subcommittee.

The AIA is concerned that the ADA bill does not adequately take into account the special nature of historic properties. The Uniform Federal Accessibility Standards (UFAS) in Section 4.17 sets forth standards for historic properties. It allows the Advisory Council on Historic Preservation to determine whether accessiblity requirements of UFAS would "threaten or destroy" the historic integrity of a qualified building or facility. If so, then special accessibility rules would apply. The ADA bill should require a standard of this type for all qualified properties including those listed on or eligible for the National Register of Historic Places, or designated historic by a state statute or local ordinance.

The alterations section of Title III also establishes a "maximum extent feasible" test. This phrase is too vague, although the Senate report attempts a definition.

New Construction

The legislation imposes requirements for new construction, which apply to facilities open for first occupancy more than 30 months after the date of enactment. It makes a distinction between public accommodations, which are defined in a list of facilities and establishments, and "potential places of employment" which appear to be all those facilities not considered "public" in the limited sense of being used or visited by customer, patient, client or patron. The AIA firmly agrees with the premise that accessibility features can be easily incorporated at little or no additional cost into the original design if universal accessibility for all is a conscious goal of the architect from the first day of design.

"Potential places of employment", however, is a new term. It is unclear in the legislation whether all spaces within potential places of employment must be made readily accessible and usable, such as a rarely visted utility or store-room. The legislation's requirements should cover all those spaces within an establishment or facility that would be generally used by the public, either as consumers or employees, and exempt accessibility of other special purposes spaces such as catwalks, elevator shafts and electrical panel closets as is done in the ANSI Standards, UFAS and PA Act 166.

Although the legislation attempts to accommodate projects already in the design process by delaying their effective date of compliance (a year after enactment for alterations, 30 months for new construction), there will be serious transition problems for some projects that are or will be under contract for design prior to the effective date of the bill. These projects must comply by the effective dates. They will therefore be subjected to

costly, often complicated redesign, yet architects will not know with any certainty what they must do to comply. In its section estimating the bill's cost for state and local government, the Senate report acknowledges the significant added costs of re-design. One way to handle this problem is to retain the effective dates in the legislation for alteration and new construction, but have the law apply only to those projects that receive a contract for design after the date of enactment. After much discussion in Pennsylvania it was determined that any design contract for renovations or new construction dated later than sixty (60) days after enactment of the accessibility law was a fair and efficient way to make a transition into the new law's requirements, without the delay and cost of re-design being involved. The burden of proof was put upon the architect or building owner. If he or she could show that design work began on the project before the effective date, that project did not have to comply with the new law. Projects currently on the drawing board would not be affected. New or altered buildings escaping early compliance, however, would eventually come under the alteration requirements. Our suggestion is also similar to, but we believe more effective than, the approach instituted in the Fair Housing Act Amendments regulations which exempt from compliance those projects whose final building permits are issued on or after January 14, 1990.

To provide a "safe harbor" for architects, particularly necessary during the transition from enactment to final regulations, the legislation should provide in the statute language that compliance with the requirements of the American National Standards Institute ANSI Standard A117.1 1986 or an equivalent standard would be sufficient, though not necessary, for compliance with the legislation. ANSI A117.1 is a national model accessibility standard adopted throughout the country, and known to many architects. Given the uncertainty of the ADA's requirements, and of the nature of the regulations, architects need a readily accepted standard to which they can refer with confidence. Since ANSI no longer prescribes the scope of the standard, such as how many accessible bathrooms should be placed in a new office project as opposed to what an accessible bathroom must include, the legislation as an alternative could instead refer to the Uniform Federal Accessibility Standard (UFAS), which contains a scoping element. In the new fair housing law enacted last year, ANSI is deemed a sufficient standard to follow in complying with accessibility requirements for housing.

Because the report makes it clear that the Architecural and Transportation Barriers Compliance Board shall extend and make necessary revisions to the federal Minimum Guidelines and Requirements for Accessible Design (MGRAD), a question is raised about the relationship of this provision to current ANSI Standards. Is the revised MGRAD supposed to supplant ANSI as the standard for the details of handicapped accessibility design? MGRAD now relies on the ANSI standard. The legislation should specify this continued reliance, except, to the extent that a scoping element is required. Incidentally the ANSI A117 Committee, of which I am a member, will be considering re-adoption of a scoping standard in its 1991 Edition.

The ADA's new construction provisions also exempt from compliance those new projects where it is "structurally impracticable" to comply. The Senate report makes it clear that structural impracticability does not pertain to conditions involving a "hilly" site but only to those conditions that would prevent accessibility or destroy the physical integrity of a structure. It is meant to be a very limited exemption involving such buildings as those built on stilts in marshland or in a floodplain. The issue of economic feasibility should not be overlooked, especially since such feasibility is inherent in the idea of structural inpractibility. The sections of the ADA dealing with readily achievable removal of architectural barriers and with alterations already acknowledge the cost of compliance and seek to ensure that the legislation's costs are not unreasonable.

The new construction requirements should do the same. The AIA supports the legislation's intent to require the incorporation of accessibility features which are not prevented by structural impracticability or economic infeasibility. The ADA should also incorporate the term "equivalent facilitation" to allow alternative access means where conventional accessibility is impracticable and an alternative means can be demonstrated to achieve an equivalent accessibility result.

Enforcement

The Senate bill also provides that courts should consider a good faith effort to comply when hearing complaints brought against a covered entity or individual. We support a stronger provision. State or local building officials should be able to certify that an architect has complied with the Act. Certification by such officials that an architect has complied should then constitute a strong defense against complaints of discrimination. This can be accomplished by permitting the Department of Justice to certify, on the application of a state or locality, that its building code complies with or exceeds the federal standard established by the ADA. When the building official of a jurisdiction with a DOJ-certified statute inspects a renovation or new construction project covered by the ADA, his or her enforcement of the state or local statute would ensure compliance with the ADA. It is only fair that if a state or local building official assures an architect that a project complies with DOJ certified handicapped access statutes, then the architect should have confidence that any liability will be sharply limited.

Technical Assistance

Finally, the Senate bill establishes a program of technical assistance for affected segments of the public to inform them about the act and its details. This is a worthwhile provision aimed at encouraging compliance through better understanding and information, rather than through the heavy hand of the courts. Specifically, in reference to architects, the AIA urges that the technical assistance program give major attention and resources to the education of architects in the new law and in design for universal accessibility.

The American with Disabilities Act is far-reaching legislation aimed at opening doors for a segment of our society shut out of the mainstream for too long. The legislation's significance demands that its crafting advance rather than impede achievement of its objectives. We hope that our suggestions will help this bill become what it deserves to be.

Mr. Chairman, I would close by saying that we architects, the designers, and builders of the environment of man must broaden our spectrum of design paramehters to help improve the quality of life for those of us who cannot walk or talk, see or hear.

Our creative skills must be applied, as well, to design for the small and the tall, those who are frail or spastic and those who are head-injured or mentally challenged. It is a modern day and unique challenge we should engage with enthusiasm and vigor.

Mr. **Edwards**. Mr. Roth, I want to assure you that we want more communication with theater people because these problems can be resolved and we are going to write our legislative history very carefully, which will help to resolve some of your concerns.

Now, Mr. Roth, what about removable seats as one way to accommodate the disabled? Do you have any history of that? Are you acquainted with that procedure?

Mr. **Roth**. Yes, sir, I am. I think it is an excellent way to accommodate varieties of handicaps. However, if we are talking about 9:10 and we have 250 people leaving an auditorium and 250 people trying to get in and I arrive in a wheelchair and ask, can you take out those two removable seats, that is a pretty good sized problem.

Mr. **Edwards**. Well, what do you do when a disabled person arrives?

Mr. **Roth**. In every auditorium, when we have removable seats, we have open spaces for wheelchair seating.

Mr. **Edwards**. Have you ever turned one away?

Mr. **Roth**. No, sir.

Mr. **Edwards**. So you feel you accommodate the people in wheelchairs now?

Mr. **Roth**. What would happen was, you would call and say "I am coming to the 9:20 show and I am bringing my wife and my sister who is confined to a chair. We have been in your theater before and we know in a certain area you have the removable chairs. Is it possible that you can have them taken out before this evening so when we get there they would be available?"

By all means we would do that. If we could do it without any prior notice, we would try, but it poses the problem of discomforting 300, 400, or 500 people while two ushers are trying to dismantle the chair and carry it out.

But, yes, it is a real good way when combined with other good ways to accommodate people with various handicaps.

Mr. **Edwards**. Mr. Roth, you feel that the bill as written with appropriate legislative history that specifically addresses your concerns can assuage your fears as to the effects of this legislation?

Mr. **Roth**. Well, sir, the more legislative history, the better, but when you get to the local level and somebody is arguing with you, whether you complied with the act or you don't, those local people whether they be the building inspector, the fire inspector or whoever, they don't have the legislative history readily at hand and the average theater operator does not have the legislative histories in his file cabinet.

So what will happen, somebody will whip out the act which makes it critically important that the act itself be as clear as possible because by the time we research, investigate and adjudicate the legislative history, the lease may have expired.

Mr. **Edwards**. Do you have any specific recommendations for amendments to this legislation?

You don't want to be exempted from it.

Mr. **Roth**. No, sir, we don't want to be exempted from it. We have in several instances submitted specific language. If the committee or the subcommittee would like further submissions, we would be delighted to offer them.

Mr. **Edwards**. We would welcome any specific language that you have in mind and we will give it very careful consideration. I only have a question or two for Mr. Lynch. Then I will yield to Mr. Sensenbrenner.

The Pennsylvania experience appears to be of great advantage to us in that you have a prior track record, isn't that correct, and generally speaking you think that the legislation that we have written here can work satisfactorily?

Mr. **Lynch**. Well, sir, we feel that there is some clarification in the language that needs to be made. We have gone through an awful lot of the thought process that you are going through now in Pennsylvania and I think one of the beauties of our legislative process that we choose to take was to try to get as many of the groups such as theater owners, small businessmen, restaurant owners, multifamily housing managers involved in the legislative process early so they did for us what we are hoping to offer to you today, they offered us areas of concern that needed to be clarified.

We felt that we had the bill pretty well ironed out by the time it did get to enactment. I think we may have had a few less fuzzy areas of terminology than you present have today.

Mr. **Edwards**. Does your full statement include all of your recommendations or do you have in mind sending us some more?

Mr. **Lynch**. We have basically put it into our full statement. There are some elaborations that if we had the opportunity would probably be of benefit. I think just to further elaborate on some of them would show the rationale on why we picked things, for instance, to talk about, levels of renovation which I think might better solve the problem here than the terminology which I think S. 933 talks about, alterations and then major structural alterations.

There are some problems with architectural terminology that would mislead architects, I am sure, if they read it. We found in the Pennsylvania experience—I felt one of my conclusions made to Senator Rhodes' task force in Pennsylvania was that I was able to show where architectural and construction terminology was applicable and would be better interpreted by those people who needed to know it, like building officials, architects, engineers and contractors.

Mr. **Edwards**. Thank you.

Mr. Lynch, we welcome over the next few days, and perhaps even few weeks, any communication with our staff, minority and majority staff, so that we can work out any of these problems that we find mutually agreeable.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you, Mr. Chairman.

Mr. Lynch, I would like to pick up on what the chairman said, could you please send us a letter for inclusion into the record where you believe there is terminology in the Senate-passed bill which would be misleading to architects and also what type of language that you would recommend that would accomplish the same thing that the Senate authors wanted in the inclusion of that language and how we could write something differently that would tell architects what to do and accomplish the same thing as the Senate's intent.

Mr. **Lynch**. Mr. Sensenbrenner, we would be pleased to do that. I am glad you are giving us the opportunity to do. We have the language and we would love to share our experience with it.

Mr. **Sensenbrenner**. I can tell you we would not know what to do on this subject so we need some direction from you.

Mr. **Lynch**. You have it.

Mr. **Edwards**. I would suggest you might be a very good first professor at one of our great Pennsylvania universities. It is shocking that there are no courses on this subject.

Mr. **Lynch**. Unbelievable.

Mr. **Edwards**. Thank you, gentlemen.

Our final panel will be Ms. Jo Holzer, executive director of the Council for Disability Rights in Chicago. She has been involved in the disability movement for many years. After Ms. Holzer has testified, we will hear from Prof. Robert Burgdorf. I will introduce him in more detail at the proper time.

Because we have some problems with votes today, we are going to ask unanimous consent that both of your excellent statements be made part of the record in full and if you possibly can limit your remarks to about 10 minutes apiece.

Thank you.

Ms. Holzer.

STATEMENT OF JO HOLZER, EXECUTIVE DIRECTOR, COUNCIL FOR DISABILITY RIGHTS

Ms. **Holzer**. Thank you. My name is Jo Holzer and I am speaking to you today as an advocate for the rights of all people with disabilities and as a parent of a young adult with a physical disability. I began my volunteer activities in the disability rights movement in 1973 when, as the parent of a child with a disability, I was asked to be a founding member of Advocates for the Handicapped, in Chicago. A few years later I decided to devote all of my time to the cause of disability rights and in 1981 I was a cofounder of the Council for Disabilities Rights. I am its executive director.

The council provides information and referral on disability-related requests; we provide training for parents, for consumers, or for professionals on disability-related topics including self-advocacy, disability awareness, disability rights and special education rights. Our monthly newsletter, CDR Reports, is sent out to nearly 40 States as well as several provinces in Canada. We have just begun the second year of a State-funded project for job preparation and placement.

Let me tell you why I became a full-time advocate for disability rights for all people with disabilities: My youngest daughter Margaret, who is 23 years old and a senior at University of Wisconsin at Whitewater, has a very rare condition called fibrodysplasia ossificans progressiva or f.o.p. that she shares with approximately 70 other people in this country; it is an inborn biochemical error that affects their muscles, but has no negative impact on their intelligence.

Her condition was diagnosed when she was 3 weeks old. Very early in the grieving process, I realized that the only way I could ever really help our child was to help all people with disabilities;

that as a member of a tiny minority within a vast minority, she could never be heard, but that as a member of that larger minority, she could be heard and could also be benefited.

It was one of the very best decisions I have ever made. I am proud to be a disability rights advocate and to share in the pursuit of our common goal—independence with dignity and equal participation in all aspects of society.

Every parent tries to look ahead and help their children prepare for their futures. Our major concern for Margaret has always been her long-term future. Our hopes and expectations for Margaret are no different than for her two sisters.

The general public, as well as many professionals, do not, however, share our high expectations for most people with disabilities. As she grew up, we all constantly encountered the "great myth," that people with disabilities are not quite human, that they cannot function adequately or appropriately by themselves, and more or less learned to live with it, mostly by ignoring it. Her friends, however, who only encountered the attitude when with Margaret, were often angered by the general public attitude toward her.

Through the years Margaret has been the object of discrimination in many ways and venues, but perhaps the most despised have been the low—even absent—expectations of some of her teachers, the very people society has charged with the development of our children. Too often her presence was simply tolerated because the law required that she be served.

I do not mean to condemn the teaching profession for poor attitudes, but their attitudes toward students have been proven to be vital to the success of their students. They are reflective of society at large, but have a far more serious impact on children. Many teachers simply told me not to worry about her, that she was very smart and "got everything." They failed to understand that we were at odds with their stereotypical thinking, that we had great expectations for all of our children.

The inevitable result of these side effects of mainstreaming, the downside, was a perfectly dismal performance her first 2 years at the university. Now that she understands these dynamics herself, she is doing well and fully expects to graduate this June.

Margaret is among the earliest graduates to have benefited from Public Law 94-142, the Education for All Handicapped Children Act, which became effective when she was in grade school. Soon she will be seeking employment and she expects to find access and accommodation in the adult world at least to the degree that she has experienced it during her education.

Millions of children with disabilities have benefited directly from the services, therapies and transportation provided to them and their families by Public Law 94-142. These kids have been integrated into the school with their nondisabled peers, as the act intended; they will, of course, expect to be integrated into the community and the adult world in the same nondiscriminatory manner.

Now they expect to become employed, to work as hard as everyone else, to benefit from being employed, and to pursue their own independent lifestyle—just as you and I do—in the community.

As her parents, we also have the same expectations, that with her good talents and skills, she will be able to find and keep a good job and enjoy all that her community has to offer.

However, barriers do exist. There is enormous need for barrier-free public accommodations. These are the barriers that impact most heavily on the family unit and prevent families from participating in normal public events, civic activities, voting, community affairs, and other regular activities like shopping, movies, entertainment, and sports.

Our family has fared better than most in many ways because we live in a State with strong laws on the books. Margaret was able to get a summer job when she was 16; she was well-accommodated on the job. Many businesses, both small and large, have made these simple infrequent accommodations without going bankrupt. In addition, many public accommodations have removed architectural barriers without great cost. As an advocate, however, I am aware that in too many other States, families do not share our experiences. The ADA would cure this inequity for families across the country.

Margaret has been extremely fortunate in many, many ways, not the least of which is her father's financial success. But our family is by no means typical. According to "Toward Independence," the Census Bureau reports that a household/family that includes a person with a disability is twice as likely to fall at or below the poverty level as a household/family without a person with a disability.

Margaret has been fortunate to survive. Although the condition itself is nonfatal, its complications often are. Margaret is fortunate to have a superior intelligence and excellent communications skills, both written and oral. Margaret is fortunate to have grown up in a stable family unit with siblings and two parents.

Indeed, Margaret is uniquely fortunate to have been born with so many advantages, with or without the disability. Even so, she still must endure the physical and attitudinal barriers of our society. She may always be stared at, rebuffed, ignored, and otherwise mistreated by the general public. We cannot legislate good manners or sensitivity to others, but we can ensure that she and all other people with disabilities are given equal treatment and the opportunity to participate in the workday world.

On behalf of all parents, I implore you to consider the future of our children: Give them an equal chance to succeed; remove those barriers to their success.

On behalf of my daughter and all those individuals with disabilities who do not have her advantages, I urge you to pass the Americans with Disabilities Act of 1989, so that they may each have a better chance to achieve equal participation in society and independence with dignity.

Thank you for this opportunity to present these views on behalf of our community who seek their own empowerment, their equal opportunity to participate, their own place in the sun, to contribute to a better future for all of us.

Mr. **Edwards**. Thank you. That is very helpful testimony. We do appreciate it.

[The prepared statement of Ms. Holzer follows:]

PREPARED STATEMENT OF JO HOLZER, EXECUTIVE DIRECTOR, COUNCIL FOR DISABILITY RIGHTS

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Every parent tries to look ahead and help their children prepare for their futures. Our major concern for Margaret has always been her long-term future. Our hopes and expectations for Margaret are no different than for her two sisters. The general public, as well as many professionals, do not however, share our high expectations for most people with disabilities. As she grew up, we all constantly encountered the "great myth" -- that people with disabilities are not quite human, that they cannot function adequately or appropriately by themselves, etc. -- and more or less learned to live with it, mostly by ignoring it. Her friends, however, who only encountered it when with Margaret, were often angered by the general public attitude toward her.

Through the years Margaret has been the object of discrimination in many ways and venues, but perhaps the most despised have been the low -- even absent! -- expectations of some of her teachers, the very people society has charged with the development of our children. Too often her presence was simply tolerated -- because the law required that she be served. I do not mean to condemn the teaching profession for poor attitudes, but their attitudes toward students have been proven to be vital to the success of their students. They are reflective of society at large, but have a far more serious impact on children. Many teachers simply told me not to worry about her, that she was very smart and "got everything." They failed to understand that we were at odds with their stereotypical thinking, that we had great expectations for all of our children.

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Thank you for this opportunity to present these views on behalf of our community who seek their own empowerment, their equal opportunity to participate, their own place in the sun -- to contribute to a better future for all of us.

Mr. **Edwards**. Now we will hear from Prof. Robert Burgdorf of the District of Columbia School of Law. Professor Burgdorf formerly served on the staff of the National Council on Disability and while there drafted the original version of ADA introduced last year. We look forward to hearing more from him and learning from his expertise.

We welcome you, Professor Burgdorf.

STATEMENT OF ROBERT L. BURGDORF, JR., ASSOCIATE PROFESSOR OF LAW, DISTRICT OF COLUMBIA SCHOOL OF LAW

Mr. **Burgdorf**. Thank you, Mr. Chairman.

Mr. Chairman, Representative Sensenbrenner, I am honored to be here. Let me begin by saying that as the drafter of the original version of the Americans with Disabilities Act, as it was introduced last year, I have no hesitation in endorsing this year's bill as achieving the goal of the National Council on Disability which set out to enact a clear and comprehensive law to prohibit discrimination against people with disabilities.

I wanted to begin by talking a little bit about the scope of the problem, particularly in the area of accommodations that we are addressing. In 1986, the Louis Harris organization conducted a poll, a nationwide poll of people with disabilities and the pollsters discovered that people with disability were an extremely isolated segment of the population.

The National Council on Disability took a look at the results of the Louis Harris Poll and stated the following: The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and excluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, to musical performances and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, a grocery store and never go to a church or synagogue.

Specifically, the Harris Poll found that nearly two-thirds of all disabled Americans never went to a movie in the last year, that is compared to 22 percent of the general population. Three-fourths of all people with disabilities did not see live theater or live music performances in the past year as opposed to only 40 percent of the general population.

Disabled people are three times more likely than nondisabled people to never eat in restaurants. They are also much less likely to go to grocery stores. Thirteen percent of disabled persons never shop in a grocery store compared with only 2 percent of people without disabilities.

Why is this true? Why do we have an isolated and excluded population?

The Harris Poll went further and asked these people why aren't you getting out, why aren't you doing things. The two major reasons were fear and barriers, fear of how people were going to be treated. Six out of 10 of the people whose activities were limited said that is one of the major reasons why they are limited.

Forty percent said physical barriers kept them from going places and doing things as often as the rest of the population. We have unfortunately in America erected an unwelcome sign to people with disabilities. They are afraid to go to places.

They don't know how they are going to be treated there and they don't know if they are physically going to be able to get into the buildings.

This bill would be a major step forward in addressing this discrimination and putting up a welcome sign for people with disabilities. I heard the earlier witnesses in the previous panel, particularly Mr. Roth, talk about the loose language of the bill, talk about its vagueness and ambiguity.

We have heard concerns expressed by other members of the small business community that this is somehow an attack upon small businesses. I wanted to say to the subcommittee that I have no hesitancy whatever in saying that this particular bill takes into account and gives deference to the needs of businesses, and in particular small businesses more than any other civil rights bill that has ever been before the Congress.

At every juncture in the bill, there is deference paid to the size and to the difficulties faced by smaller businesses. For example, the bill does not call for existing buildings to be made totally accessible to people with disabilities. It requires only that easy things be done, readily achievable.

Barrier removal is called for. Readily achievable is defined as easily accomplishable and able to be carried out without much difficulty or expense. The bill describes factors to be considered in determining what is readily achievable.

Those factors include the size of covered entity, number and type of facilities, size of the budget. So, the size and the money available to a business is particularly, specifically required to be considered.

A mom-and-pop store is clearly held to a much lower standard than is a highly financed big national concern. A struggling small business will be required to do much, much less than a bigger, more well to do establishment.

Likewise, there is a requirement for the provision of auxiliary aids. The auxiliary aids are not required if to do so would be an undue burden. Once again, in determining what is an undue burden, the size and budget of the entity affected are clearly required to be examined.

A struggling small business will be excused from providing an auxiliary aid or service in circumstances where a larger, more prosperous business might be required to provide it. But what is the big, scary requirement? The new construction requirement, is that onerous to small businesses? I don't believe it ever was.

In working out a compromise bill to make absolutely certain this could not be onerous, there is an exemption put in specifically saying that small buildings do not have to have elevators put in them. The bill excepts small buildings from the elevator requirements, for facilities less than three stories or having less than 3,000 square feet per story.

That is the big, scary one. It is specifically not required either for new construction or major structural alterations. Likewise, the bill sets a standard of readily accessible to and usable by as its accessibility standard. That is not a total accessibility requirement.

It is a term of art. It has been used for years. It is specifically tailored to the type and use of each particular facility. The Senate bill shows it does not require the accessibility of every part of every area of a facility.

Further, the term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, et cetera, are accessible, only a reasonable number must be accessible, depending on such factors as location and number.

Again, it is a bowing to small businesses that may have fewer facilities and fewer areas and therefore have fewer areas and facilities to make accessible. I can go on, and I did in my testimony address five or six additional ways in which this bill tries to take into account and give deference to the needs of small businesses.

I would like to respond briefly to some of the comments of the previous panel. The testimony of Mr. Lynch and Mr. Roth was very enjoyable to me in that they endorsed the basic goal and the coverage of the American with Disabilities Act. I had some disagreements about specifics.

In terms of Mr. Lynch's testimony, the question of major structural alterations and whether this is or is not clearly defined in the bill, he took the example of a dropped ceiling, and that perhaps that would trigger a path of travel requirement under the bill.

The bill talks about alterations that affect usability of a facility. I would find it hard to argue that replacing tiles in a dropped ceiling affects the usability of a building.

Second, it has to be a major alteration and a structural alteration. The Senate report defines structural to mean changes in the walls, ceilings or floors. It is changing one of the physical components of a structure.

Third, it has to be major. The report says that major refers to only those changes that occur in a major area, a major part of the building. So, for example, a change in a broom closet is not a major structural change, no matter how extensive it is, and a change in a bank lobby would be, a change in a major area of a bank.

With that said I look forward to your questions. Thank you for this opportunity to testify on the bill.

Mr. EDWARDS. Thank you very much, Professor Burgdorf.

[The prepared statement of Mr. Burgdorf follows:]

PREPARED STATEMENT OF ROBERT L. BURGDORF, JR., ASSOCIATE PROFESSOR OF LAW, DISTRICT OF COLUMBIA SCHOOL OF LAW

My name is Robert L. Burgdorf Jr. I am an Associate Professor of Law at the District of Columbia School of Law, where I teach Constitutional Law and will be supervising a clinical legal education program dealing with the rights of people with disabilities. From March, 1985, to December, 1988, I worked for the National Council on Disability, where I had the honor of drafting the original version of the Americans with Disabilities Act (ADA) as it was introduced last year. For me this bill represents the culmination of more than fifteen years of work as a legal advocate for the rights of citizens with disabilities. I appreciate this opportunity to appear before the Subcommittee to discuss the issue of discrimination against individuals with disabilities in public accommodations.

At the outset, let me say that as the author of last year's version of the bill I have no hesitation in endorsing this year's bill. I believe the 1989 model of the ADA is fully consistent with the spirit and intent of the original proposal of the National Council on Disability that called for enactment of "a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting, clear, consistent and enforceable standards prohibiting discrimination on the basis of handicap" (Toward Independence, p. 18 (1986)). The version of the bill (S. 933) that was passed by the Senate by a 76 to 8 vote on September 7, 1989, was the product of extensive negotiation and compromise; as such, it does not completely satisfy any of the interest groups affected. In my opinion, however, the revised bill represents a strong vehicle for prohibiting discrimination against people with disabilities, with provisions that, on balance, are prudent and well-crafted. The passage of this bill will represent an unprecedented advance -- a milestone in the struggle by people with disabilities to secure a legal status of equality in American society.

EXTENT AND EFFECTS OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS

In the first ever nationwide poll of people with disabilities conducted in 1986, the Louis Harris organization asked a number of questions regarding the social integration and activities of Americans with disabilities. The pollsters discovered that people with disabilities are an extremely isolated segment of the population. As the National Council on Disability summarized the poll's results:

> The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue.... While a decided majority of other Americans report that they are not active in religious, volunteer, and recreation groups, most persons with disabilities are not active in such groups. The extent of non-participation of individuals with disabilities in social and recreational activities is alarming.
> (Implications for Federal Policy of the 1986 Harris Survey of Americans with Disabilities, p. 35 (1988))

Specific findings of the poll included the following:

> - Nearly two-thirds of all disabled Americans never went to a movie in the past year. In the full adult population, only 22% said that they had not gone to a movie in the past year.
> - Three-fourths of all disabled persons did not see live theater or a live music performance in the past year. Among all adults, about 4 out of 10 had not done so.
> - Two-thirds of all disabled persons never went to a sports event in the past year, compared to 50% of all adults.
> - Disabled people are three times more likely than are nondisabled people to never eat in restaurants. Seventeen percent of disabled people never eat in restaurants, compared to 5% of nondisabled people. Only 34% of disabled people eat at a restaurant once a week or more, compared to a 58% majority of nondisabled people.
>
> (Louis Harris and Associates, The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream, p. 3 (1986))

Another specific finding of the poll had to do with grocery shopping and similar activities:

> Disability also has a negative impact on vital daily activities, like shopping for food. A much higher proportion of disabled persons than nondisabled persons never shop in a grocery store. Thirteen percent of disabled persons never shop in a grocery store, compared to only 2% of nondisabled persons. About 6 out of 10 disabled persons visit a grocery store at least once a week, while 90% of nondisabled adults shop for food this often.
> (Id., p. 3)

Why don't people with disabilities frequent places of public accommodation and stores as often as other Americans? The Harris poll sheds some light on the reasons for this isolation and nonparticipation by persons with disabilities in the ordinary activities of life. Two of the major reasons have to do with not feeling welcome and inaccessibility.

The preeminent reason why people with disabilities do not participate in various aspects of commercial, social, and recreation activities that are a routine part of ordinary life for most other Americans is that they do not feel that they are welcome and can participate safely. Two of the major reasons most commonly identified by the Harris poll why the activities of people with disabilities are limited are fear and self-consciousness about their disability. The Harris organization reported that "Fear is the barrier mentioned most frequently by disabled people as an important reason why their activities are limited," with nearly six out of ten (59%) of those reporting activity limitations listing fear as an important reason (Id., p. 63). And self-consciousness about their disability was reported as an important factor by forty percent (Id., p. 64). To a disturbing degree, people with disabilities do not feel safe or welcome to attend or visit ordinary places open to the public for socializing, doing business, or engaging in recreation and other major activities in our society.

Another way in which people with disabilities are prevented from visiting social, commercial, and recreational establishments (and in which the lesson of not being welcome is underscored) is by the presence of physical barriers. Many people with mobility impairments, including in particular those who use wheelchairs, cannot get into or use a facility that has steps, narrow doorways, inaccessible bathrooms, and other architectural barriers that keep them out. People having visual and hearing impairments are often unable to make effective use or to participate safely in activities and services if the facility in which they occur has included no features for communication accessibility. According to the Harris poll, forty percent of individuals with disabilities reporting limitations on their activities say that an important reason why they are limited is inaccessibility of buildings and restrooms (Id., p. 64).

The Harris poll documents the social isolation of people with disabilities that results, in large part, from discrimination they encounter when they try to engage in the ordinary social and commercial transactions of daily life.

NEED FOR TITLE II-LIKE PROTECTION

Nearly three decades ago, four black students sat down at a lunch counter at a Woolworth's store in Greensboro, North Carolina, ordered a cup of coffee, and refused to move until they were served. Unknown to the four young men at the time, their act of courage would precipitate a series of sit-ins and other forms of civil disobedience challenging the racial segregation of lunch counters, restaurants, hotels, motels, parks, and other facilities. The segregation of such places was a principal target of civil rights protests, lawsuits, and proposals for legislative reform during the early sixties.

These efforts culminated in a major section of the Civil Rights Act of 1964 -- title II, which prohibits discrimination on the basis of race, color, religion, or national origin in places of public accommodation. Title II (42 USC 2000a) defines the phrase "place of public accommodation" to include a range of establishments that had generated serious problems of segregation. These include inns, hotels, motels, and other lodging establishments; restaurants, cafeterias, lunchrooms, lunch counters, soda fountains, and other facilities selling food for consumption on the premises; gasoline stations; and motion picture houses, theaters, concert halls, sports arenas, stadiums, and other places of exhibition or entertainment. Since 1964 it has been illegal for any of these establishments to discriminate on the basis of race, color, religion, or national origin. Unfortunately, it is not unlawful today for these same establishments to exclude, segregate, mistreat, insult, or otherwise discriminate against people because of their disabilities.

People with various disabilities are turned away from restaurants because proprietors say that their presence will disturb or upset other customers. Steps, narrow doorways, curbs, and other physical barriers block people who use wheelchairs from entering many arenas, stadiums, theaters, and other public buildings. People with visual or hearing impairments find that no arrangements have been made for their attendance or effective participation.

At the height of civil rights confrontations in the early sixties, some parks and zoos were closed by entrenched authorities rather than permit these facilities to be integrated.

Nearly thirty years later, people with disabilities are still having trouble gaining admission to many such establishments. Last year, the Washington Post reported that a New Jersey zookeeper refused children with Down syndrome admission to his zoo because he was afraid they would upset his chimpanzees.

In 1985, I wrote an article for the Washington Post concerning the lack of accessibility at Ford's Theatre and other Washington performing arts facilities. Since that article was written, some substantial improvements have been made to improve access at Ford's. A major factor in the change for the positive was that the Ford's Theatre is subject to federal laws and regulations governing federally owned, leased, and federally assisted buildings, and a complaint of discrimination was filed on account of the inaccessibility of the theatre. In resolving the formal discrimination complaint, the National Park Service concluded that accessibility features were necessary and could be achieved without compromising the historic character of the Ford's building, and has worked diligently to have such changes implemented.

Had the Theatre not had a federal nexus, however, it would not be prohibited from discriminating against people with disabilities even though it is an important public accommodation. If such a facility were privately owned and operated, the improvements that have been made to increase accessibility would not have been required, and it could persist in discriminating, by practice and through architectural barriers, against people with disabilities. A place of public accommodation that is prohibited by federal law from discriminating against people because of their race or religion or national origin, is perfectly free to engage in blatant and invidious discrimination against people with disabilities. Indeed, under existing law, there is no federal statute that would prevent a private operator from constructing a new, totally inaccessible public accommodation.

The ADA seeks to correct this inequity. It addresses the two major ways in which discrimination keeps people with disabilities from making equal use of public accommodations. It prohibits discriminatory practices -- rules and attitudinal barriers that bar people with disabilities from participating or participating equally. And, in certain circumstances, it prohibits architectural and communication barriers that can keep people from even getting into a facility.

SCOPE OF COVERAGE OF PUBLIC ACCOMMODATIONS UNDER THE ADA

Title III of the ADA deals with "Public Accommodations and Services Operated by Private Entities" (my references are to the compromise version of the bill as it was passed by the Senate). Under the ADA a public accommodation means any privately operated establishment that affects commerce and is included in any of the twelve categories of establishments listed in the bill -- places of lodging, establishments serving food or drink, places of exhibition or entertainment, places of assembly, retail sales establishments, service establishments, transportation terminals, places of public display or collection, parks or zoos, schools, social service establishments, and places of exercise or recreation (sec. 301(3)). As the Senate Report notes (at p. 59), the legislation lists a few examples in each of these classes and then, in most cases, adds the phrase "other similar" to broaden the coverage to include a wide array of related types (construed liberally) of establishments. In effect, the definition of public accommodation in the ADA includes almost all establishments used by the general public as customers, clients, or visitors. The broad definition of public accommodation in the ADA is consistent with public accommodation anti-discrimination statutes in effect in some states, and incorporates broad notions of accessibility to the public that are features of the Architectural Barriers Act of 1968 (42 USC 4151).

The definition of public accommodations used in the ADA is not identical to the definition used in Title II of the Civil Rights Act of 1964. Like Title II, the ADA covers hotels, motels, restaurants, cafeterias, theaters, concert halls, sports arenas, stadiums and other places of exhibition or entertainment. When the 1964 Civil Rights Act was passed, these were the public accommodations which posed pervasive problems of discrimination to racial minorities. As in Title II, the ADA focuses on those aspects of society which pose problems of discrimination; for people with disabilities, these include, in addition to those establishments covered in Title II, others such as doctors' offices, grocery and other retail stores, and parks. This reflects a realistic approach to the problems faced by persons with disabilities as did Title II in 1964 for other minorities. It simply makes no sense to bar discrimination against people with disabilities by theaters and not by parks, or by restaurants but not stores, or by places of entertainment but not in regard to such critical services as doctors' offices.

It is important to note that Title II has been interpreted to cover entities not specifically mentioned, Org. of Minority Vendors, Inc. v. Illinois Central Gulf R.R., 579 F. Supp. 574 (D.C. Ill. 1983), and that Section 1981 operates to ban many additional public accommodations from discriminating on the basis of race and national origin. The approach underlying these developments is an attempt to broaden antidiscrimination coverage to address existing discriminatory practices without being hemmed in by a narrow construction of the term "public accommodations."

Likewise, the approach taken in the definition of public accommodation in ADA is to define the term to encompass all those places in which people with disabilities have been denied or limited in their access to facilities, services, programs, and opportunities that are routinely made available to other members of the general public. Such is surely the essence of the words "public accommodations."

While the definition of public accommodations in the ADA is broad, it certainly does not include every new building in the U.S. Private homes, apartments, condominiums, cooperatives, and other private housing facilities and residences are not included (many multifamily residences are subject to the accessibility requirements of the Fair Housing Amendments Act). Buildings owned by the federal government are not included (these are already subject to accessibility requirements under the Architectural Barriers Act and Section 504). Buildings owned by state and local governments are not within the definition of public accommodation, but most will be covered by the "public service" provisions in Title II. Specifically exempted from the coverage of this Title of the bill are private clubs, and religious organizations and entities controlled by religious organizations (Sec. 307).

Another important concept in regard to the ADA's coverage of places of public accommodation is the term "facility." The Senate Report indicates that the term "facility" should be interpreted to refer to "all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located" (Id. at p. 67). This definition is based upon the definition of the term "facility" in Section 504 regulations (45 CFR 84.3(i)), and is similar to definitions of this term in UFAS (3.5) and in the ANSI standards (3.5). (UFAS and ANSI are discussed subsequently in this testimony.)

This definition of the term "facility" applies to both indoor areas and all outdoor areas where human-constructed improvements or items have been added to the natural environment. It includes buildings and other erected structures, as well as vehicles, equipment, apparatus, and parking lots, walkways, sidewalks, roadways, and passageways, plus the sites, areas, or settings in which such things are located.

FORMS OF DISCRIMINATION PROHIBITED

Subsection 302(a) of the bill establishes the general rule that makes it illegal to discriminate against an individual on the basis of disability in regard to "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation." Subsection 302(b)(1) provides five priciples of construction for applying the nondiscrimination mandate. These include provisions prohibiting: (1) denials of opportunities, unequal opportunities, and unnecessarily separate opportunities; (2) segregation; (3) denial of opportunity to particpate in nonseparate opportunity; (4) discriminatory standards, criteria, or methods of administration; and (5) discrimination because of association or relationship with a person with a disability.

Subsection 302(b)(2)(A) describes six types of discriminatory acts that are specifically prohibited; these include:

(1) discriminatory eligibility criteria;

(2) failure to make necessary reasonable modifications in rules, policies, practices, procedures, protocols, or services, unless to do so would involve a fundamental alteration of the nature of the privileges, advantages, or accommodations being provided;
(3) failure to ensure the provision of auxiliary aids and services, unless doing so would involve a fundamental alteration or would result in an undue burden;
(4) failure to remove architectural, transportation, and communication barriers in existing facilities and vehicles where such barrier removal is readily achievable;
(5) where such barrier removal is not readily achievable, failure to take alternative readily achievable steps to provide access; and
(6) failure to incorporate, to the maximum extent feasible, accessibility into alterations of facilities or parts of facilities (with an exception regarding elevators in certain small buildings).

Subsections 302(b)(2)(B) and (C) establish specific prohibitions of discrimination in regard to (respectively) fixed route transportation systems and demand responsive transportation systems.

Section 303 deals with new construction requirements in public accommodations and potential places of employment. It provides that it is discrimination for such establishments to fail to make new facilities constructed for first occupancy more than 30 months after the date of enactment of the Act accessible, except where it is structurally impracticable to do so.

The forms of discrimination listed in sections 302 and 303 are generally based upon existing concepts of nondiscrimination in law and regulations, particularly under Section 504 of the Rehabilitation Act of 1973. Thus, the requirements of reasonable modifications, of providing auxiliary aids and services, and of removing architectural, transportation, and communication barriers to make facilities and vehicles readily accessible to and usable by individuals with disabilities, are well-established principles of disability nondiscrimination law. Likewise, limits upon nondiscrimination requirements, such as "fundamental alteration in the nature," "undue burden," "to the maximum extent feasible," and "structurally impracticable," are all drawn from existing regulatory language under Section 504, the Architectural Barriers Act of 1968, and UFAS. In applying new construction accessibility requirements to "potential places of employment," in addition to places of public accommodation, the bill adopts an approach that had previously been applied in the Architectural Barriers Act.

An important distinction is made between providing an auxiliary aid or service and removing an architectural or communication barrier:

Removal of architectural and communication barriers are structural solutions, for example:

- audio loops (assistive listening systems in places of assembly like auditoriums to assist hearing-impaired people)

- signage (with Braille, raised letter, and/or color-contrasting features to assist visually-impaired people)
- emergency flashing lights or alarms (to assist hearing or visually-impaired people)
- permanently-installed ramps to assist mobility-impaired people

A permanently-installed public telephone which is equipped with a T.D.D. could be classified as structural, and therefore as the removal of a communication barrier.

Auxiliary aids and services are features of a program or service provided to an individual with a disability to enhance or permit participation; they address methods in which the program or service is operated, rather than how the building housing the services is erected. Providing sign language interpreters is an auxiliary service. Providing a portable T.D.D. can be an auxiliary service. Generally, a feature is a structural item (and therefore constitutes removal of an architectural or communication barrier) if it can be found in commonly-accepted accessibility standards such as ANSI and UFAS (to be described below).

ACCESSIBILITY STANDARDS UNDER THE ADA

The bill gives the Attorney General the authority to issue regulations and the Architectural and Transportation Barriers Compliance Board (ATBCB) the obligation to establish minimum guidelines regarding accessibility. ATBCB has already established such minimum guidelines for accessibility under section 504 of the Rehabilitation Act of 1973 -- the Minimum Guidelines and Requirements for Accessible Design (MGRAD), and these guidelines, along with similar, existing, widely accepted standards, such as the ANSI standards (promulgated by the American National Standards Institute) and the UFAS (Uniform Federal Accessibility Standards) will be used as models, with necessary modification to establish standards that apply to particular types of facilities.

- ANSI Standards

ANSI is a well-recognized standards-setting organization which has promulgated codes covering many aspects of the built environment which are used in most parts of the country. The large majority of states already have some form of accessibility requirements, and ANSI's accessibility standards are the standards most-often referenced by existing local and state accessibility laws.

- UFAS

UFAS are a set of standards similar in many respects to ANSI, but which have been carefully reworked by the four principal standard-setting federal departments (HUD, GSA, DOT, and the Postal Service) for use in enforcing existing federal rules requiring non-discrimination on the basis of handicap. UFAS is particularly pertinent for standards pursuant to the ADA, because UFAS includes thorough scoping requirements which make clear exactly what standards apply in what situations. UFAS affords designers a great deal of clarity by specifying exactly what is required, and eliminates potential confusion that might be engendered by a less-specific set of standards.

The ADA provides that the Department of Justice will issue standards, consistent with minimum guidelines developed by the ATBCB, to extrapolate upon existing UFAS requirements (including scoping) and apply them to the various types of facilities and places of public accommodation covered by the bill.

- Industry familiarity with standards

It is not foreseen that local establishments will have any difficulty in learning about the standards established pursuant to the ADA. Such accessibility requirements as those in UFAS and ANSI are already widely known and recognized by planners, architects, and builders. The building industry's organizations and associations have disseminated information and conducted training on standards affecting their members in the past and can be expected to continue to do so. Also, as a part of their rulemaking authority, appropriate federal agencies can undertake training for private entities affected by the ADA.

- Limits upon accessibility requirements

Provisions in sections 302 and 303 of the ADA explicitly set limits upon the obligation of achieving full accessibility.

Thus, the ADA does not require full accessibility when (1) in the case of new facilities, access would be "structurally impracticable;" (2) in the case of existing facilities, access is not "readily achievable;" or (3) in the case of altered facilities, access would be beyond the "maximum extent feasible." In such circumstances, a place of public accommodation would not be required to exceed these limits in order to achieve full accessibility. Such an agency would, however, be required to take less extensive steps, less than the limits stated in the above limits, to achieve accessibility. And even where full architectural and communication accessibility is not required, there is still a requirement of "program access," such as arranging for services or goods to be delivered at a portion of a facility that is accessible.

The bill also provides an exception regarding the obligation to install elevators in certain small buildings. Pursuant to section 302(b)(2)(A)(vi) (alterations) and section 303(b) (new construction), elevators are not required to be installed in facilities that are less than three stories or that have less than 3,000 square feet per story, unless the facility is a shopping center, shopping mall, professional health care office, or is in a category determined by the Attorney General to require the installation of elevators.

- Impact on state and local standards

The ADA does not establish any direct mandate for the inclusion of its minimum accessibility standards in state and local building codes and ordinances. As a practical matter, however, since entities which fail to comply with the minimum accessibility requirements of ADA may be subject to legal liability under the ADA, it is likely that state and local regulatory agencies will begin to make their requirements consistent with the accessibility provisions of the ADA. State and local governments can continue to select and/or develop their own codes, but they will probably not want their standards to fall below the minimum guidelines established by the ADA.

The ADA establishes certain minimum accessibility requirements that are necessary to avoid discriminating against people with disabilities. Entities covered by ADA will be required to comply with these federal nondiscrimination requirements regardless of the provisions of State and local laws. State and local provisions that set lesser standards of accessibility will be overridden in the sense that compliance with them will not protect entities covered by the ADA from complaints of violating the Act. State and local provisions that set equivalent or higher standards of accessibility than under the ADA would be unaffected by the ADA and would remain fully enforceable through normal state and local enforcement processes.

The ADA's approach to accessibility requirements is consistent with other kinds of federal requirements for nondiscrimination, which have sometimes established uniform federal policies that differ from existing local or state practices. For example, in the past, state laws and local ordinances traditionally contained restrictive covenants requiring leases to bar blacks, Jews, and Catholics from housing in portions of a community. Congress decided, as a matter of public policy, to undercut such state and local policies by permitting federal courts to intervene to bar discrimination in housing. As society has come to recognize and understand that severe discrimination also exists against people with disabilities, Congress has mandated various measures to bar this kind of discrimination as well.

- Prior federal regulation of accessibility

On a number of occasions, the federal government has demonstrated its recognition that protecting people with disabilities from discrimination requires regulation of the built environment. Regulations promulgated pursuant to Section 504 of the Rehabilitation Act of 1973 provided that all new buildings constructed by or for the use of a recipient of federal assistance must be readily accessible to and usable by handicapped persons. These regulations incorporate by reference standards issued by the American National Standards Institute and specify that such standards constitute compliance with the "readily accessible and usable by" standard. See 34 CFR 104.23. In 1984, the federal government published its Uniform Federal Accessibility Standards (UFAS) for the design, construction, and alteration of buildings and residential structures covered by the

Architectural Barriers Act, so that handicapped persons will have ready access to and use of such buildings and structures.

- Fair Housing Amendments Act precedent

When large majorities of both houses of Congress acted in 1988 to pass the Fair Housing Amendments Act, which included requirements for accessibility in all new multi-family housing, they demonstrated their recognition of the need for some kind of structural regulation in carrying out a broad nondiscrimination policy. That Act expressly directed the Secretary of HUD to encourage but not require state and local governments to issue accessibility requirements consistent with the minimum access requirements set out in the Act. The ADA continues the policy direction of that very popular legislation, and incorporates many of its provisions. The approach in the Fair Housing legislation of encouraging but not requiring state and local authorities to establish and enforce accessibility standards consistent with minimum statutory requirements for accessibility has provided a particularly useful model for the ADA.

- Readily achievable.

The standards applicable to public accommodations operated by private entities under the ADA are less, in certain circumstances, than those applicable to entities which receive federal financial assistance. Entities which receive federal financial assistance and public accommodations subject to the ADA are both required to provide program access to existing buildings. For recipients of federal financial assistance, if program access cannot be accomplished through other means, structural changes are required (34 CFR Section 104.22(b)). The only exemption is for recipients with fewer than 15 employees that provide health, welfare, or other social services. These recipients are exempted from making "significant alterations" if program access cannot be achieved in any other way (34 CFR Section 104.22(c)).

Under the ADA, existing facilities are only required to make structural changes that are "readily achievable." The phrase "readily achievable" is defined to mean "easily accomplishable and able to be carried out without much difficulty or expense" (Sec. 301(5)(A)). This requires physical access that can be achieved without extensive restructuring or burdensome expense. For example, a public accommodation which has one or two steps may be required to install a simple ramp. A public accommodation would generally not be required to provide access if there is a flight of steps which would require extensive ramping or an elevator. The agency or business would still have to take other "readily achievable" steps to provide program access. For example, a real estate agency doing business to the general public at a three story walk-up office would not be required to install an elevator to provide access to the upper floors. But the agency might be required to install a simple ramp over the one step to its entrance, and to provide its services to customers with mobility impairments in the first floor accessible offices.

- Topological problems

The ADA recognizes that sometimes accessibility poses topological problems by allowing for exceptional cases where access would be impracticable, unachievable, or infeasible. Thus, the ADA does not require full accessibility when (1) in the case of new facilities, access would be "structurally impracticable;" or (2) in the case of altered facilities, access would be beyond the "maximum extent feasible." Such limitations will apply only in rare and unusual circumstances where unique characteristics of terrain make full accessibility unusually difficult. Such limitations for topological problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted

> certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing may traditionally be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites.

Likewise, provisions in the existing Uniform Federal Accessibility Standards contain special requirements for alterations in cases where meeting the general standards would be impracticable or infeasible.

Delineation of the narrow circumstances in which such topological limitations can be invoked in the context of public accommodations will occur in regulations implementing the Act. In such circumstances, a place of public accommodation would not be required to exceed these limits in order to achieve full accessibility. Such an agency would, however, be required to take less extensive steps, less than the limits quoted above, to achieve accessibility. And even where full architectural accessibility is not required, there is still a requirement of "program access," such as arranging for services or goods to be delivered at a portion of a facility that is accessible.

ENVIRONMENTAL IMPACT OF ACCESSIBILITY

Pursuant to the limitations noted above, ADA would not require facilities to be made accessible if doing so would have a significant adverse impact on the environment. It is, however, a misconception to assume that making facilities accessible, even in environmentally sensitive areas, is likely to have an adverse effect on the environment. Proper planning and design, and proper construction and renovation of facilities should protect and maintain the integrity of the natural environment.

- National Park Service experience

An agency with considerable experience at providing access to people with disabilities while protecting environmental interests is the National Park Service. In implementing the requirements of Section 504 of the Rehabilitation Act of 1973, the National Park Service (NPS) has spent the last decade-and-a-half developing ways to make parks and recreation areas accessible to all persons with disabilities. At first blush, park and recreation facilities seem to pose challenging design questions, such as: How can we make the Grand Canyon, Rocky Mountains, Cape Cod National Seashore, or Hawaiian Volcanoes accessible? In fact, through the application of a few simple principles, the National Park Service has found that it is feasible to provide an effective level of accessibility at almost all of its parks and facilities without undercutting environmental integrity.

NPS has stated as one of its guiding principles that "The degree of accessibility provided will be proportionately related to the degree of man-made modifications made to the area or facility and to the significance of the facility." (Special Directive 83-3) Visitors' centers, for example, have a high degree of importance and are highly man-made, so accessibility should be optimal. In areas such as campgrounds which have some man-made modifications, it may be appropriate to only make a few campsites accessible. In certain natural areas with extreme slopes, rugged terrain, and no man-made modifications, accessibility features required will be minimal. But even in such areas, park staff ought to take steps to assist visitors with disabilities to experience, as nearly as is feasible, the type of recreation experience available at the site.

- ADA requirements

The common-sense accessibility policies of the National Park Service are consistent with the ADA. Full access is not required when (1) in the case of new facilities, access would be "structurally impracticable;" (2) in the case of existing facilities, access is not "readily achievable;" or (3) in the case of altered facilities, access would be beyond the "maximum extent feasible."

- Program access

When full accessibility is not possible, the bill requires alternative methods of providing access. The Statue of Liberty is a good example of this requirement. When the Statue was being renovated, it was determined that it was structurally impossible to provide an elevator to the lookout area in the crown. Yet, the experience of the crown area and the view from it are one of the major experiences available to visitors at the park. To compensate for the inaccessibility of that area for persons unable to climb the stairs to the top, a full-scale model of the crown was developed and displayed in the museum at the site, so that people can enter it and get an idea of its size. A video presentation of the view from the top is also provided. Of course, such alternative methods must be used with some caution to avoid superficial, unequal solutions -- seeing a picture of a wild and scenic river is no substitute for rafting the river.

People with disabilities should have the opportunity for the first-hand experience whenever possible.

- Other agencies

In addition to the National Park Service, other federal agencies such as the U.S. Forest Service, the Fish and Wildlife Service, and the U.S. Army Corps of Engineers have also had experience in developing accessible facilities. A number of states have passed legislation mandating accessibility in their park and recreation facilities. The experiences of all these agencies have demonstrated that making facilities accessible can be accomplished through means that are in harmony with the environment.

STANDARDS, GUIDELINES, AND TECHNICAL ASSISTANCE REGARDING ACCESSIBILITY OF PUBLIC ACCOMMODATIONS

A variety of standards, guidelines, technical assistance documents, and how-to guides are already available regarding access for people with disabilities to various types of public accommodations.

A. Public Accommodations Generally

- Standards

Existing accessibility standards, such as UFAS and ANSI, currently provide standards for accessibility of a wide variety of facilities. The scoping provisions of UFAS make it applicable to a whole spectrum of accommodations. Thus, hotels, motels, and boarding houses are addressed by UFAS 4.1.4(11); kindergartens and schools by UFAS 4.1.4(6); institutional uses, such as hospitals and child care facilities, by UFAS 4.1.4(9); businesses, such as banks, barber shops, etc., by UFAS 4.1.4(5); and mercantile facilities, such as markets, department stores, etc., by UFAS 4.1.4(10). A category of places of assembly are covered by UFAS 4.1.4(4) and these include a number of civic, social, recreation, and religious facilities; the list includes: amusement parks and arcades, arenas, armories, art galleries, auditoriums, auditoriums, banquet halls, bleachers, bowling alleys, carnivals, churches, clubs, community halls, courtrooms, dance halls, drive-in theaters, exhibition halls, fairs, funeral parlors, grandstands, gymnasiums, motion picture theaters, swimming pools, tennis courts, lecture halls, libraries, museums, night clubs, passenger stations, pool and billiard halls, restaurants, skating rinks, stadiums, taverns and bars, studios, and theaters.

For facilities covered by the scoping provisions, the general requirements and particular specifications of UFAS can be applied. To comply with UFAS, new construction of covered facilities will have to apply with substantive requirements and specifications regarding parking, an accessible route to the facility, an accessible entrance, usable bathrooms and water fountains, and access to the service or program and other common use areas of the facility.

For certain categories of facilities, UFAS sets out some more specific requirements. Part 5 of UFAS describes the special application of the standards to restaurants and cafeterias; Part 6 to health care facilities; Part 7 to mercantile establishments; Part 8 to libraries; and Part 9 to postal facilities. Moreover, regarding the category of places of assembly, as described above, sub-part 4.33 gives more specific guidance regarding the location of wheelchair seating locations, access to performance areas, placement and types of listening systems, and other issues pertinent to assembly areas within a facility.

- How-to Guides

In addition to formal standards such as UFAS that apply to places of public accommodation, there are a variety of technical assistance manuals and how-to guides that give nuts-and-bolts descriptions of how to achieve accessibility. The hotel and motel business has been blessed with two fine resources, the American Hotel and Motel Association's publication, Handicap Accessibility in Newly Constructed Hotels & Motels: An Interpretation of ANSI A117.1 (1986), and a book by Thomas Davies and Kim Beasley, Design for Hospitality: Planning for Accessible Hotels and Motels, published by the Paralyzed Veterans of America with assistance from the American Hotel and Motel Association. Both of these publications include schematic drawings, guidelines, and practical advice for designing and constructing accessible facilities.

In other areas of public accommodations there are similar publications. Examples include: Accessibility Guidelines for Meeting and Lodging Facilities (1981), published by the University of Arkansas in cooperation with the federal Rehabilitation Services Administration; Curb Cuts (1984), produced and published by the Eastern Paralyzed Veterans Association; Barrier-Free Meetings: A Guide for Professional Associations (1976), written By Martha Ross Redden, Wayne Fortunato-Schwandt, and Janet Welsh Brown, and published by the American Association for the Advancement of Science.

B. Parks and Recreation Facilities

There is a wide range of standards and how-to guides regarding access for people with disabilities to park and recreation facilities.

- Standards

Existing accessibility standards, UFAS and ANSI, are applicable to the majority of such facilities either directly or indirectly. Both UFAS and ANSI include standards for buildings, bathrooms, parking lots, entrances, etc. Nature centers, visitors' centers, and many other park and recreation facilities are buildings, and as such are subject to accessibility standards applicable to other buildings. Requirements regarding bathroom and parking facilities are the same. UFAS has standards for certain special uses, such as restaurants, housing, assembly areas, and mercantile. These standards can be applied to recreation facilities.

Even where existing accessibility standards do not apply directly, they may provide substantial guidance indirectly. For facilities such as fishing piers, campgrounds, and nature trails, UFAS and ANSI can lend significant wisdom. Major elements of accessible design under UFAS, including parking, accessible route, entrance and egress, bathrooms, and water fountains, can be applied or adapted to such facilities. Specifications for access to a pier, for example, can be extrapolated from UFAS simply by considering the pier as an extension of the pathway, and applying appropriate criteria for making a pathway accessible.

- Guidelines and technical assistance manuals

Since accessibility was required by Section 504 of the Rehabilitation Act of 1973, guidelines for federally assisted and federally conducted programs in the areas of parks and recreation have been available since the mid-1970s. For example, the Department of Housing and Urban Development published a technical assistance guide to making parks accessible in 1976. Barrier Free Site Design recommended specific technical requirements for construction of trails, campgrounds, swimming pools, etc. In 1983, the National Park Service issued a "General Statement of Policy on Accessibility for Disabled Persons" (Directive 83-3), outlining both basic principles and the application of accessibility policy to specific National Park Service operations. In 1986, the Park Service published Interpretation for Disabled Visitors in the National Park System, providing guidelines and resource information to assist park personnel in working with visitors with disabilities. The National Park Service has also produced two informative videotapes on accessibility: "Access to Parks and Recreation: Disabled People Speak" (1988), and "Access to Park and Recreation Facilities" (1989).

In 1985, the Federal Government Working Group on Access to Recreation prepared for the ATBCB a technical paper titled "Access to Outdoor Recreation Planning and Design." This publication delineates certain underlying principles in providing accessible recreation facilities, and provides specific guidelines and technical requirements regarding accessible picnic areas, campgrounds, and trails.

A variety of other documents provide how-to guidance in regard to accessibility as it applies to particular types of park and recreation activities. For example, the New Mexico Natural Resources Department has published Accessible Fishing: A Planning Handbook (1984), that provides comprehensive guidelines and technical requirements to improve access to fishing for people with disabilities. A number of other government and private agencies, such as the National Endowment for the Arts, the Smithsonian Institution, and the Disney Corporation have produced documents discussing accessibility in the context of their particular areas of interest. In 1988, Northern Cartographic published Access America: An Atlas and Guide to the National Parks for Visitors with Disabilities, which presents comprehensive accessibility information, including maps, diagrams, access ratings, lists of accessible features and facilities, information about weather and elevations, and a wealth of other information and data about 37 National Parks, along with essays about park use by individuals with disabilities and full-color photos of scenic views in the parks.

APPLICATION OF ACCESSIBILITY STANDARDS TO EXISTING BUILDINGS

The ADA provides that no individual shall be discriminated against in the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations on the basis of disability, and provides that "discriminated against" includes a failure to remove architectural and communication barriers that are structural in existing facilities, where such removal is readily achievable. If the removal is not readily achievable, the goods, services, accommodations, etc. must be provided via alternative methods. In this way, the ADA provides a reasonable standard by which existing facilities will be required to remove the barriers that can be removed without great difficulty, the sum total of which will greatly increase the architectural and communication accessibility of the existing public accommodations for people

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with disabilities.

The readily achievable standard is lower than the ADA's standard applicable to auxiliary aids and services, which are required unless the entity can demonstrate that provision would result in an undue burden. Here, access is not required unless it can be achieved readily.

The "readily achievable" standard was preceded by the earlier (1988) version of the ADA which required structural barriers to removed within two years if doing so did not fundamentally alter the nature of the activity engaged in by a place of public accommodations. It was felt by the current sponsors of the ADA that it is more practical and inexpensive for the private sector to be held to a "readily achievable" standard.

- Existing Historic Buildings

If an existing historic building is not being otherwise altered or renovated, it is required to remove barriers when doing so is "readily achievable." This standard leaves considerable room for balancing the need for accessibility with maintaining the integrity of the building's historically significant features. Under existing law, providing access to historic properties has generally been found to be achievable without destroying a property's historic significance. The National Park Service has established the following policy for addressing accessibility in regard to historic buildings:

> The National Park Service will provide the highest feasible level of physical access for disabled persons to historic

> modifications for disabled persons will be designed and installed to least affect the features of a property that contribute to its significance. Some impairment of some features will be accepted in providing access. If it is determined that modifications of particular features would destroy a property's significance, however, such modifications will not be made.
> (NPS Memorandum H42 (Jan. 13, 1989)).

In summary, the Park Service notes, "The issue is not *if* we should make historic properties accessible but *how* to provide the *highest* level of access with the *lowest* level of impact." (Id.)

In cases where full access is not readily achievable, the ADA requires "alternative methods of making such ... accommodations available." The "alternative methods" requirement can generally be accomplished in historic buildings through a combination of alternative access features (ramps that are slightly steeper than code, usage of non-primary entrances, etc.) along with video presentations and other representational displays of inaccessible features of the building.

If any public service is offered in an existing historic building, the building is covered under the ADA's requirement for nondiscrimination in activities of state and local governments. Section 204 of the bill requires the Attorney General to develop standards for public services which are consistent with regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Therefore, the standards to be developed would be consistent with the historic standards to be developed would be consistent with the historic building standards in the Uniform Federal Accessibility Standards (or UFAS). UFAS contains provisions that allow access to be provided to certified historic buildings in alternative ways (Sec. 4.1.7). For example, if it would impair the historic facade of a building to make the primary entrance accessible, another entrance can be made accessible.

COSTS OF ACCESSIBILITY

A. Making New Facilities Accessible

The regulatory impact statement issued in connection with the Section 504 rule by HEW in 1977 estimated that a new building could be made accessible at an additional cost of one half of one percent (.5%) of the total cost of construction (41 Fed. Reg. 20,333). Offsetting this cost, of course, is the savings to taxpayers of permitting employment for millions of persons with disabilities, by reducing public assistance payments and increasing tax revenues.

Other studies, prior and subsequent to the 1977 estimate, have supported the conclusion that accessibility costs in the construction of new buildings are extremely low. In the mid 60s the National League of Cities studied costs of access for people with disabilities for a national commission on architectural barriers; the study showed that when planned into the initial design, accessibility features usually cost less than one-half of one percent. A Syracuse University study conducted for HUD reached the same conclusion. In 1975, the General Accounting Office estimated that accessibility in a new building can be accomplished for less than one-tenth of one percent of overall costs.

Other authorities have concurred with these estimates that accessibility in a new building should not cost more than one-tenth to one-half of one percent of construction costs: ATBCB, About Barriers, p. 5 (1982); National Council on Disability, Toward Independence, Appendix, pp. F-28 & F-29 (1986); U.S. Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities, pp.81-82 (1983); Congressional Record, April 29, 1988 (Remarks of Representative Owens).

In 1981 the ATBCB prepared for the Office of Management and Budget a report of cost information based upon data provided by the federal accessibility standard-setting agencies. It stated:

> The Board staff reviewed cost studies and cost data compiled by states, architects, the General Accounting Office, HUD, manufacturers, and other members of the public and incorporated this information into papers which were presented to Board members and which were made a part of the public docket. Experience and research demonstrated that accessibility can be achieved at minimal cost -- usually 1/2 to 1% of the construction cost. This percentage would be even lower if total cost were considered (i.e., architectural and engineering fees, cost of land, landscaping, and the like).
> (ATBCB, "ATBCB Minimum Guidelines and Requirements -- Cost Information," Memorandum to James C. Miller III (March 20, 1981)

All of these studies and authorities agree that the costs of accessibility in new construction is very, very low.

B. Costs of Making Existing Inaccessible Buildings Accessible

The costs of alterations to render existing buildings accessible vary widely, depending upon the type and age of the building, the extent of architectural and communication barriers present, and other factors. Generally, renovations to make buildings accessible are estimated to vary between one-half to three percent of construction costs of an overall renovation or of a building's underlying value. (ATBCB, "ATBCB Minimum Guidelines and Requirements -- Cost Information," Memorandum to James C. Miller III (March 20, 1981, pp. 5 & 9; U.S. Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities, p. 81 (1983); Senator Paul Simon, "Defending the Handicapped," National Journal, p. 468 (Mar. 14, 1981)).

- ADA limits on access to existing buildings

In regard to existing buildings, ADA requires the removal of existing barriers only where they are "readily achievable," or, where renovations or alterations are otherwise being undertaken, to the "maximum extent feasible." If barrier removal would exceed these modest limits, it is not required under the ADA. In many cases, however, access for people with disabilities can be significantly enhanced within the statutory limits.

- Resources and tax deduction

The question of what is readily achievable or feasible is affected by the nature of a building, overall renovation plans, and resources available. For existing buildings, a significant portion of the cost of providing access is tax deductible. Currently, private businesses can deduct up to $35,000 in access expenditures yearly from federal taxes. Section 190 of the Internal Revenue Code permits businesses to deduct up to $35,000 for costs incurred in removing architectural or transportation barriers to persons with disabilities or elderly people in any facility or public transportation vehicle owned or leased for use in a trade or business.

C. Justification for Requiring Expenditures for Accessibility

It is appropriate for government to guarantee equal opportunity for its citizens, to prohibit discrimination, and to regulate facilities in the public interest. Accessibility for people with disabilities is a legitimate public and governmental interest which is rapidly gaining recognition. Given that a significant portion of our populace has a disability or will experience one at some point, such requirements do not represent a fiscal sacrifice for a select few, but a basic insurance policy provided by our entire society on behalf of our entire society.

At this point in the development of our society, we have enough understanding of the significant life limitations posed by architectural and communications barriers on millions of our citizens, that it is folly to continue to build in such barriers. To continue to erect newly-built but inaccessible public facilities, for example, when access can be provided so cheaply, is to continue a form of discrimination that can be characterized as ignorant, at best, or, at worst, as intentional.

Rather than continue the misguided and uninformed policies of the past, we must design a public policy for the '90s and beyond that takes cognizance of the increasing age of our society, of the many groups of disabled people whose talents are needed by our culture and economy, and of the need to decrease the percentage of our citizenry surviving on benefits and entitlements because of discrimination and an inaccessible environment. We now have the opportunity to prevent significant future discrimination against a large and rapidly growing group.

- Expenses minor

A public policy of accessibility such as the one described by the ADA can generally be implemented economically. In new facilities, the cost is usually under 1/2 of 1% of the building cost. In existing facilities, the "readily achievable" standard (often requiring only such things as small ramps and grab bars) will also be inexpensive, and frequently tax-deductible, with the potential return of additional profits.

The Architectural and Transportation Barriers Compliance Board has noted that accessibility costs are very small, especially when compared with the relatively high costs of incidental routine maintenance:

> The U.S. General Accounting Office notes that in constructing a new building, accessibility features may cost less than one-tenth of one percent of overall costs. By contrast, the cost to clean and polish most office floors is about 13 cents per square foot. Thus recurring cleaning costs far exceed fixed access costs.
> (ATBCB, About Barriers, p. 5)

Even though they may entail some minor costs, access requirements are comparable to many other federally imposed obligations (such as environmental and health/safety regulations and other civil rights protections) which are levied in the public interest. In the current situation, the public interest cries out loudly for people with disabilities to be afforded the equal opportunity to participate in all facets of American society.

DEFERENCE TO NEEDS OF SMALL BUSINESSES

A great deal of concern has surfaced among the small business community that the requirements of the ADA will impose serious hardships upon small businesses. Lack of familiarity with existing measures that prohibit discrimination against people with disabilities, serious misinformation about the actual requirements of this bill, and a great deal of misunderstanding about the needs and rights of people with disabilities have combined to whip up sentiments that the bill does not take into account the needs of small businesses and that it will be disastrous for them.

Actually, the bill has been very carefully crafted to take into account the needs and situation of small businesses at every juncture. I have no hesitancy whatever in stating that this bill is the most responsive to the particular situations and characteristics of small businesses of any federal civil rights law that has ever been considered by the Congress. Each of the major requirements of the bill has been tailored in some way to consider and make allowance for the important and unique needs of the small business operator. It is true that small businesses have not been wholly exempted from the coverage of the public accommodations provisions of the bill; small businesses are too important a source of goods and services for the American public to have them totally exempted and told that it is okay to go ahead and discriminate against people with disabilities. Small businesses make up a large percentage of the establishments that provide services and goods on a daily basis; to cut them out of the ADA would seriously undermine the bill's goal of opening up our society to people with disabilities on an equal basis. In many contexts, small business is business in America today. The approach of the ADA is not to eliminate small businesses from the requirements of the bill, but rather to tailor the requirements of the Act to take into account the needs and resources of small businesses -- to require what is reasonable to require and not to impose obligations that are unrealistic or debilitating to businesses.

Not creating a total exemption for small public accommodations is consistent with Title II of the Civil Rights Act of 1964, which covers all such public accommodations regardless of size. There, as here, it would defeat a major purpose of the Act to permit small restaurants, lunchrooms, theaters, service stations, etc., to continue to discriminate. If nondiscrimination is to have any real meaning, it is essential that local neighborhood businesses be prohibited from engaging in such discrimination.

Each of the major sections and requirements of the ADA takes into account the fact that some businesses are very small local enterprises that may have very limited resources. In each area, either the size and resources of establishments are explicitly required to be taken into account in determining what is required, or some amelioration for small businesses is built into the substantive requirement itself. My testimony is focusing upon the public accommodations requirements of the ADA, but I will mention in passing that small business concerns are well-accounted for in other parts of the bill as well, as for example, in the employment Title and various requirements regarding transportation.

The following are some of the ways in which the public accommodations provisions of the ADA provide great deference for the characteristics and needs of small businesses:

- The readily achievable limitation

As noted previously in my testimony, the ADA places a very modest requirement for removing architectural and communication barriers in existing public accommodations -- such barriers need not be removed unless doing so is "readily achievable," i.e., is "easily accomplishable and able to be carried out without much difficulty or expense." In determining whether an action is readily achievable, the ADA lists as the first two factors to be considered: "the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of budget," and "the type of operation of the covered entity, including the composition and structure of the entity" (Sec. 301(5)(B)). (The "nature and cost of the action needed" is the other factor listed.)

The size and budget of a business are, therefore, explicitly considered in determining what is readily achievable. A Mom-and-

Pop store is clearly held to a much lower standard than is a highly financed, big national concern. A struggling small business will be required to do much less than a bigger, more well-to-do establishment. The readily achievable standard takes into account the particular physical and financial realities of each individual establishment and requires more of those realistically able to do more and less of those who are only able to do less.

- Undue Burden Limitation Regarding Auxiliary Aids and Services

The requirement that places of public accommodation make available "auxiliary aids and services" under section 302(b)(2)(A)(iii) of the bill does not apply in circumstances where the provisions of such aids and services would "fundamentally alter" or would "result in undue burden." The Senate Report notes that the term "undue burden" is analogous to the phrase "undue hardship" in the employment section of the ADA, and that "The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determining 'undue hardship'" (Id., p. 63). The factors to be taken into account (see section 101(9)(B)) are nearly identical to the factors I have discussed just above in connection with the readily achievable standard. In determining whether providing an auxiliary aid or service amounts to an undue burden, the size, budget, and circumstances of a business are expressly relevant. A struggling small business will be excused from providing an auxiliary aid or service in circumstances where a larger, more prosperous business might be required to provide it.

- The Elevator Exception for New Construction and Alterations

As noted above, the inclusion of accessibility features in the design and construction of new facilities and in renovation projects can usually be accomplished at relatively little expense. To further protect small businesses, however, the Senate compromise bill incorporated a specific exception to accessibility requirements with regard to elevators in small buildings. While the previous version of the bill would have required elevators where necessary for accessibility of upper floors in new construction and certain major renovations, the Senate compromise specifically provides that elevators are not required "for facilities that are less than three stories or that have less than 3,000 square feet per story." Arguably, elevators in such circumstances might make up only a small and manageable percentage of overall building and renovation costs, but to make absolutely sure that small building owners and builders would not be unduly burdened, the bill excepts small buildings from the elevator requirement -- the only potentially significantly costly accessibility feature.

- The Readily Accessible to and Usable by Accessibility Standard

The ADA does not require total or universal accessibility, even in regard to newly constructed buildings subject to its requirements. The bill incorporates a standard of accessibility developed under federal statutes and regulations -- "readily accessible to and usable by." This standard imposes accessibility obligations that are tailored to the type and use of each particular facility. The Senate report notes that "the term does not necessarily require the accessibility of every part of every area of a facility" (Id., p. 69), and further:

> The term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, etc. are accessible; only a reasonable number must be accessible, depending on such factors as their location and number.
> (Ibid.)

The term is intended to enable people with disabilities "to get to, enter, and use a facility."

Making facilities readily accessible to and usable by persons with disabilities is a facility-by-facility process that involves consideration of the physical structure and of the nature of the activities that take place or will take place there. A small facility may have fewer areas and services and therefore will have fewer areas and services to make accessible.

Complying with the readily accessible to and usable by requirement of the ADA will require a business to make its services and facilities accessible to persons with disabilities, but will not require it to add additional features not made available to persons without disabilities. For example, a business that does not provide drinking fountains or restroom facilities for the use of its customers will not be forced to add accessible fountains or toilets for customers with disabilities. Under this standard, small businesses with the fewest "frills" will have fewer such services and conveniences to make accessible.

- Allowing Alternative Means to Serve Customers When Readily Achievable Changes Are Not Sufficient to Provide Accessibility

Where the removal of an access barrier is not required under the ADA because such removal is not readily achievable, the ADA permits businesses to make goods, services, etc., available "through alternative methods" (Sec. 302(b)(2)(A)(v)). The Senate Report cites examples of such alternative methods:

> coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater. (Id., p. 66)

These are examples of means by which small businesses can accommodate the needs of customers with disabilities without hurting their businesses or incurring extensive expenses. In no event do the readily achievable and alternative methods requirements require a small business to make structural changes to existing buildings to achieve accessibility beyond what is readily achievable.

- Telecommunications Relay Services

Title IV of the bill provides for the establishment of a system of telecommunications relay services for individuals with speech or hearing impairments. While it may not be apparent on its face, the development of this relay service is an accommodation to the interests of small businesses. In prior versions of the ADA where there was no relay service requirement, one of the potential obligations upon places of public accommodation was the purchase and operation of a Telecommunications Device for the Deaf (TDD) so that customers and potential customers could call on their TDDs to make reservations, purchase tickets, inquire about products and prices, check on store hours, etc. While portable TDDs are relatively inexpensive (a good unit can usually be purchased for around $200), there was some concern that it was too burdensome on small businesses to require that all such businesses must have TDDs. As an alternative, the relay service provisions were developed. Under the requirements of Title IV, each area and locality of the country will be served by a telecommunications relay service, and individuals using TDDs will be able to call the relay service and have their inquiries, reservations, etc. passed on by voice to the business. In this way, small businesses were spared the requirement that all of them incur the modest costs of obtaining TDDs.

- **Absence of Compensatory and Punitive Damages**

Previous versions of the ADA would have permitted successful complainants to have recovered monetary damages, both compensatory and punitive, from public accommodations found to have discriminated against a person with a disability. Members of the business community expressed strong objections to such damages provisions in regard to public accommodations. It was felt that these monetary remedies were too harsh, and that some small businesses would not be able to afford legal counsel to advise them and so would risk serious financial liability. In negotiations with the Administration, these damages provisions were removed.

The compromise bill allows monetary damages and civil fines only in cases where the Attorney General successfully proves a case of "pattern or practice" discrimination. Such a remedial scheme is highly advantageous to small businesses. The most that they risk in situations where they are unclear about their duties under the Act or otherwise engage in prohibited discrimination is that if they are successfully sued they could be subjected to an injunction ordering that they stop discriminating. It would be a rare case indeed where a Ma-and-Pa operation or other small business would engage in a "pattern or practice" of discrimination egregious enough to catch the attention and merit the litigative might of the Attorney General of the United States. For all practical purposes, an injunction ordering that discriminatory conduct cease is the worst risk that a small business faces under the bill.

For all of these reasons it is clear that the ADA has been carefully crafted with an eye toward protecting (perhaps overprotecting) the interests of small businesses. The passage of this bill will have no dire consequences for America's small businesses, and yet it would provide an important advance toward assuring that these and other places of public accommodation will begin to include people with disabilities as full and equal parts of the "public" they serve.

Thank you for your consideration of my testimony. I look forward to your deliberations, and am hopeful that you will take positive action to make the Americans with Disabilities Act of 1989 the law of the land.

Mr. **Edwards**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. I have no questions, Mr. Chairman.

Mr. **Edwards**. Well, you think it is a pretty good bill then, Professor?

Mr. **Burgdorf**. I think on balance, it is an excellent bill. I probably would have drawn some lines in different places. I think perhaps it leans over a little too far in trying to accommodate to the needs of small businesses.

I would like to have seen a bit more required, but on balance, as a compromise, I think it is a fine piece of legislation.

Mr. **Edwards**. Do you know anything about the Pennsylvania law that Mr. Lynch described?

Mr. **Burgdorf**. There are lots of good things about the Pennsylvania law. I am not an expert on it, but let me respond to what I think is the major point of AIA's suggestion about that law. It is the ratio that is established to determine what is a major alteration.

It compares the overall cost of an alteration with the value of the building. We think that is problematic. We think it defeats one of the basic purposes of this bill, which is that over time, as buildings are renovated, they should become accessible.

Let me give you an example: If a building was originally built for $50,000 some years ago, it may today be worth $1 million. The major alteration, major structural alterations language, if it were to adopt the Pennsylvania approach, would have to be $500,000 before it triggered any requirement to make paths of travel accessible in such a building.

The percentage requirement creates a motive for those who are doing alterations to keep it just below that level, so they do a $499,000 alteration, do not make changes in the path of travel, and then the building now is worth $1,499,000.

So, next year, if they do another renovation project, it can cost $700,000 and still not trigger the path of alterations requirement. We don't think that is what they are intending or what the bill is intending. We would rather see it done in terms of what the bill does, to talk about what is major, what is structural. We are not talking about painting a wall.

We are talking about moving a wall. I think the bill and the Senate report language does a nice job of spelling out what is intended. If it does not affect usability, it does not trigger that requirement anyway.

Mr. **Edwards**. Thank you. I think where we are going to have a problem is explaining to members what we mean in the bill by terms such as "readily achievable," "reasonable accommodation," "undue burden," "auxiliary aids," et cetera.

I wonder if you think these terms soften the bill too much, give loopholes?

Mr. **Burgdorf**. That is a good question. One example that I raised before is the readily achievable standard. It requires in existing facilities, already constructed, only easy changes to be made.

Last year's bill would have called for retrofitting of buildings to make them accessible. This would threaten the existence of the business itself. That was a high standard, and the business community objected to that. I think this is a very low cut, a very low, modest standard.

I don't see how anybody could object to doing what is easy to do. I think that is the minimum that a Federal statute trying to require equality of access ought to require.

Mr. **Edwards**. Ms. Holzer, are these terms so loose that only judicial decisions will finally interpret them, or do you think that they are definable accurately enough so that this law can work without unnecessarily litigation?

Ms. **Holzer**. It seems to me from the Senate report there is a tremendous amount of explanation of these terms. I think anyone who is active in the disability community is familiar with some of these terms from past usage and other references.

I am the daughter of a small businessman. I think perhaps that it is a natural reaction to an unknown. If somehow they could educate themselves more on the issues and the particulars, they would not feel so threatened.

I would like to comment on the need for spontaneity in a lifestyle. I think the request to have a person with a disability call ahead for anything is really unreasonable on the part of a provider of services. That really kills any kind of spontaneity that everyone else enjoys.

Mr. **Edwards**. Thank you. That is very helpful.

Professor Burgdorf, some persons with disabilities have expressed a concern that ADA will force them into using separate or different programs that were designed to accommodate disabled persons. Should persons with disabilities be allowed to choose a regular program? What safeguards are there in the bill for that?

Mr. **Burgdorf**. Fortunately, that is one that was thought about not even for the first time in this bill, but under existing section 504 regulations. A provision was specifically incorporated into ADA to address that. Section 302(b)(1)(c) of the bill says that "notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different."

That is a very important and very clear provision. People, for example, who have a visual impairment do not want to be told they have to go only on the trail for visually impaired people. They would like to go with their friends and go on the same trail that anybody else goes on.

I think this is fairly covered in the legislation.

Mr. **Edwards**. Thank you.

The committee might have more questions to ask you expert witnesses, but we must move along. We thank you very, very much for your testimony today. It has been very useful to us.

The subcommittee is adjourned.

[Whereupon, at 1:40 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

F. JAMES SENSENBRENNER, JR.
NINTH DISTRICT, WISCONSIN

COMMITTEE ON THE JUDICIARY

COMMITTEE ON SCIENCE, SPACE
AND TECHNOLOGY

SELECT COMMITTEE ON NARCOTICS
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August 7, 1989

Miss Chai Feldbloom
Legislative Counsel
American Civil Liberties Union
122 Maryland Avenue, N.E.
Washington, D.C. 20002

Dear Miss Feldbloom:

I want to thank you for your testimony before the Subcommittee on Civil and Constitutional Rights concerning the Americans with Disabilities Act, H.R. 2273. Your knowledge of the bill, as well as your command of the other civil rights laws, is extremely helpful to the Subcommittee.

I do have some additional questions concerning this bill, and would appreciate your help in answering them for me. If you could respond in writing to the attached questions by August 18, 1989, it would be quite useful to me.

Thank you for your help with this valuable legislation.

Sincerely,

F. James Sensenbrenner, Jr.
Member of Congress

CDR:aw

GENERAL

1. **Why does neither the Section 101(b) "Defenses," nor the Section 202(b)(2), "Denial of equal employment opportunities," provision contain an "undue hardship" defense? What defenses are there to these provisions?**

2. How are employee benefits treated under this bill? Would an employer be able to continue insurance coverage with a carrier that excluded preexisting conditions?

3. In the employment context, do you view the ADA as, in effect, simply extending 504 of the Rehabilitation Act to employers not now covered by that provision or are we even broadening coverage for the disabled? If we are broadening the coverage, can you please explain what the specific differences are? If not, why not just extend 504 and add no further language?

4. Is this bill going to mandate quotas for the disabled if they are underrepresented? If not, how will the Title VII regulations, policies and court decisions concerning "effects" be changed to insure this does not occur? If not, would you be willing to put a specific exemption in the bill to prevent quotas from being required?

Doesn't the broad definition of disability in the ADA in effect repeal the provision in Title 18 of the U.S. Code, Section 922(g) prohibiting a person who has been "adjudicated as a mental defective or who has been committed to a mental institution" from receiving or possessing a firearm?

TITLE I

1. Section 101(a)(5) prohibits an employer from "aiding or perpetuating discrimination by providing significant assistance to the agency, organization or individual that discriminates." "What is significant assistance" -- a bank loan? A purchase agreement for goods? International trade contract? (Example: If Boeing holds contracts on all the Japanese airlines, which foreign companies are obviously not in compliance with ADA, would Boeing be open for suit under Section 101(a)(1)(E) by providing significant assistance to an organization that discriminates?)

2. How do you see Title I interacting with Title II and the other Titles? Don't you see some potential for confusion here? Why not put the provisions in the appropriate Title to which they relate, even if some redundancy is necessary?

3. Please explain the purpose and coverage of 101(a)(5) which would prohibit discrimination based on "association". Is this concept in the 504 regulations? If not, please tell me from where it was derived and how would it be applied and interpreted? Is there a body of case law interpreting such a concept? If so, please give citations to appropriate cases.

4. What exactly is the purpose of Section 101(b)(2)(A) and (B)? How would this wording affect the current definition of "handicapped" in the Fair Housing Act amendments?

5. Under 101(b)(2)(A), who defines "alcoholic" or "drug abuser"? By the way that is worded, it appears that it is o.k. for an individual to use drugs as long as they do not pose a direct threat to property or safety of others? If that is the case, wouldn't you say that totally contradicts the drug free workplace concept?

6. Again, with respect to the drug abuser exemption, what relationship will this section have with the current drug testing programs that are being instituted in many of the agencies. For instance, if an individual came back with a negative drug test or a drug test that indicated he had been using drugs, is there any way

11. Section 101(b)(1) "Defenses" is almost the most complicated sentence in the bill. Can you please break that sentence down and explain what it means?

12. In Section 101(a)(1)(B) what does the term "equal" mean when used in that context? Who determines what is "equal?" Again, under Section 101(a)(1)(C), who determines what is "less effective" than that provided to others? Who makes that determination? Is there some sort of notice requirement to employers or to public accommodations that what the disabled is receiving is "less effective" before an owner can be sued for punitive damages?

13. What would you say to the private doctor who desires not to hire as a nurse an individual who tests positive for HIV AIDS virus? Must that doctor hire him or be in violation of ADA? If that is true, what assistance is provided for the loss of business which might then occur to the doctor?

14. Similarly, what if a child care center does not want to take a child who tests positive for AIDS virus. Must that child be accepted? If so, what compensation could be given to the business which finds itself bankrupt because of raised insurance rates?

that person could be fired from his position if he did not, at that point, pose a "direct threat" to property or the safety of others in the workplace?

7. In your opinion, doesn't this legislation require employers to make difficult, if not impossible, determinations regarding the immediate dangers posed by an individual's drug use, in the face of overwhelming evidence that drug use in the workplace is inherently dangerous?

8. Under Section 202(b)(3), the ADA places restrictions on tests that "tend to identify" qualified individuals with disabilities. Doesn't this language, taken together with the language in Section 101(b), restrict the practice of many employers to use drug screening of employees or prospective employees? An individual screened out by such testing could challenge the exclusion unless the employer could prove that the exclusion is necessary and substantially related the ability of an individual to perform the essential functions of a particular job.

9. I am concerned by the ability of government to end the demand for illegal drugs in the workplace, in schools, in public housing, and elsewhere. Doesn't existing law -- i.e., the Rehabilitation Act of 1973, under Section 504, which outlaws discrimination by federal grantees against "handicapped individuals" -- pose a problem because the law has been interpreted to include drug and alcohol abusers among the "handicapped," so that it impairs the ability of local school boards who try to expel drug-abusing students or public housing authorities who try to evict tenants who are drug offenders? Wouldn't the language of the ADA make the problem even worse?

10. In Title I(a)(2) the bill states that "for purposes of this act, aides, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individuals needs." Who decides what is "appropriate to the individuals needs?" Who has the burden of proof in this regard? How are the needs determined?

15. What about a person with a history of mental disease, including violence and child abuse, yet the person's doctor certifies him as healed and he is otherwise extremely well-qualified for the job. Can a child care center, nevertheless, refuse to take him on that basis alone? For that matter, would it even be appropriate under ADA to ask on an application form whether the person had a past history of mental disease or would that run afoul of Section 202 (b)(3)?

TITLE II

1. Section 205 provides for a private right of action for "any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability ... (emphasis supplied)." This provision for anticipatory suits is unprecedented with respect to employment matters. Won't this result in clogging the federal courts with vague claims of anticipated discrimination? What effect will this have on the case backlog? Why include this in the employment Title?

2. Can you articulate definite guidelines for the concepts of "reasonable accommodation" and "undue hardship"? You state in your testimony that those terms have been used before and that criteria is listed under

§84.12 regulations. Please specify which leading cases (with citations) have defined these terms, including the "cost" or "nature" of accommodation required. Has the 'safety of others' been considered under the umbrella of "undue hardship"?

a) If an individual has a typing business in her home, must that person include, at a minimum, a ramp and large bathrooms to accommodate wheelchairs, if any other repair work is being contemplated on the house? If not, where is the exemption?

TITLE IV

1. Example: I am an owner of a restaurant in Wisconsin and I want to be in compliance with ADA now that it is law. Please tell me what I need to do to put myself in compliance with the law?

(a) Will I have to build ramps?

(b) What if I had intended to put a new balcony eating area on second floor next year? Under Section 402(b)(5) do I have to enlarge all my bathrooms at the same time and put in an elevator?

(c) Do I have to have my menus in braille?

(d) Do I have to have room for wheelchairs at all locations in my restaurant?

2. What is your understanding of the intent and effect of the inclusion of the phrase "potential places of employment" in Title IV of the ADA? Why is it needed, given the scope and construction of the employment Title in the ADA?

   (a) With that in mind, what about the woman who has a typing business in her home? This appears to be a "personal business" under the 402(2)(B) definition of establishment and is also a "potential place of employment whose operations affect commerce." Without a small business exception, couldn't that person be liable for punitive damages if a disabled person were not able to utilize those services?

   (b) If your answer suggests that it would probably fall within the "undue hardship", provision, how would that person prove undue hardship?" Costs spent? Is there case law? If so, please cite specific case examples.

   (c) If the "readily achievable" language is cited, how would that person prove "not readily achievable?" Please reference case citations defining this term.

3. Section 402(b) defines, "discrimination against" as "a failure to remove architectural and communication barriers that are structural in nature and existing facilities where such removal is "readily achievable; and (B) where an entity can demonstrate that the removal of a barrier...is not readily achievable, a failure to make such good services, facilities, privileges, advantages and accommodations available through alternative methods, if such methods are readily achievable."

   (a) Could you give examples of what would and would not be required under this section; for example, doctor's office; a video store; a dry cleaners; a church?

   (b) I understand that the term "readily achievable" has been used as synonym for "easily accomplished with little difficulty and at little expense". Is "little difficulty in expense" a relative concept? If so, how are the threshold/cutoff points measured -- in time, in money, disruption of current practice? Please refer to case citations, where applicable.

(c) Are there not grounds for exemptions, especially for small businesses, even if we develop a common understanding of the term?

4. Assuming that a common understanding of the term "readily achievable" is possible and that such an understanding includes relative dimensions, should not the remedies available reflect a distinction for intentional versus unintentional acts of discrimination?

CDK:c:8/7/89

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September 26, 1989

The Honorable F. James Sensenbrenner
2444 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Sensenbrenner:

As you requested, I am responding to the questions that you raised in your letter regarding H.R. 2273, the "Americans with Disabilities Act of 1989" (ADA). I will answer the questions by reference to the House bill, H.R. 2273. However, in cases in which the compromise ADA bill, which was passed by the Senate on September 7th and which reflects compromises requested by the Bush Administration and the business community, directly addresses and resolves a concern that you raise, I note that fact in my response. I hope you will find that all of your concerns have been adequately met.

GENERAL

Q #1. Why does neither the Section 101(b) "Defenses" nor the Section 202(b)(2), "Denial of equal employment opportunities," provision contain an "undue hardship" defense? What defenses are there to these provisions?

A. The defense that a reasonable accommodations is not required if it would impose an undue hardship is applicable in both provisions to which you refer. Under the substantive provisions of the bill, an employer does not have to provide a reasonable accommodation if "such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business." See Sec. 202(b)(1). This substantive requirement of "undue hardship" applies in every situation in which the provision of a reasonable accommodation by the employer is at issue. Thus, for example, when the defenses section refers to "applicable reasonable accommodation," the accommodation being referred to is one which would not create an undue hardship. (That is, the "applicable" reasonable accommodation is the accommodation which appears in the substantive section of the bill, section 202(b)(2), in which the requirement of undue hardship is clearly incorporated.)

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The same is true for the other provision to which you refer, section 202(b)(2). That provision directly tracks a section 504 regulation, 42 C.F.R. 84.12(d), which states: "A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant." As in the ADA, the section 504 regulation does not state "which does not impose an undue hardship" after the term "reasonable accommodation," because that is understood from the rest of the regulation, which clearly states that an accommodation need not be provided if it would impose an undue hardship. See 42 CFR 84.12(a). The point of this provision, in both the ADA and section 504, is that an employer may not deny an employment opportunity to an individual because of that individual's need for a reasonable accommodation, if that accommodation could be provided without an undue hardship.

Q #2. How are employee benefits treated under this bill? Would an employer be able to continue insurance coverage with a carrier that excluded preexisting conditions?

A. The Senate compromise ADA bill (henceforth "compromise bill") directly addressed this issue. It was never the intent of the ADA to prohibit traditional insurance underwriting policies, such as the inclusion of pre-existing condition clauses in health insurance policies. In order to make that clear, however, the compromise bill includes a new section on insurance which explicitly states that nothing in the ADA is to be construed to prohibit or restrict insurance companies or employers from sponsoring, establishing, observing or administering benefit plans that are based on underwriting risks or classifying risks. See S. 933, sec. 501(c). This would include allowing employers to contract for benefit plans that incorporate preexisting condition exclusions.

Q #3. In the employment context, do you view the ADA as, in effect, simply extending 504 of the Rehabilitation Act to employers not now covered by that provision or are we even broadening coverage for the disabled? If we are broadening coverage, can you please explain what the specific differences are? If not, why not just extend 504 and add no further language?

A. You are correct in stating that, in the employment section, the ADA basically extends the provisions of section 504 of the Rehabilitation Act to private entities. However, a thoughtful and deliberate decision was made on the part of the drafters of this legislation not to simply add "and private entities" to the approximately 50 words which currently make up section 504. Section 504 is a very brief provision, which has been explicated by regulations and caselaw over the past years. The sponsors of the ADA wished to draw upon those regulations and caselaw to create a clear and comprehensive statute that would set forth all of the relevant non-discrimination provisions in one place. The intent is still to track section 504 -- but, at the same time, to create a statute that can stand on its own and not be dependent on incorporation by reference to regulations issued under section 504.

Q #4. Is this bill going to mandate quotas for the disabled if they are underrepresented? If not, how will the Title VII regulations, policies and court decisions concerning "effects" be changed to insure this does not occur? If not, would you be willing to put a specific exemption in the bill to prevent quotas from being required?

A. The ADA specifically does not mandate quotas for people with disabilities. Section 503 of the Rehabilitation Act, which governs federal contractors, does require that contractors engage in "affirmative action" for people with disabilities. By contrast, both section 504, and the ADA, do not include such a requirement. Thus, even if affirmative action under section 503 could be understood to include the concept of quotas (it has not, in the past), that requirement does not appear in the ADA. The Title VII concept of discriminatory "effects," which has its parallel in ADA, is a separate legal issue from that of quotas. The ADA's "effects" provision, which directly tracks the provision under section 504, prohibits standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability. This provision does not, in any way, mandate quotas, even if people with disabilities may be underrepresented in a particular employment setting.

Q. #5. Doesn't the broad definition of disability in the ADA in effect repeal the provision in Title 18 of the U.S. Code, Section 922(g) prohibiting a person who has been "adjudicated as a mental defective" from receiving or possessing a firearm?

A. No. The public accommodations title of the ADA provides that a covered entity may apply eligibility criteria that screen out people with disabilities if such criteria are necessary to the provision of the goods or services. It would be a valid eligibility criterion for purchase of a firearm that an individual not be "mentally defective" and unable to understand the consequences of owning a firearm. In addition, it is worth noting that, under the firearms law, anyone who has been denied a firearm because they are in a category that prohibits that person from owning a firearm (e.g., a person who has been adjudicated as "mentally defective"), may apply to the Secretary of the Treasury for a waiver, which may be granted if the person can prove that he or she is no longer dangerous and that granting the waiver is in the public interest. This too is consistent with the ADA.

TITLE I

Q. #1. Section 101(a)(5) prohibits an employer from "aiding or perpetuating discrimination by providing significant assistance to the agency, organization or individual that discriminates." "What is significant assistance" -- a bank loan? A purchase agreement for goods? International trade contract? (Example: If Boeing holds contracts on all the Japanese airlines, which foreign companies are obviously not in compliance with ADA, would Boeing be open for suit under Section 101(a)(1)(E) by providing significant assistance to an organization that discriminates?)

A. In H.R. 2273, section 101(a)(1)(E) provided that it was discriminatory for entities to aid or perpetuate discrimination "by providing significant assistance to an agency, organization or individual that discriminates." That provision was based on section 504 regulations, 42 C.F.R. §84.4, which provided that a recipient under section 504 could not "aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program." That provision had worked without difficulty under section 504.

During negotiations with the Administration and the business community, however, concerns were raised that it might be more difficult to apply this provision with regard to private entities which engage in all forms of assistance. In addition, it was noted that, unlike section 504, the ADA would itself cover most entities directly, without any "assistance provision." In the compromise bill, therefore, the assistance provision was dropped and the bill includes the clearer provision that covered entities may not utilize methods of administration that "perpetuate the discrimination of others who are subject to common administrative control." See S. 933, section 102(b)(3)(B).

Q. #2. How do you see Title I interacting with Title II and the other Titles? Don't you see some potential for confusion here? Why not put the provisions in the appropriate Title to which they relate, even if some redundancy is necessary?

A. H.R. 2273 was based on the format used in the section 504 regulations issued by the Department of Health and Human Services. In those regulations, there was an opening, general section that set forth the forms of discrimination prohibited (42 C.F.R. §84.4), which was followed by specific sections dealing with employment, social services, and education (42 C.F.R. Subparts B-D). H.R. 2273, with its overall title I and its specific titles following, was based directly on that format.

There was never any intention, however, to create conflicting or confusing requirements. Indeed, no conflicts or confusion had ever arisen under the section 504 regulations. In light of the concern raised by the business community, however, the approach you suggest was, in fact, adopted in the compromise bill. Title I was dropped completely from that bill and the relevant provisions of that title were incorporated into the other titles. Although, as you point out, that does create a certain amount of redundancy in the legislation, we felt that is was more than offset by the greater confidence covered entities would feel in the clarity of the legislation.

Q. #3. Please explain the purpose and coverage of 101(a)(5) which would prohibit discrimination based on "association." Is this concept in the 504 regulations? If not, please tell me from where it was derived and how it would be applied and interpreted? Is there a body of case law interpreting such a concept. If so, please give citations to appropriate cases.

A. The prohibition against discrimination against those who associate with people with disabilities is based on an identical provision included in H.R.1158, the Fair Housing Amendments Act of 1988 (currently codified at 42 U.S.C. secs. 3601-3619). The Fair Housing Act, as amended, makes it illegal to:

"discriminate in the sale or rental of a dwelling, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter;

(B) a person residing in, or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with the buyer or renter." (emphasis added)

Sec. 804(f)(1), as amended.

Although the disability provisions in the Fair Housing Amendments Act were essentially patterned after Section 504, this new provision was specifically added to address the fact that discrimination often occurs against non-disabled people because of their association with people with disabilities. The provision was added in the ADA for the same reason. Because of concerns raised by the business community, however, two changes were made in the ADA provision which do not appear in the Fair Housing Act provision. Based on business requests, the ADA provision now provides that discrimination includes --"excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association." (The underlined words are new.) Business owners were concerned that lawsuits could be filed by individuals whom they never even knew had associations with people with disabilities. The additional statutory words make it clear that this provision extends only to situations in which the covered entity knows that the non-disabled person has an association with a person with a known disability, and in which discrimination has occurred on that basis.

Q. #4. What exactly is the purpose of Section 101(b)(2)(A) and (B)? How would this wording affect the current definition of "handicapped" in the Fair Housing Act amendments?

A. Section 101(b)(2)(A) of H.R. 2273 provided that a valid qualification standard under the ADA could include requiring that "the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to the property or safety of others." This provision directly tracks the provision that exists under Section 504 with regard to alcoholics and drug addicts. With regard to current users of illegal drugs, this provision is different from that which appears in the Fair Housing Amendments Act, in which such individuals are excluded from coverage.

We believe that the provision which appears in H.R. 2273 is the appropriate policy approach to drug addicts. It does not require an employer to hire any drug addict unless he or she is completely qualified to do the job, and specifically notes threat to the property or safety of others as one, although certainly not the exclusive, example of a qualification standard that such individuals may perhaps not meet.

In any event, however, this provision was substantially changed in the compromise bill. The bill that was brought up on the Senate floor included a list of actions that an employer is allowed to take against employees, including prohibiting use of alcohol and illegal drugs in the workplace and requiring that employees not be under the influence of alcohol or illegal drugs in the workplace. On the Senate floor, three additional amendments regarding current drug addicts were accepted. Two of these amendments explicitly excluded individuals who currently use illegal drugs from coverage under the Act. The third amendment did the same with regard to coverage under Section 504. The compromise bill, therefore, is now consistent with the Fair Housing Amendments Act with regard to exclusion of current users of illegal drugs.

Section 101(b)(2)(B) of H.R. 2273 provides that a qualification standard may include requiring that "an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals." This provision is identical to one that was included in the Democratic version of the Civil Rights Restoration Act amending section 504, as well as in the Administration version of the Civil Rights Restoration Act which you sponsored. It also appears in the Fair Housing Amendments Act. The provision is designed to address any concerns that covered entities may have regarding individuals with contagious diseases or infections.

Q. #5. Under 101(b)(2)(A), who defines "alcoholic or "drug abuser"? By the way that [it] is worded, it appears that it is o.k. for an individual who uses drugs as long as they do not pose a direct threat to the property or safety of others? If that is the case, wouldn't you say that totally contradicts the drug free workplace concept?

A. Under the ADA, as under Section 504, an individual must have a medical disability in order to be covered. Thus, an individual who simply uses alcohol or drugs, and does not have the medically disabling condition of drug or alcohol abuse, was never covered under either Section 504 or the ADA. As noted in my previous answer, however, under the compromise bill, an individual who either uses or is addicted to illegal drugs is now excluded from coverage under the Act.

Q. #6. Again, with respect to the drug abuser exemption, what relationship will this section have with the current drug testing programs that are being instituted in many of the agencies? For instance, if an individual came back with a negative drug test or a drug test that indicated he had been using drugs, is there any way that person could be fired from his position if he did not, at that point, pose a "direct threat" to property or the safety of others in the workplace?

A. The compromise bill expressly addresses this concern. First, as noted above, the "direct threat" provision has been removed from the compromise bill and, in its place, the bill explicitly excludes people who currently use illegal drugs from coverage. In addition, the bill includes a new section which specifically states that the ADA does not prohibit drug testing of either applicants or employees and does not prohibit making employment decisions on the basis of such test results. See S. 933, sec. 104(c).

Q. #7. In your opinion, doesn't this legislation require employers to make difficult, if not impossible, determinations regarding the immediate dangers posed by an individual's drug use, in the face of overwhelming evidence that drug use in the workplace is inherently dangerous?

A. The compromise bill ensures that employers will never have to make those determinations, because the bill excludes coverage for current illegal drug users. I would like to point out, however, that even under the original H.R.2273, employers were significantly protected by being allowed to fire workers who were unqualified, in any fashion, for the job.

Q. #8. Under Section 202(b)(3), the ADA places restrictions on tests that "tend to identify" qualified individuals with disabilities. Doesn't this language, taken together with the language in Section 101(b), restrict the practice of many employers to use drug screening of employees or prospective employees? An individual screened out by such testing could challenge the exclusion unless the employer could prove that the exclusion is necessary and substantially related the ability of an individual to perform the essential functions of a particular job.

A. In the compromise bill, the phrase "identify ... or tend to identify" has been dropped from section 202(b)(3). In its place, the compromise bill tracks section 504 regulations, 42 C.F.R. §84.14, regarding medical examinations and inquiries. In addition, the compromise bill specifically allows for drug testing of applicants and employees. A new section has been added regarding drug testing, which states that "a test to determine the use of illegal drugs shall not be considered a medical examination," and which further provides that nothing in the bill shall be construed to "prohibit ... the conducting of drug testing of job applicants or employees or making employment decisions based on such test results." S. 933, sec. 104(c).

Q. #9. I am concerned about the ability of the government to end the demand for illegal drugs in the workplace, in schools, in public housing, and elsewhere. Doesn't existing law--i.e., the Rehabilitation Act of 1973, under Section 504, which outlaws discrimination by federal grantees against "handicapped individuals" -- pose a problem because the law has been interpreted to include drug and alcohol abusers among the "handicapped," so that it impairs the ability of local school boards who try to expel drug-abusing students or public housing authorities who try to evict tenants who are drug offenders? Wouldn't the language of the ADA make the problem even worse?

A. The compromise bill addresses this concern. On the Senate floor, an amendment was added which excluded current users of illegal drugs from Section 504 of the Rehabilitation Act of 1973. The concerns you raise are the ones which motivated that amendment. In addition, as noted above, current users of illegal drugs are excluded from coverage under the ADA.

Q. #10. In Title I(a)(2) the bill states that "for purposes of this Act, aides, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs". Who decides what is "appropriate to the individual's needs?" Who has the burden of proof in this regard? How are the needs determined?

A. In the compromise bill, Title I, including this provision, has been deleted from the bill. This particular provision has not been carried over into the employment section, because there are other provisions which deal more directly with the requirements of non-discrimination and reasonable accommodation. A version of the provision appears in the public accommodations section, which provides that: "Goods, facilities, privileges, advantages, accommodations and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual." This requirement is straightforward. When a covered entity provides services and goods to the public, including people with disabilities, that entity may not provide the goods and services in a separate or different manner for people with disabilities. See S. 933, sec. 302(b)(1)(A)(iii). At times, however, because of the particular disability of the individual, a modification of the provision may be required. In those circumstances, the entity must provide the services or goods "in the most integrated setting" appropriate to the individual. In other words, to the extent that the goods or services can be provided in a more integrated setting with non-disabled individuals, that effort should be made. In addition, the policy behind this provision is that every effort should be made initially to provide goods and services to people with disabilities in the same setting in which non-disabled individuals receive their goods and services.

Q. #11. Section 101(b)(1) "Defenses" is almost the most complicated sentence in the bill. Can you please break that sentence down and explain what it means?

A. You are certainly correct regarding the length of this sentence. The point, however, was to codify in law the "otherwise qualified" requirement that had been developed under section 504. In the compromise bill, the provision has been modified and shortened. It now reads as follows:

> "It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability, has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation." S. 933, sec. 103(a).

As I noted, the point was to codify the "otherwise qualified" requirement of Section 504, in order to assure businesses that they are not required to hire unqualified individuals with disabilities. The provision states, therefore, that a covered entity may have a qualification standard or a criterion that actually denies a job or benefit to an individual with a disability, or that simply tends to screen out such individuals, if the standard or criteria is "job-related and consistent with business necessity," and the performance of the individual on the job cannot be otherwise accomplished through some reasonable accommodation. The standard and terms in this provision come directly from the regulations under sections 503 and 504 and are intended to codify that approach.

Q. #12. In Section 101(a)(1)(B) what does the term "equal" mean when used in that context? Who determines what is "equal?" Again, under Section 101(a)(1)(C), who determines what is "less effective" than that provided to others? Who makes that determination? Is there some sort of notice requirement to employers or to public accommodations that what the disabled is receiving is "less effective" before an owner can be sued for punitive damages?

A. In the compromise bill, Title I, including the provisions you refer to, have been dropped. They have not been included in the employment title, because there are other provisions in that title which deal more directly with the requirements of non-discrimination. One of the provisions has been carried over, in a modified form, to the public accommodations title. S. 933, sec. 302(b)(1)(A)ii) provides that:

> "It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage or accommodation that is not equal to that afforded to other individuals."

This is a basic provision in the sphere of public accommodations. It simply means that people with disabilities have to be offered goods and services that are equal to those offered to people without disabilities. For example, a restaurant owner could not decide to seat people with disabilities only in the less expensive or less attractive sections of the restaurant because he or she did not want people with disabilities seen by the better-paying customers.

Q. #13. What would you say to the private doctor who desires not to hire as a nurse an individual who tests positive for HIV AIDS virus? Must that doctor hire him or be in violation of ADA? If that is true, what assistance is provided for the loss of business which might then occur to the doctor?

A. The ADA is patterned directly after Section 504 with regard to coverage of individuals with contagious diseases, including coverage of people with AIDS and HIV infection. Under Section 504, and under the ADA, a person must be qualified for a particular employment position. For a person with a contagious disease or infection, this means that the person cannot pose a significant risk of transmitting the infection to others in the workplace. This was the requirement enunciated by the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987), and established clearly both in an amendment to Section 504 and in an explicit provision of the ADA.

In the context of your example, therefore, the question would be whether the nurse with HIV infection was otherwise qualified to do the functions required of the job. If the individual was not qualified--that is, if there was a significant risk of the nurse transmitting the infection to others while performing the job--the doctor would not be in violation of the ADA by refusing to hire the person. Conversely, if the person was qualified, the doctor could not use the person's HIV infection as a reason for not hiring the person. The determination as to whether the person was qualified would be based on the particular functions of the job expected of the individual and an assessment as to whether there was a significant risk of transmission in having the person perform those functions. This is the same analysis that applies to all other disabilities under the Act.

With regard to possible loss of business, the ADA draws the proper line. If the applicant is not qualified--that is, if there are objective, rational reasons for rejecting the individual--the law allows the applicant to be rejected. By contrast, if the applicant is qualified and the only reasons for an adverse decision are fears and stereotypes, the law does not allow the applicant to be rejected. Fears and stereotypes on the part of others is precisely one type of discrimination that the law is designed to forbid. Indeed, the law in this area has long been settled in the sphere of race and sex discrimination. Courts have held that the prejudices of the public may not be allowed to define the acceptable limits of non-discrimination. See. e.g., Diaz v. Pan American World Airways, 442 F.2d 385 (5th Cir.), cert. denied, 404 U.S. 950 (1971) (fact that customers prefer women stewardesses cannot justify sex discrimination despite possible financial consequences). Any other approach would undermine the basic, underlining premise of anti-discrimination protection. Moreover, one should note that because a comprehensive anti-discrimination law covers all businesses, no one business can gain a competitive advantage by not hiring blacks, women, or people with certain disabilities.

Q. #14. Similarly, what if a child care center does not want to take a child who test positive for AIDS virus. Must that child be accepted? If so, what compensation could be given to the business which finds itself bankrupt because of raised insurance rates?

A. The same analysis described above applies in this case. A child with a contagious disease who posed a significant risk of transmitting the disease to others could be excluded under the standards of the child care center. Under current medical evidence, there is no reason to assume that a child who is HIV-infected would pose such a risk in a child care setting. All of the major medical, social service and child care organizations, including the American Medical Association, the American Nurses' Association, the American Association of Pediatrics and the Child Welfare League, agree that children with HIV infection can be safely cared for in child care settings. Thus, if a child meets the eligibility criteria of the center--e.g., payment of funds, age requirements, and not posing a significant risk to others--it would not be permissible to deny entry because the child is HIV-infected. Moreover, there is no basis for believing that a business who accepts HIV-infected children will go "bankrupt" because of raised insurance rates. There is no evidence that insurance companies have raised liability insurance to child care centers because some children attending the center are HIV-infected.

Q. 15. What about a person with a history of mental disease, including violence and child abuse, yet the person's doctor certifies him as healed and he is otherwise extremely well-qualified for the job. Can a child care center, nevertheless, refuse to take him on that basis alone? For that matter, would it even be appropriate under ADA to ask on an application form whether the person had a past history of mental disease or would that run afoul of Section 202 (b)(3)?

A. Under the compromise bill, as it passed the Senate, individuals who are pedophiliacs or who have sexual behavior disorders are excluded from coverage under the Act. Thus, such individuals could be denied employment on that basis and employers could ask, at any point, whether they have such disorders. In addition, it would be a legitimate job-related inquiry to ask an applicant for a child care job whether the person has a history of child abuse.

TITLE II

Q. #1. Section 205 provides for a private right of action for "any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability... (emphasis supplied)." This provision for anticipatory suits is unprecedented with respect to employment matters. Won't this result in clogging the federal courts with vague claims of anticipated discrimination? What effect will this have on the case backlog? Why include this in the employment Title?

A. I believe there was often significant misunderstanding regarding the "about to be discriminated against" provision of the ADA. This provision was never intended to allow plaintiffs to present completely speculative complaints for which there was no basis. To the contrary, this provision was derived from case law under Title VII, which incorporates the basic concept of anticipatory discrimination and which establishes specific, strict standards that plaintiffs must meet to prove such discrimination.

In any event, in order to address this misunderstanding, the compromise bill deleted the term "about to be discriminated against" in the employment section. The accompanying Senate Committee Report explained that, because the case law under Title VII already provided protection against the type of discrimination with which the ADA was concerned (without including any specific statutory provision to that effect), there was no need to include such a specific provision in the employment section. See Senate Committee Report, 101-116, at p. 43.

Q. #2. Can you articulate definite guidelines for the concepts of "reasonable accommodation" and "undue hardship"? You state in your testimony that those terms have been used before and that criteria is listed under §84.12 regulations. Please specify which leading cases (with citations) have defined these terms, including the "cost" or "nature" of accommodation required. Has the 'safety of others' been considered under the umbrella of "undue hardship"?

A. As you note, the terms "reasonable accommodation" and "undue hardship" appear in the section 504 regulations, 42 C.F.R. §84.12. They have been applied in numerous cases brought under section 504 since its passage. Some of the leading cases are:

* Strathie v. Department of Transportation, 716 F.2d 227 (3rd Cir. 1983) (Plaintiff, who was hearing impaired and wore a hearing aid, challenged regulations denying licenses to school bus drivers who wore hearing aids. The court analyzed reasonable accommodation requirements at length, held that there were sufficient facts to conclude that drivers with hearing aids might be reasonably accommodated and remanded for that determination.)

* Nelson v. Thornburgh, 567 F.Supp. 369 (E.D.Pa. 1983) (Blind income maintenance workers for the Pennsylvania Department of Public Welfare sought reasonable accommodations. The court analyzed at length the type and nature of accommodations sought, the nature of the business and the nature of the jobs and determined that certain accommodations would be required.)

* Prewitt v. United States Postal Service, 662 F.2d 292 (5th Cir. 1981) (Plaintiff was a disabled Vietnam veteran with limited mobility in his left arm and shoulder who was denied a job as a

distribution clerk for the Postal Service. The court held that some reasonable accommodation, such as lowering a shelf, might be required of the defendant. The court used the EEOC regulations implementing section 501.)

In the compromise bill, the applicable section 504 regulation, 42 C.F.R. §84.12 has been incorporated almost in full in the statute, to ensure that the factors that have been used in these, and other, section 504 cases continue to apply. Under this standard, as both the regulations and case law make clear, a reasonable accommodation is an action or modification that enables the disabled person to perform the essential functions of the job. If an accommodation would not achieve this desired effect (that is, the person could still not do the job), it is not reasonable to require the accommodation. In addition, the accommodation may not place an undue hardship on the operation of the employer's business. In other words, it may not constitute a significant expense for the employer or require significant difficulty for implementation--an analysis which takes into account the size and nature of the business. Consideration for the safety of others has been explicitly included in the determination of "otherwise qualified" in section 504 cases. Indeed, the most recent Supreme Court case on section 504, School Board of Nassau County v. Arline, 480 U.S. 273 (1987) held that a person with a contagious disease would not be otherwise qualified if the person posed a significant risk to the safety of others, that is, by transmitting the disease to others in the workplace.

Q. #2a) If an individual has a typing business in her home, must that person include, at a minimum, a ramp and large bathrooms to accommodate wheelchairs, if any other repair work is being contemplated on the house? If not, where is the exemption?

A. If the individual employed more than 15 employees in her business at her home (that is, if she were basically operating a substantial business out of her home), she would be covered under the employment title of the bill. The only physical changes she would then have to make are those that would be considered "reasonable accommodations" for an employee who used a wheelchair. If it were a small business (e.g., 16 employees), it is doubtful that she would be required to expend large amounts of money on renovations, because that would be considered an undue hardship.

It seems to me, however, that you are actually talking about a person who simply runs a typing business, by herself, out of her home. That person is exempted from the employment title because she has fewer than 15 employees. In addition, with regard to public accommodations, the compromise bill clarifies that "potential places of employment" do not include facilities that are covered, or expressly exempted from coverage, under the Fair Housing Act. A residential home would fall into that category.

TITLE IV

Q. #1. Example: I am an owner of a restaurant in Wisconsin and I want to be in compliance with ADA now that it is law. Please tell me what I need to do to put myself in compliance with the law?

(a) Will I have to build ramps?

A. You will not have to build a ramp unless doing so would be "readily achievable"--that is, able to be carried out without much difficulty or expense. In practical terms, that means that if there were one step into the restaurant that could be easily ramped without much expense or difficultly, that would be required.

(b) What if I had intended to put a new balcony eating area on second floor next year? Under Section 402(b)(5) do I have to enlarge all my bathrooms at the same time and put in an elevator?

Under the compromise bill, the path of travel to a renovated portion of the facility, and the bathrooms serving that portion, need to be made accessible only if the entity is engaging in "major structural alterations." The statute specifically provides that what is to be considered a "major structural alteration" will be defined by criteria established by the Attorney General. S. 933, sec. 302(b)(2)(A)(vi). The Senate Committee Report notes that the term "structural" means "elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors or doorways." Committee Report, p. 67. It is likely that renovating a balcony eating area would be considered structural. As noted, however, the Attorney General will have statutory responsibility for establishing the criteria for determining what are structural alterations. With regard to the elevator, the compromise bill includes an explicit provision which exempts entities from putting in elevators during major renovations in buildings less than three stories. An elevator, therefore, would not be required in this example, regardless of the nature of the alterations.

(c) Do I have to have my menus in braille?

No. The Senate Committee Report used this as a specific example, noting that a restaurant would not be required to have its menus in braille if it provided a waiter or other person who was willing to read the menu.

(d) Do I have to have room for wheelchairs at all locations in my restaurant?

According to individuals who have first-hand experience with maneuvering in restaurants, this is not really an issue. Access to restaurants is an issue with regard to entry, restrooms and getting to each level where there is seating, or where there may be a bar or a dance floor. Once a wheelchair user is on an appropriate level, however, seating is accessible without any special consideration being given to access. The owner need do nothing special to the seating to ensure satisfactory access to tables.

2. What is your understanding of the intent and effect of the inclusion of the phrase "potential places of employment" in Title IV of the ADA? Why is it needed, given the scope and construction of the employment Title in the ADA?

   (a) With that in mind, what about the woman who has a typing business in her home? This appears to be a "personal business" under the 402(2)(B) definition of establishment and is also a "potential place of employment whose operations affect commerce." Without a small business exception, couldn't that person be liable for punitive damages if a disabled person were not able to utilize those service?

   (b) If your answer suggests that it would probably fall within the "undue hardship", provision, how would that person prove undue hardship?" Costs spent? Is there case law? If so, please cite specific case examples.

   (c) If the "readily achievable" language is cited, how would that person prove "not readily achievable?" Please reference case citations defining this term.

A. The term "potential places of employment" in the public accommodations title of the ADA was never intended to cover employment actions of businesses. Those actions were covered under the employment title of the bill, in which there is an exemption for employers with less than fifteen employees.

"Potential places of employment" was designed to cover new construction requirements, in situations in which there were not yet identified tenants in a building that was being constructed, but which was understood to be designed for commercial (i.e., employment) and not residential use. In order to avoid any misunderstandings, the compromise bill now makes this clear. The definition of "public accommodations" no longer includes the term "potential places of employment." That term appears only in the section regarding new construction, and explicitly defines such places as those that are not covered or exempted under the Fair Housing Amendments Act (i.e., residential buildings.)

To answer your specific question, therefore, a woman who has a personal typing business, in a home which is already built, would not be covered as a "place of potential employment" under the public accommodations title. As noted above, she would also be exempted under the employment title because she has fewer than fifteen employees.

Q. #3. Section 402(b) defines, "discrimination against" as "a failure to remove architectural and communication barriers that are structural in nature and existing facilities where such removal is "readily achievable; and (B) where an entity can demonstrate that the removal of a barrier...is not readily achievable, a failure to make such good services, facilities, privileges, advantages and accommodations available through alternative methods, if such methods are readily achievable."

(a) Could you give examples of what would and would not be required under this section; for example, doctor's office; a video store; a dry cleaners; a church?

A. As an initial matter, under the compromise bill, churches have been exempted completely from the public accommodations title of the ADA.

For the entities that are covered, "readily achievable" means that such entities must remove small architectural barriers that are inexpensive and not difficult to remove. This would include, for example, placing a small ramp over one or two steps or adding grab bars to a restroom stall. If the barrier removal is not readily achievable (for example, there are numerous steps going into a store at a steep incline or the store is on the second floor), the "alternative methods" requirement means that measures must be taken to offer the services of the entity--to the extent those measures can be taken simply. For example, if there are five steps into the dry cleaners store, and therefore building a ramp is not readily achievable, the "alternative methods" provision would require that the staff take a wheelchair user's clothes from the person at the foot of the stairs and bring them out for pick-up, if called beforehand. In the same manner, the staff of a video store would be required to bring a specific requested video tape to the bottom step and collect it there when it is returned.

(b) I understand that the term "readily achievable" has been used as synonym for "easily accomplished with little difficulty and at little expense". Is "little difficulty in expense" a relative concept? If so, how are the threshold/cutoff points measured -- in time, in money, disruption of current practice? Please refer to case citations, where applicable.

A. The term "able to be carried out without much difficulty or expense," is, in fact, under the compromise bill, the statutory definition of "readily achievable." The term is relative in the sense that the size and nature of the business, and the cost of the removal or action, is taken into account in determining whether an action is readily achievable. This is essentially a form of a "small business exemption, " by allowing the size of the business to be taken into account, even in the "readily achievable" analysis. There are no case citations that one can give in this area. Because of negotiations and compromises that were made even before the ADA was introduced, the term "readily achievable" was adopted as a new term, not found in Section 504, designed to denote a standard which is lower than any existing section 504 standard. Because it is a new term, designed to establish a more flexible standard, there are no cases interpreting the term. While we would be happy to adopt the established section 504 standard of "undue burden" for the removal of barriers in existing facilities, for which there are various cases citations, I doubt the business community would be pleased with this higher standard.

(c) Are there not grounds for exemption, especially for small businesses, even if we develop a common understanding of the term?

A. As you can see from the previous discussion, there is already a type of exemption already built in for small businesses. No small business will have to make any changes that cannot be accomplished easily and without much difficulty or expense -- in an analysis that takes into account the size of the business. Similarly, the "undue burden" standard takes into account the size of the business. Finally, in the area of new construction and renovations, an part of the compromise with the Administration, the concerns of small businesses were taken into account by providing an exemption for installing elevators in facilities that are less than three stories high or have less than 3,000 square feet per story. See S.933, sec. 302(b)(2)(A), 302(b)(2)(A)(vi) and 303(b).

4. Assuming that a common understanding of the term "readily achievable" is possible and that such an understanding includes relative dimensions, should not the remedies available reflect a distinction for intentional versus unintentional acts of discrimination?

A. It is not necessary that there be a distinction between "intentional" versus "unintentional" discrimination. As an initial matter, section 504 never drew such a distinction between "intentional and unintentional discrimination." Indeed, one of the Supreme Court cases dealing with Section 504 (Alexander v. Choate, 469 U.S. 287 (1985)) expressly noted that discrimination against people with disabilities often did not derive from a "wilful" or "malicious" desire to discriminate, but rather was derived from "thoughtlessness" and "benign neglect." The Court noted that, in order to ensure that the protections of Section 504 did not "ring hollow," Congress intended to cover more than just intentional discrimination. Limiting the ADA to cases in which there is "intentional" discrimination, or a "wilful failure" to act would remove basic substantive protections that have long been in place under Section 504.

In addition, the compromise bill has removed any possible concern regarding remedies. The major compromise sought and achieved by the Bush Administration before it lent its support to the ADA was a change in the available remedies. Under that compromise, the right of individual plaintiffs to bring damage actions against covered entities was removed from the bill. In its place, authority is given to the Attorney General to bring suits where there is a pattern or practice of discrimination. In those cases, limited damages are available: a court may assess defined civil penalties of up to $50,000 for the first violation and up to $100,00 for subsequent violations, if the court concludes that it would "vindicate the public interest." In addition, *if* the Attorney General requests it, monetary damages may be given to the aggrieved person. See S. 933, sec. 308. If lyou would like to recommend that compensatory and punitive damages be reinserted in the ADA for individual plaintiffs in cases of intentional discrimination, we would be open to that suggestion.

I hope these answers are useful to you as you continue your consideration of the Americans with Disabilities Act. I apologize sincerely for my delay in transmitting these answers to you. Please do not hesitate to let me know if I can be of further assistance.

I look forward to your support and leadership in making this historic piece of legislation a reality for all individuals in this country.

Sincerely,

Chai R. Feldblum

Chai R. Feldblum
Legislative Counsel

UNITED STATES HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

TESTIMONY OF JAMES W. ELLIS
PRESIDENT, AMERICAN ASSOCIATION ON MENTAL RETARDATION

PROFESSOR OF LAW, UNIVERSITY OF NEW MEXICO
VISITING PROFESSOR, AMERICAN UNIVERSITY

AMERICANS WITH DISABILITIES ACT

Mr. Chairman and members of the subcommittee: I appreciate the opportunity to present testimony on behalf of the American Association on Mental Retardation on the important subject of preventing discrimination against citizens on the basis of disability.

My name is James W. Ellis, and I am the President of the American Association on Mental Retardation (AAMR). I am a Professor of Law at the University of New Mexico, where I specialize in constitutional law and legal issues affecting people with mental disabilities. During this academic year, I am a Visiting Professor at the Washington College of Law of the American University here in Washington, D.C. I have had the privilege of representing AAMR and a consortium of disability organizations in the Supreme Court of the United States in City of Cleburne v. Cleburne Living Center, Bowen v. American Hospital Association (the so-called "Baby Doe" case), and, this last Term, Penry v. Lynaugh.

The American Association on Mental Retardation is the nation's oldest and largest interdisciplinary organization of professionals in the field of mental retardation. Founded in 1876, AAMR has long been interested in legal issues involving people with mental retardation. AAMR members are organized in a number of professional divisions, including psychology, education, administration, medicine, nursing, social work, community services, nutrition and dietetics, communication disorders, occupational and physical therapy, religion, vocational rehabilitation, and legal process and advocacy. Our members serve individuals with mental retardation in a variety of residential and nonresidential settings.

The American Association on Mental Retardation strongly supports the passage of the Americans with Disabilities Act. We believe that our nation's civil rights laws must be extended to reach discrimination on the basis of mental or physical disability.

People with disabilities have been subjected to invidious discrimination throughout history. In the case of individuals who have mental retardation, this history of discrimination has been described by five members of the Supreme Court of the United States as "grotesque." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 454, 461 (1985). This discrimination has been pervasive and has reached almost every aspect of the lives of people with disabilities and has denied them the most basic and fundamental rights of American citizenship.

Because of their disability, people with mental retardation have been denied the right to marry, the right to have children, the right to vote, the right to attend public school, and the right to live in their own community, with their own families and friends. Through the discriminatory withholding of medical care and nutrition and hydration, they have even been deprived of the right to life itself, solely because of their disability.

The rationalizations for discriminating on the basis of disability have been varied. Sometimes it is argued that the discrimination is necessary to "protect" the disabled persons themselves. But more careful scrutiny often reveals that the real purpose is very different. For example, early laws prohibiting people with mental retardation and other disabilities from marrying are sometimes thought to be designed to insure that unscrupulous nondisabled individuals do not take advantage of people with handicaps. But the real purpose in enacting these laws was eugenic -- making it a crime to enter into such a marriage, even for the person with a disability. See Linn & Bowers, The Historical Fallacies Behind Legal Prohibitions of Marriages Involving Mentally Retarded Persons -- The Eternal Child Grows Up, 13 Gonzaga Law Review 625 (1978).

Similarly, eugenic sterilization laws were not an attempt to address the problems of informed consent by persons with mental disabilities, but rather were a part of a larger scheme to remove people with handicaps from society. As one proponent of such laws wrote at the time of their enactment,

> "What shall we do with the feeble-minded and epileptic already existing? One school says vasectomy, another castration, and still another segregation. None of these is correct in whole but in part only. To reach the proper solution of this question both sterilization, in some form or other, and segregation must be carried out, castration or vasectomy being used as adjuncts to segregation, and going hand in hand with it."

H. Carey, A Plea for the Sterilization of Certain Defectives, Particularly the Feeble-Minded and Epileptic 4-5 (1912).

The notion that nondisabled citizens should be spared from any contact with people with disabilities was also made explicit in rationalizing the exclusion of people with handicaps from public schools. For example, the Supreme Court of Wisconsin approved the exclusion of a boy with cerebral palsy because he "produces a depressing and nauseating effect upon the teachers and school children." State ex rel. Beattie v. Board of Education, 169 Wis. 231, 172 N.W. 153, 154 (1919).

Another feature of discrimination against people with disabilities is the denial that they are really citizens, or even that they are human. This has been true throughout our history. For example, the Mississippi statute creating eugenic segregation gave chancery courts "jurisdiction in all cases of legal inquiry in regard to feeblemindedness, including idiocy, imbecility, and the higher grades and varieties of mental inferiority which renders the subjects unfit for citizenship." 1920 Miss. Laws 288, 294.

Particularly odious are references in modern policy debates to people with disabilities as subhuman. For example, it has been argued that there is

> "no reason to feel guilty about putting a Down's Syndrome baby away, whether it's 'put away' in the sense of hidden in a sanitarium or in a more responsible lethal sense . . . . True guilt arises only from an offense against a person, and a Down's is not a person."

Bard & Fletcher, The Right to Die, The Atlantic Monthly 59, 64 (April 1968). Another writer attempts to justify discrimination in this way:

> "If we compare a severely defective human infant with a nonhuman animal, a dog or a pig, for example, we will often find the nonhuman to have superior capacities, both actual and potential, for . . . anything . . . that can plausibly be considered morally significant."

Singer, Sanctity of Life or Quality of Life?, 72 Pediatrics 128, 129 (1983). Contemporary debate also contains frequent references to people with disabilities, particularly mental disabilities, as "vegetables." For eloquent criticism of this usage, see Hentoff, The Awful Privacy of Baby Doe, The Atlantic Monthly 54, 57 (January 1985).

The tone of these attempts to justify discrimination against citizens with disabilities is more offensive than anything encountered by any group in American society since the days of slavery.

The impact of this discrimination on the lives of people with mental disabilities has been as devastating as has the discrimination encountered by racial minorities and women in our society. But unlike those other groups, people with disabilities have lacked legal protection against private and public discrimination.

The piecemeal statutory laws now in place do not address the problem adequately. Section 504 of the Rehabilitation Act was an important first step, but it only reaches discriminatory conduct by recipients of government funding, and thus leaves most harmful discrimination untouched. Similarly, Public Law 94-142, The Education of All Handicapped Children Act, has worked a revolution in the lives of people with disabilities by making it possible for them to receive an education. But 94-142 reaches discrimination only in the field of education, and does nothing to prevent it in other areas of a disabled person's life.

The inadequacy of current Federal statutory protections is all the more important because state laws have not provided substantial protection to people with disabilities. Only two states, Connecticut and Massachusetts, prohibit discrimination on the basis of handicap in their state constitutions, and even these provisions have received little judicial enforcement. And few state statutes provide the kind of protection against discrimination on the basis of disability that they typically afford in the areas of race and gender.

Even more crucial is the lack of judicial enforcement of the protections of the United States Constitution. The Fourteenth Amendment guarantees to all persons the equal protection of the laws. There can be no doubt that this applies to citizens with disabilities just as it does to all others. But the Supreme Court of the United States has declined to provide the same level of protection that it does in the areas of race and gender. Instead, it consigned cases involving disability discrimination to the level or "tier" of judicial scrutiny least favorable to the individual who suffers the discrimination -- the so-called "rational basis" test. City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985). What this means in practical terms is that any halfway plausible rationalization for governmental discrimination against people with mental or physical disabilities will be enough to satisfy the Federal courts.

Conclusion. The inadequacy and limited scope of existing laws on discrimination against people with handicaps makes prompt Congressional action essential. The American Association on Mental Retardation urges the House of Representatives to join the Senate and President Bush in approving the Americans with Disabilities Act.

STATEMENT
on
AMERICANS WITH DISABILITIES ACT
for submission to the
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
of the
HOUSE COMMITTEE ON THE JUDICIARY
by
Nancy R. Fulco*
October 11, 1989

The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents nearly 180,000 businesses and organizations, such as local/state chambers of commerce and trade/professional associations.

More than 93 percent of the Chamber's members are small business firms with fewer than 100 employees, 45 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—numbers more than 10,000 members. Yet no one group constitutes as much as 32 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 59 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

The U.S. Chamber of Commerce appreciates this opportunity to express its concerns about H.R. 2273, the Americans with Disabilities Act (ADA), legislation designed to expand rights for the disabled. (As requested by the Subcommittee, the Chamber's comments are based on S. 933, the Senate's companion bill as passed by the Senate on September 7.) Although the Chamber shares the goal of the bill's proponents — opportunity for individuals to participate fully in society — the Chamber opposes H.R. 2273 because of its lack of guidance and parameters to help businesses to comply and the resulting reliance on the court system to define precise rights and obligations; its enforcement scheme (specifically in Title III); and its lack of sensitivity to the special needs of small businesses.

The following comments will focus primarily on Titles I and III, the employment and public accommodations titles of the ADA, respectively.

PROTECTIONS FOR USERS OF ILLEGAL DRUGS

The ADA continues to protect users of illegal drugs who are also disabled. The specific language states:

> Section 104. Illegal Drugs & Alcohol
>
> (a) Qualified Individual with a Disability -- For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that any individual who is otherwise handicapped shall not be excluded from the protection of this Act if such individual also uses or is also addicted to drugs (emphasis added).

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*Human Resources Attorney, Employee Relations Policy Center

This language can be interpreted to mean that it is acceptable for disabled people to use illegal drugs but not able-bodied individuals. Although this was not intended, the problem remains. The underlined language should be deleted. Employers must have the ability to refuse to hire or to discharge an employee for illegal drug use, regardless of the presence of a disability.

PARAMETERS AND GUIDANCE FOR BUSINESS COMPLIANCE

The ADA is replete with affirmative obligations required of the private sector, yet many of these obligations are unclear or lack guidance of any sort. The result will be businesse having to play a guessing game as to what is required or even whether or not they are in compliance. The stakes of this game are high because businesses will face the threat of lawsuits over whether their guesses were correct. The attached editorial from The New York Times and article from the National Journal provide eloquent analyses of this problem.

Title I

The employment provisions of the ADA, generally, reflect a fair balance between the legitimate yet competing interests of the disability and business communities. Nevertheless, several areas need clarification:

- Individuals with disabilities must be able to perform the "essential functions" of the jobs they hold or want. The "essential functions" of a given job will vary from business to business and among different segments of the same business. At a minimum, it should be made clear that employers have the discretion to decide what constitutes the "essential functions" of a job.

- The definition of discrimination is very broad, and the proponents of the ADA claim that it is intended to cover 900 types of disabilities. A list of covered disabilities is appropriate so that businesses know when their obligations are triggered. Additionally, such a list would reduce the threat of litigation that will result if employers are forced to guess at what is covered.

Title III

The public accommodations provision of the ADA is the most sweeping of its kind. As a result, the private sector faces new and unknown obligations. Therefore, it is essential that the ADA provide as much specific guidance as possible. In particular:

- Affirmative obligations are placed on public accommodations. However, the ADA does not address, in a landlord/tenant situation, who bears the responsibilities. Clarification here is necessary so that landlords and tenants know the rules. Otherwise, the ADA will become a vehicle that fosters unnecessary litigation between landlords and tenants.

- When a facility is "altered" or when a "major structural alteration" is undertaken, the facility must make the altered area accessible to the "maximum extent feasible." The ADA fails to define what must be undertaken to establish an alteration, makes no distinction between "altered" and a "major structural alteration," and gives no guidance as to the meaning of "maximum extent feasible." This ambiguity could be easily eliminated by following the example of Pennsylvania. Under state law, an alteration is deemed to trigger the accessibility requirements if the alteration affects 50% or more of the value of the building.

- Title III provides that accommodations need not be made if they would "fundamentally alter" the nature of the good, service, etc. being provided. No meaning is given to the phrase "fundamentally alter." It would be appropriate to leave this discretion within the purview of the employer.

Without clarity, the court system will determine many of the obligations. Unfortunately, this will be done at the expense of the business community — particularly small businesses, which can least afford this expense.

ENFORCEMENT

There are times when the enforcement scheme for ensuring compliance with a law needs to be punitive, and other times when it merely needs to be corrective. The ADA fails to make this distinction. To be truly effective, the ADA should shift its focus from confrontation to conciliation.

Title I

Disputes surrounding the employment relationship and discrimination historically have focused on making the aggrieved individual whole, e.g., back pay, front pay, and reinstatement. Although Title I of the ADA embraces this concept, a few disturbing questions remain:

- o The original version of S.933, the Senate's ADA bill, and the current version of H.R. 2273 allow individuals to bring suit if they believe they are "about to be" discriminated against (anticipatory discrimination). Although this language was excluded from S. 933 as passed, the concept was left in the Senate committee report language. In practical terms, this means that what one person thinks another is thinking becomes actionable in court. Any reference to this idea should be eliminated.

- o The ADA does not preempt any civil rights protections for the disabled at any level — federal, state, or local. Many employers are already covered by the antidiscrimination/reasonable accommodation provisions of the Vocational Rehabilitation Act of 1973. Laws at the federal, state, and local levels are not uniform; and in many instances, there are additional and/or conflicting obligations. An employer could be faced with multiple lawsuits at the same time on the same set of facts. At a minimum, a provision should be included in the ADA providing that compliance with the ADA is deemed compliance with the Rehabilitation Act.

Title III

The public accommodations provision requires any entity used by customers, clients, or visitors to be accessible. Despite the best intentions, there will be businesses that fail to do so either through a misinterpretation of their obligations or through a lack of knowledge. The enforcement scheme for this section, however, is punitive, even though one course of action is the appropriate "make-whole" process discussed above. Specific concerns in this area include:

- The lack of definition of what constitutes a "pattern and practice" of discrimination. For example, does it apply in cases of intentional and/or unintentional acts of discrimination? Is the finding based on site-specific instances or full company instances, e.g., a company with approximately 3,000 stores nationwide? The answers to these questions, respectively, should be "only in intentional situations" and only on a "site-specific basis."

- In these "pattern and practice" cases, monetary damages and civil penalties are available at the discretion of the Attorney General and the court. First, monetary damage should be defined as actual, out-of-pocket expenses only. Second, a distinction should be made between intentional and unintentional violations of the ADA. Third, it should be made clear that civil penalties may be imposed in cases of intentional violations only.

- A cause of action for anticipatory discrimination is expressly included in Title III. In the situation where new construction is taking, or is about to take place that is not in compliance with the ADA, it is appropriate that injuctive relief be available. In all other situations, however, this cause of action is inappropriate -- it will be frivolous -- and reference to anticipatory discrimination should be deleted.

For those entities that willfully and intentionally violate the provisions of the ADA, punitive sanctions are appropriate. But to punish those who commit errors unintentionally in the same way as willful violators is not only inappropriate but also unfair.

SMALL BUSINESS NEEDS

Any time the federal government imposes a mandate on businesses, the unique needs of small businesses should be addressed. Small businesses, generally, do not have extra money available for the financial obligations of new mandates and often operate on a very narrow profit margin. These special needs were adequately addressed in the employment section of the ADA through the small business exemption yet were not appropriately recognized in the public accommodations provision.

There was an attempt to provide some relief for small businesses in Title III through limitations on obligations, such as requiring only what is "readily achievable." Definitions of terms, however, remain unclear and subjective and, therefore, do not provide the necessary relief. Lawsuits will arise over what is required; and the cost of these lawsuits, both direct and indirect, will be very burdensome to small businesses. It would be appropriate to provide a small business exemption in Title III similar to that in Title I.

Additionally, financial incentives would go far in helping small businesses to comply with the ADA, and perhaps even encourage compliance where a small business might not otherwise be required to comply, i.e., because a particular accommodation is beyond what would be considered to be "readily achievable." Section 190 of the Internal Revenue Code should be expanded to allow deductions for all expenditures made to accommodate the disabled. Currently, this section permits a business to deduct a maximum of $35,000 annually for structural alterations.

CONCLUSION

Ensuring that all individuals have the opportunity to participate fully in society is a laudable and necessary goal -- one that the Chamber supports. Indeed, integration into this country's economic life of people with disabilities is essential in preserving their dignity and in facing the nation's global economic challenges.

Despite this positive goal, the complexity of the ADA has not been considered adequately. The importance of this issue necessitates taking the time to resolve its problems to ensure that the bill is the best that it can be. Parameters and guidance should be provided so that businesses know what their obligations are and so that courts are not thrust into the role of legislator. Businesses should be helped to comply, rather than having to face punishment if they inadvertently fail to do what is required; and small businesses will need financial relief to assist them in complying with the ADA. In short, the focus of the ADA should be on opening opportunities for the disabled, not on imposing unreasonable and unworkable demands on the business community.

Thank you for the opportunity to submit the Chamber's views on this important legislation.

Attachments

THE NEW YORK TIMES, WEDNESDAY, SEPTEMBER 6, 1989

Blank Check for the Disabled?

With surprisingly narrow public scrutiny, Congress is moving swiftly to extend broad civil rights protection to the nation's 43 million disabled citizens. The sentiment is laudable: to bring the disabled closer to the mainstream of American society. But the legislation is vague; not even its defenders are able to calculate its benefits and costs. Those costs could be monumental. The proposal thus requires patient, unemotional examination.

That won't be easy. The bill was unanimously approved by the Senate Labor and Human Resources Committee last month, and though it still awaits hearings in four separate House committees, it commands strong bipartisan support in both House and Senate and the endorsement of President Bush. As one skeptic put it, "No politician can vote against this bill and survive."

•

The bill would ban discrimination in employment in all businesses with more than 15 workers. That's caused no controversy. What has is a provision requiring nearly every retail establishment, large or small, old and new — barber shops, banks, restaurants, movie theaters — to be accessible to the disabled. The legislation does not spell out how. But in many cases it would mean building ramps, widening doorways, modifying restrooms. Elevators would be required in all new buildings of more than two stories.

The bill would also require bus companies to include lifts, specially designed restrooms and other facilities on all new buses built five to six years after enactment. The bill calls for a study — after the bill is passed, not before — to determine how much this would cost the companies.

The bus companies are angry. Most businessmen are simply fretful and confused. That's partly because the bill's language is so vague. It says that existing facilities must make only "readily achievable" changes that won't involve "burdensome expense." Yet what do these words mean in practice? Obviously, no bill can give precise instructions to thousands of individual businesses. But several states already have laws on the books that provide business more useful guidance than the Senate bill does.

Senator Tom Harkin, Iowa Democrat, argues that "costs do not provide a basis for exemption from the basic principles in a civil rights statute." Mr. Harkin has a hearing-impaired brother and a quadriplegic nephew. He's fought honorably for the bill, and has already made compromises.

He also points out that the Federal Government now spends nearly $60 billion a year on benefits for the disabled — a sum that could shrink if the disabled had easier access to jobs and could move from welfare rolls to tax rolls. The Census Bureau reported last month that less than 25 percent of all disabled men and only 13 percent of disabled women hold full-time jobs. And the earnings of those who do work average only two-thirds that of all workers.

Predictions about the bill's projected benefits are obviously speculative. Worse, nobody has even tried to speculate about its costs. But it shouldn't be impossible to provide estimates. The Office of Management and Budget has done so before in tough instances, like the costs of air bags.

Congress and the Administration now have a similar responsibility to stand back, to weigh, to calculate. No one wishes to stint on helping the disabled. It requires little legislative skill, however, to write blank checks for worthy causes with other people's money.

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It Sounds Great, but What's It Mean?

CONGRESSIONAL CHRONICLE

By Richard E. Cohen

Congress is writing bills that few people—least of all, its Members—understand or can explain.

The latest example is the 1989 Americans with Disabilities Act, which the Senate passed by a 76-8 vote on Sept. 7 and which the House is expected to approve before lawmakers complete business this year. The bill is well-intended, addresses a legitimate and serious national problem and sets goals with which few people can disagree. But its broad prescriptions are so ambiguous and potentially overreaching that federal judges quite likely will struggle for years to define what the law means and how to enforce it.

The problem is not unique to the disabilities bill, which is this year's top priority of the civil rights lobby. Nor is vague or sloppy draftsmanship confined to one party, one chamber or one set of issues.

In the month since enactment of the savings and loan bailout bill, for example, federal officials charged with enforcing that law have disagreed over the intent of key sections. A reason for the modest press and public reaction to the child care bill passed by the Senate in June has been that few persons can decipher its wide-ranging provisions. And Congress lately has been torn by constituent unhappiness over last year's law expanding medicare coverage for catastrophic illnesses; one cause evidently has been that few beneficiaries understood the law's scope or what it would cost them.

In seeking to bar discrimination against disabled Americans—and there are as many as 43 million, it's estimated—backers of the bill have assembled a powerful coalition. The enthusiasts include President Bush, who has had a long-standing interest in the disabled; Senate Minority Leader Robert Dole, R-Kan., whose crippling wartime injury led to his creation of a foundation to help the disabled; Senate Labor and Human Resources Committee chairman Edward M. Kennedy, D-Mass., whose family has long supported related causes; and former House Majority Whip Tony Coelho, D-Calif., an epileptic who has continued his advocacy of these issues since resigning his post in June.

After Kennedy's panel unanimously approved the bill on Aug. 2, staff aides spent several weeks drafting a revised version. The committee formally filed its report with the Senate on Aug. 30, while most Senators and their aides were completing their August vacation. Once they ended their recess on Sept. 6, few Senators spent much time reviewing the measure.

Senate debate of the bill, which lasted most of an afternoon and evening, addressed several questions—some of them esoteric. Conservatives, for example, made sure that its protections do not cover such groups as drug users, pedophiliacs, transvestites and kleptomaniacs. Charles E. Grassley, R-Iowa, despite reservations by the bill's sponsors, won approval of an amendment extending the bill's coverage to Congress—but not to the rest of the federal government. (State and local governments are covered, however.) And intercity bus companies, which say the law will cost them at least $200 million, won a year's extension before having to install wheelchair lifts and special toilet facilities on their vehicles.

Fundamental issues were barely addressed or explained by the committee. The bill, for example, would require that existing facilities in public accommodations be made accessible to the disabled if such steps would be "readily achievable." According to Kennedy, that means "easily accomplishable and not involving much difficulty or expense."

Another provision would bar an employer from discriminating against a job applicant who is disabled. The bill would require firms to make "reasonable accommodations" for disabled employees, unless that obligation would place an "undue hardship" on a business. Asked during the debate whether this would require a firm to provide a full-time reader for a new employee who is blind, Tom Harkin, D-Iowa, who chairs the Labor Subcommittee on the Handicapped, said: "If it is IBM, perhaps that is not a big deal. But if it is a small pharmacy, . . . that's a different story."

The bill's standards appear more sweeping than those in earlier civil rights statutes or in laws protecting the disabled. And, although the bill would exempt businesses with 15 or fewer workers from its provisions on employment, it has drawn opposition from small-business groups. But the measure has moved so quickly that lobbyists have had little time to mobilize their members. "I am concerned about what I think may put some people out of business," said Senate Small Business Committee chairman Dale Bumpers, D-Ark., who raised questions about the bill but voted for it.

The limited opposition to the bill can be explained partly by its label as a civil rights measure. By contrast, when Bumpers raised comparable questions last year about a worker protection bill backed chiefly by organized labor, the fact that the bill had a union label was enough for Republicans and southern Democrats to stop the bill in its tracks. But few lawmakers want to oppose a bill that seemingly has the appeal of apple pie and bears little cost to the federal government.

"The problem was the lack of professional examination of issues at the staff level," said Robert M. Guttman, who was the chief aide for Dan Quayle both at the Labor Committee and in the Vice President's office. "The bill resulted more from the political forces all pointing in one direction."

Even though sponsors did little to hype their victory—which they attained with greased lightning speed—passage of the bill bolsters this year's slim legislative record. It also sends a symbolic message that restores some of the faded bipartisanship Bush has urged. But the glow may fade if the proposal proves to be an empty vessel or raises endless questions. ☐

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American
Dental
Association

ADA

1111 14th Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 898-2400

October 24, 1989

The Honorable Jack Brooks
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20415-6216

Dear Mr. Chairman:

I am writing to express the views of the American Dental Association with regard to H.R. 2273, the Americans with Disabilities Act.

The Association finds commendable this legislation to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. At the same time, we urge the Committees to examine the language throughout for the purpose of improving the specificity of its several sections. By so doing, we believe the bill will serve the intent of the Congress and will avoid the confusions, misunderstandings and litigious results that have been predicted in the general and business media.

We note the efforts in this regard in the Senate, particularly the amendment addressing the concept of the separate benefit in public accommodations. This is a matter of critical concern to the dental profession, inasmuch as, traditionally, certain dental patients with disabilities -- persons suffering from diseases of the central nervous system are a prominent example -- are treated by certain dentists with experience and demonstrated capability in the management of these patients. From our reading of the amended Senate bill, the separate benefit provision would allow for this quite effective approach to dental care to continue.

Further, we appreciate the difficulty of adequately defining the operative terms in the legislation. We urge the Committee, nevertheless, to address itself to this task, so that the obligations of all proprietors of public accommodations will be readily understood. In our opinion, the discussion in Senate Committee Report 101-116 of the meaning of "readily achievable," for example, might be included in Section 3 of H.R. 2273.

Finally, the Association recommends that the bill be amended to specifically prohibit discrimination against individuals in all stages of HIV infection. We believe such amendment would respond directly and unambiguously to the recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic in this regard.

We request that this letter be included in the official record of the Committee's hearings on H.R. 2273.

Sincerely,

Roy S Bredder

Roy S. Bredder
Director
Washington Office

RSB:mw

Kathy J. Hogancamp
301 G STREET SW, No. 418 • WASHINGTON, D.C. 20024

October 27, 1989

Honorable Don Edwards
Chairman, Subcommittee on Civil and
  Constitutional Rights
2307 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I recently discussed with Ms. Colleen Kiko, Minority Counsel for the Subcommittee on Civil and Constitutional Rights, my concerns about the Americans with Disabilities Act (H.R. 2273). She suggested that I submit to you a statement expressing my concerns.

I am a disabled individual who is opposed to the Act. Although I am employed by the U.S. Department of Education, my views are my own and do not reflect the views of this agency or the Federal government in any way. In addition, my opinions were not formed as a result of working in the Department.

Enclosed is my written statement. I would appreciate it being included in the Hearing Record. Thank you for considering my views.

Sincerely,

Kathy Hogancamp

Kathy J. Hogancamp
732-2057 (w)
484-4575 (h)

Enclosure

TESTIMONY
SUBMITTED TO
THE
COMMITTEE ON THE JUDICIARY
U. S. HOUSE OF REPRESENTATIVES
OCTOBER 27, 1989

I am Kathy J. Hogancamp and I am a quadriplegic--paralyzed from the shoulders down. When I was 17 years old, I broke my neck in an automobile accident, damaging my spinal cord. Despite my severe disability--and despite only limited use of my hands--I have learned to work around my limitations. I earned a Master's degree in Guidance and Educational Psychology and am presently employed by the Federal government as a program specialist. I am also a 1989 recipient of the Presidential Awards Program for Outstanding Federal Employees With Disabilities.

I would like to share with you my concerns about the Americans With Disabilities Act (ADA). The following statement from a disabled person may surprise many of you. My view of this bill does not reflect the position of the Administration or the Federal government on this issue. In addition, my opinions were not formed as a result of working for a Federal agency. Thank you for the opportunity to share this statement with you.

Under the ADA (H.R. 2273), the term "disability" is broadly defined to include "a physical or mental impairment that substantially limits one or more . . . major life activities; [has] a record of such impairment; or [is] regarded as having such an impairment." This broad definition of "disability" in the current House bill also covers self-imposed conditions such as drug abuse and alcoholism. (See section 101, "Forms of Discrimination Prohibited" (a)(5)(b)(2)(A).) As a truly, severely disabled person, I am offended at being put in the same category as those whose only disability is a self-imposed one. (None of us who are recipients this year of the "Outstanding Federal Employees with Disabilities" are disabled by reason of addiction to an illegal substance.) In Senate hearings on the issue it was reported that the term in this legislation is so broadly interpreted that it would include persons with various sexual behaviors. A sexual orientation should not be interpreted to be a "disability."

Similarly, "discrimination" is broadly described in the ADA. It is used to refer not only to "outright intentional exclusion," but also to "the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices. . . ." From a Civil Rights perspective, "discrimination" has historically denoted a person acting on the basis of prejudice or bias. In the ADA, the term has been redefined to include unintentional effects.

For example, under the legislation a business owner would be "discriminating" against wheelchair users like myself if the business is located up a flight of steps. To make private businesses guilty of discrimination by unintentional omission is unfair. Granted, a business does not have to make "reasonable accommodations" if it can demonstrate "undo hardship." Yet the burden of proof that a business is not discriminating lies with the business.

Yes, it can be frustrating as a disabled consumer not to be able to go to a movie or restaurant because of a lack of accessibility. But what about the rights of the private sector, of private, small business owners? The private sector does not owe me--or any other disabled person--a frustration free life.

The "reasonable accommodations" requirements under ADA would be extremely expensive for the private sector. A Federal requirement of accommodating disabled individuals will cause many small companies to go out of business. In some cases, businesses would be required to hire two employees to fill one vacancy. For instance, in addition to hiring a professional who is blind, an employer may also need to hire a reader as a "reasonable accommodation." Similarly, in order to fill one vacancy, an employer may need to hire both a physically disabled professional and an attendant for job-related assistance. Businesses that survive the ADA will show less profit because of the costs of accommodations. As a result, it is likely that businesses will begin to see us--the disabled--as a threat; and consequently, a discriminatory attitude may develop.

Another aspect of ADA that could precipitate a discriminatory attitude is the ADA's broad extension of the Federal role into the private sector. The bill states that one of the purposes of ADA is "to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities." (See section 2, "Findings and Purposes" (b)(3).) To enforce the ADA, four executive agencies are required to promulgate new regulations: the Equal Employment Opportunity Commission, the Attorney General, the Secretary of Transportation, and the Federal Communications Commission. Moreover, regulations that are currently in existence will be extended to cover private entities. This would include the enforcement provisions of the Rehabilitation Act of 1973. Without question, regulatory burden on the private sector will increase.

Additionally, under the ADA, individuals with disabilities or even individuals associated with disabled individuals can initiate litigation against an employer, a prospective employer, or a business or agency where they are a client or customer if they believe they have been discriminated against. Individuals may even initiate litigation if they believe they are going to be discriminated against. Because we live in an age of litigation, there can be no doubt that lawsuits will abound after the passage of ADA. Businesses could begin to view disabled persons as adversaries looking for a lawsuit.

From my own personal experience as a disabled person, I would rather businesses and agencies accommodate my disability voluntarily--even if I have to wait awhile for them to become sensitized and begin to take positive action. The private sector and State and local agencies should not be coerced into making expensive modifications. If businesses and agencies voluntarily make changes, those of us with disabilities will not be perceived as a threat.

To remedy many of these concerns, I ask that an amendment such as the Armstrong amendment which was adopted by the Senate be added to the ADA. It places some common sense restrictions on the definition of "disability." It states that the following lifestyles or conditions would not be included in the term "disability": "homosexuality, bisexuality, transvestism, pedophilia, transsexualism, pyromania, gender identity disorders, current psychoactive organic mental disorders . . . or other sexual behavior disorders."

Additionally, the ADA should be amended to prohibit a private cause of action. Encouraging litigation will very likely result in a discriminatory attitude. A prejudicial attitude--not barriers--is true discrimination. A more sensitive attitude toward the needs of the disabled cannot be legislated.

Although the suggested amendments would make the ADA more tolerable, it is my final conviction that the ADA should not be passed. The premise of the ADA is wrong. It is based on the presupposition that little advancement has been made over the years, that the disabled population is segregated from the rest of society, and that "discrimination against individuals with disabilities continues to be a serious and pervasive social problem." (See section 2 "Findings and Purposes," (a)(2).) I disagree totally with this premise.

It has been my experience that with determination and hard word--and with the support of family, church, friends, and voluntary associations--disabled individuals can succeed and have succeeded in today's society in such areas as education, professional achievement, emotional fulfillment, etc. Attitudes have changed and sensitivity has been developed toward the disabled. There are more opportunities than there have ever been and disabled individuals are enjoying the mainstream of society to a great degree.

I believe that the supporters of the ADA are sincere in their desire to afford disabled individuals the opportunity to participate in all aspects of society. Supporters believe that to ensure the disabled their "rights," the Federal government must implement sweeping reforms and legislate change. Instead, the bill will create administrative and regulatory burdens on the private sector, will encroach on free enterprise, and will expand an already swollen Federal bureaucracy.

Sure, it's not easy for me sometimes. And sometimes I have to wait patiently for the doors of opportunity to open. But the doors are opening and they are opening without such a broad-sweeping Federal law.

Private businesses should not be required to make my life easier at their own expense. Even though advances have been made, the needs of the disabled in assimilating with an able-bodied society are still great. And the ADA is a response to this need. However, it is still wrong to sacrifice the legitimate rights of others to meet this apparent need. The ends do not justify the means. Moreover, with time, much of the need will be addressed by businesses choosing to provide accommodations.

This "quick fix" may provide a surface cure for the problem, but it could result in a discriminatory attitude--and more importantly, it will undermine the constitutional rights of many.

I would love to wave a magic wand and make my life and the lives of fellow disabled individuals easier. But not if it means requiring others to sacrifice their constitutional freedom. And the one tie that binds both disabled and able-bodied alike in this country . . . is this freedom.

Thank you.

THE AMERICAN INSTITUTE OF ARCHITECTS

OCT 30 1989

October 26, 1989

[illegible]

The Honorable Don Edwards
U.S. House of Representative
Washington, DC 20515

Dear Representative Edwards:

On behalf of The American Institute of Architects, the professional association representing the nation's architects, I would like to suggest improvements to the Americans with Disabilities Act, S.933/H.R.2273 (the ADA bill), specifically to the alterations section of Title II concerning public services, and to Title III, the public accommodations title.

The AIA supports the legislation's intent, and believes that Congress should act to accomplish it. We are concerned, however, that it needs clarification and revision to facilitate compliance and to reduce unnecessary liability for architects.

1. Readily Achievable Removal of Architectural Barriers

The legislation requires existing buildings and facilities to remove architectural barriers, upon enactment, if the removals are "readily achievable" which means that they would not cost very much and would not be difficult to do. The AIA is concerned that whereas many barriers singly are easy and inexpensive to remove, many facilities may have a combination of barriers or multiple barriers of the same type, for which removal could impose a significant cost. The legislation could clear up this problem by requiring that removals of combinations of barriers or of multiple barriers of the same type within a single facility could be phased over time or handled as an alteration.

2. Alterations vs. Major Structural Alterations

The ADA bill requires that 12 months after enactment, alterations to a building or facility must make the altered area readily accessible and usable, and that major structural alterations in addition must include an accessible path of travel to the altered area. The reason for setting forth the differences in types of alterations was so that a small renovation would not by itself trigger a much more costly project to make the path of travel accessible. Unfortunately, the legislation fails to accomplish its purpose.

The legislation provides no way of determining when an alteration becomes a major structural alteration, although the report language attempts to make a distinction by describing the structural elements that would be considered to fall under the provisions for major structural alterations. The ADA fails to distinguish between structural elements (load-bearing walls, beams, etc.) and architectural elements (doors and windows), and thus it is possible that a small scale, inexpensive alteration that consists of dropping a ceiling or replacing windows, could trigger a much more complex and costly project to make the route to the altered area accessible.

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The legislation should refer to "major alterations" not "major structural alterations" and base the difference between a minor and a major alteration on the cost and scope of the alteration, and the degree to which it affects a facility's usability and accessibility.

Historic Preservation

The ADA bill makes no provision for historic properties. The Uniform Federal Accessibility Standards (UFAS) provides that when an alteration is undertaken for an historic property, certain accessibility features should be incorporated, unless to do so would threaten or destroy its historical integrity. Other accessibility alternatives must then be substituted. The ADA bill should apply such a standard for historic properties it covers, if they are listed on or eligible for the National Register of Historic Places, or designated historic pursuant to state or local law. A reference to UFAS or an equivalent standard should suffice.

Transition Rule

When the ADA becomes law, it will apply to many projects already under design, but not yet constructed. These projects may be required to comply, and thus undergo costly and complicated redesign. Because the regulations will not yet be promulgated, the projects' architects will be unclear as to what must be done to make the projects comply. The AIA proposes that all projects currently under design should be exempt from requirements of the act, but those receiving a design contract after the date of enactment should comply by the effective dates established in the bill for new construction and alteration. In addition, to provide a safe harbor for architects designing projects after enactment of the bill but before issuance of final regulations, the bill should provide that conformance to the standards of the American National Standards Institute A117.1 1986 or the Uniform Federal Accessibility Standard (UFAS) should be deemed sufficient, though not necessary, for compliance with the legislation. These standards for handicapped access design are well-understood and accepted within the design profession.

Enforcement/Liability

The ADA bill passed by the Senate permits courts to consider good faith efforts to comply with the legislation, in hearing complaints brought against individuals under the measure. This is not enough. Architects should have some official determination that they have complied with the legislation, and this determination should constitute a defense against charges of discrimination. This protection can be easily accomplished. The Department of Justice, on the application of a state or locality, could certify that the state or local ordinance meets the minimum standards of the legislation.

Page Three
October 26, 1989

The legislation should also provide that architects and others who receive state or local certification that their projects have complied with a DOJ-certified state or local handicapped access law should have a strong defense against complaints of discrimination.

The AIA believes that the above revisions are important to the successful achievement of the ADA's objectives. I appreciate your consideration of our suggestions.

Sincerely,

Jim Cramer

James P. Cramer, Hon. AIA
Executive Vice President/CEO

JPC/dr

2270

AMERICANS WITH DISABILITIES: TELECOMMUNICATIONS RELAY SERVICES

HEARING

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

Title V of H.R. 2273

A BILL TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

SEPTEMBER 27, 1989

Serial No. 101-96

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AMERICANS WITH DISABILITIES: TELECOMMUNICATIONS RELAY SERVICES

WEDNESDAY, SEPTEMBER 27, 1989

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Telecommunications and Finance,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 2322, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. **Markey**. Good morning. The subcommittee will come to order. Today we will hold a hearing on Title V of H.R. 2273, the "Americans with Disabilities Act of 1989." This landmark legislation will extend civil rights protection to those Americans with disabilities, and help tear down the barriers that have prevented the disabled from becoming full and equal members of society.

Today the subcommittee will examine legislation designed to bridge the gaps in our Nation's telecommunications system that have been unwillingly created by an insensitive and unsympathetic society.

This bill will guarantee communications for impaired Americans and for those people with speech or hearing disabilities, equal access to the Nation's telecommunications networks.

At present, there are many times, often when it matters the most, that a hearing-impaired person simply cannot use the telephone. Imagine not being able to call home from a friend's house, or use the phone in someone else's office, or even call 911 outside your home in an emergency.

Well, for many of the Nation's 26 million hearing-impaired persons, this is not some far fetched nightmare. It is a daily reality.

The enactment of the Communications Act of 1934, with the goal of universal service for all Americans, we in the Congress have been trying to ensure that all Americans have access to the phone. Today this goal is more important than ever because information and communications drive our society. The telephone is no more a luxury item, but an essential part of our everyday lives. Our link to the rest of the world.

The legislation that we are considering today will bring the communications impaired much closer to the realization of the universal service goal, and open up an entire new market of consumers. In essence, this bill will enable the communications impaired to use the telephone for the same purposes the rest of the population has come to take for granted.

Title V of H.R. 2273 establishes a seamless, interstate, and intrastate relay system for the use of telecommunications devices for the deaf, TDD's. That will be the vital link through which communications-impaired individuals will have access to the outside world.

This device, connected to an operator relay system, will allow a communications-impaired caller to communicate with anyone who has a telephone anywhere in the country. The relay operator, acting as an intermediary between the two parties, will translate typed TDD messages by voice and vice versa.

A few States already have relay systems in place, and have seen how the access they provide benefits segments of the communications-impaired population. In California, for example, the call volume has reached approximately 245,000 calls a month.

An entire segment of the population now has an opportunity to escape from a world of virtual silence, and into one of modern communication, and information services, but more needs to be done to open an escape route for the many States that have not progressed as rapidly as others.

Last year, the enactment of the Hearing Aid Compatibility Act of 1988, a bill which originated in this subcommittee, was a great step forward in improving the access of the communications-impaired to telephone services. We are now poised to take the next step, providing the communications tools and services needed for them to become more productive in society, and thereby benefiting all of us.

As chairman of the subcommittee, one of my highest priorities has been to ensure that the wonders of modern telecommunications are available to all Americans at affordable rates. I am certain that all of us in Congress agree that achieving the goal of universal service in an ever expanding telephone network is not possible without providing equal access to the communications-impaired.

With that, time for a statement by the Chair has expired, and I now turn and recognize the ranking minority member, the gentleman from New Jersey, Mr. Rinaldo.

Mr. Rinaldo. Thank you, Mr. Chairman. I want to commend you for calling a hearing on this important legislation. The basic purpose of the "Americans with Disabilities Act of 1989" is to remove barriers that prevent disabled citizens from leading productive lives, and contributing fully to their communities.

Nowhere is this bill more important to achieve than in the world of telecommunications. More and more, telecommunications provide the essential link with our fellow man. It has become the glue, you might say, that holds society together.

Unfortunately, very little progress has been made in providing our hearing- and speech-impaired citizens with full and equal access to the telephone network. Just last July the FCC concluded that interstate TDD relays are virtually nonexistent.

I am proud that this subcommittee has been the most active body in Congress in trying to correct that situation. Last year we passed two important bills to close the gap. The Hearing Aid Compatibility Act requires all telephones to be able to use with hearing aid.

The Telecommunications Accessibility and Enhancement Act requires the Government to provide ATDD relay systems so that hearing and speech-impaired citizens can talk to and be answered by their Government officials, including Members of Congress.

When we approved those bills, we stated that they represented the beginning of the subcommittee's work and not an end. Today we consider a bill which in part represents the logical extension of our efforts, the "Americans with Disabilities Act."

The purpose of the telecommunications title or section of the bill is to extend a public TDD relay network throughout the United States. This is a worthy and laudable goal, that will ensure that the full benefits of the telephone network are shared equally by all of our citizens.

I don't believe those who suggest that a national relay system won't be cost effective because most of the TDD goals made now are local. It sounds somewhat like the old saying, "You can't miss what you never had."

This situation is certainly an exception. There isn't an interstate TDD relay system now, so it is nearly impossible to make those kinds of calls. I am sure that when the interstate relay system is in effect it will be used more heavily than anyone ever imagined.

Telephone usage continues to increase dramatically every year. It is illogical to assume that one significant part of our population won't choose to take advantage of our telephone network if given the opportunity.

The goals of the "Americans with Disabilities Act" are certainly ones that all members of this subcommittee share. Of course, we must not only agree on the goals, but we must also agree on how telephone companies must reach those goals, and we must expedite the passage of this legislation. Thank you, Mr. Chairman. I yield back the balance of my time.

[Testimony resumes on p. 16.]

[The text of Title V of H.R. 2273 follows:]

101st CONGRESS
1st Session

H. R. 2273

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1989

Mr. Coelho (for himself, Mr. Fish, Mr. Hawkins, Mr. Conte, Mr. Owens of New York, Mr. Ackerman, Mr. Atkins, Mr. Beilenson, Mr. Bennett, Mr. Borski, Mr. Bosco, Mrs. Boxer, Mr. Campbell of California, Mr. Cardin, Mr. Clay, Mr. Crockett, Mr. de Lugo, Mr. Donnelly, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edwards of California, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Frost, Mr. Fuster, Mr. Gejdenson, Mr. Gordon, Mr. Hayes of Illinois, Mr. Hoyer, Mr. Hutto, Mr. Jacobs, Mr. Jontz, Mr. Kastenmeier, Mr. Kleczka, Mr. Levin of Michigan, Mr. Lewis of Georgia, Mr. Manton, Mr. Matsui, Mr. McCloskey, Mr. McDermott, Mr. McHugh, Mr. Mfume, Mr. Miller of California, Mr. Mineta, Mrs. Morella, Mr. Oberstar, Mr. Pallone, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Connecticut, Ms. Schneider, Mr. Shays, Mr. Smith of Vermont, Mr. Solarz, Mr. Studds, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Waxman, Mr. Weiss, Mr. Wise, Mr. Wolpe, Mr. Florio, Mr. Williams, Mr. Roybal, Mr. Morrison of Connecticut, Mr. Brown of California, Mr. Dellums, Mr. Sabo, Mr. Espy, Mr. Dixon, Mr. Miller of Washington, Mr. Young of Alaska, Mr. Foglietta, Mr. Rangel, Mr. Garcia, Mrs. Saiki, Mr. Martinez, Mr. Mavroules, Mr. Conyers, Mr. Markey, Mr. Visclosky, Mr. Kildee, and Mrs. Collins) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Energy and Commerce, Public Works and Transportation, and the Judiciary

---

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
Sec. 502. Telecommunications relay services.
Sec. 503. Regulations.
Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity,

full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * * * *

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of

coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in carrying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) SEPARATE OFFENSES.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

Mr. **Markey**. The gentleman's time has expired. I note the arrival of the gentleman from Maryland, Mr. Hoyer; and does the gentleman from Maryland wish to make any comments? I know that he is very busy this morning doing the—would you like to sit down there, or come up here, or——

Mr. **Hoyer**. I will stand. I apologize——

Mr. **Markey**. As the Chairman of the Democratic Caucus, I have to respect that.

STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. **Hoyer**. I apologize for my lateness. As you know, Mr. Chairman, I am chairing the Democratic Caucus now on the Capital Gains issue, but I wanted to be here, and I thank you for inviting me to join you at this mornings hearing on the telecommunications provisions of the "Americans with Disabilities Act."

Although I can only stay briefly because of that caucus, I would like to commend you, Chairman Markey, and Chairman Dingell, and the minority members, Mr. Rinaldo, for moving ahead with this subcommittee hearing.

As you know, the "Americans with Disabilities Act" would provide civil rights protection to 45 million disabled Americans, by prohibiting discrimination against individuals with disabilities to employment, and public service, and public accommodations, transportation, and telecommunications.

Title V of the legislation, which deals with telecommunications, is a key provision of the legislation which will finally conquer a major communication barrier between hearing and hearing disabled Americans.

There was a glaring need, Mr. Chairman, to establish relay systems which will enable the 23 million hearing and speech-impaired Americans to make and receive calls from individuals who use voice telephones.

Title V will require that the telephone companies provide hearing and speech-impaired individuals with the same level of service as provided to all other Americans. Members of Congress, like most Americans, rely on the phone perhaps as much as any other device to complete so much of our business.

It is hard to imagine not being able to pick up the phone to reason with colleagues, talk with a daughter who lives in Arizona as I have one, or arrange a dinner with my wife. Yet, that inability is a daily fact of life for hearing-impaired Americans.

The committee is fortunate today, Mr. Chairman, to have someone who can address these issues more eloquently and more knowledgeably than I. Last year, the world watched in wonder and in growing understanding as the students at Gallaudet University brought the need for change into America's living rooms.

I am pleased to have the opportunity and the privilege to introduce a good friend of mine, a leading educator in America, and one of America's most articulate and eloquent, and compelling speakers for those who have challenges that perhaps some of the rest of us do not have, and I speak, of course, of the first deaf president of Gallaudet University, my friend, Dr. King Jordan.

I urge the members of the committee to heed his words, for he speaks not only for the hearing impaired, but for millions, and millions, and millions of Americans who daily see themselves discriminated against, in large part because of insensitivity.

Perhaps in a smaller part, and we hope much lesser part, because of indifference, Dr. Jordan's appointment has shown millions of disabled Americans that the opportunities that America offers are offered to them as well.

The enactment of the "Americans with Disabilities Act" will ensure that their dreams of opportunity and equal access become a reality.

Mr. Chairman, this is the major civil rights bill of this Congress. It ought to be passed, and it ought to be passed quickly. I again applaud you, Mr. Chairman, for scheduling these early hearings, and for your strong support of this legislation, and I appreciate the opportunity to be here with you, and with the members of your subcommittee, and my friend, Dr. Jordan.

Mr. **Markey**. Thank you very much, Steny, for coming over, and I know you have a heavy schedule with the capital gains question and all, and the Democratic Party, and I would just like to show you what this subcommittee is going to be working on.

This is called a telecommunications device for some, and what it will do if we can universalize its service across the country, because it is basically a typewriter, and what it will do is that it will allow people who are communications-impaired to be able to type in their message.

The relay operator then for the telephone company will then have a printout of the message, which they can then read to the person who the communications-impaired person is trying to communicate with.

And then in turn, the message which the person who is being called or wants to call a communications-impaired person, can then be typed back through the communications relay person at the telephone company, and read back, or type back, in the instance of a message going back to a communications-impaired person.

And this is something which we—I believe—can include as part of this comprehensive package which we hope to go through, break down enormous barriers which have been existent in communications and a world that is just so dependent now on communications and the telephone on relaying messages.

And this is what—this is at the heart of what the legislation that we are doing right now.

Mr. **Hoyer**. Mr. Chairman, I am glad that you brought that to our attention, because as I said in my opening remarks I think that there has been an insensitivity, and there is really a lot of technological capability available to overcome these barriers that exist.

And, very frankly, I failed to mention, but want to mention that this legislation, as you know, is strongly supported by the President. President Bush has endorsed this legislation, and is working this legislation.

I have met with representatives of the White House yesterday, and they again reiterated—Dr. Roper—the strong support of the President, and of the White House for this legislation, and their hopes that it will see early passage.

Because they, like you, know of the importance of overcoming these barriers, not only in terms of the appropriateness of reaching out to Americans who have been discriminated against, as we are doing, whether they be black, or if they are women, or other minority groups.

This is a group that is being equally discriminated against, and it is costing America billions of dollars annually to effect that discrimination. To the extent that they are shut out of the workplace, and shut out of the ability to communicate, and shut out of the ability to get from place to place, America loses, and not just the individuals.

It is certainly those individuals that you want to protect, but it will be to the great benefit of all of the advantaged Americans as well. So, I thank the chairman for this ability to be with you.

Mr. MARKEY. Thank you very much, Steny. So, now we will turn to our panel, which consists of Dr. I. King Jordan, President of Gallaudet University, the Honorable Gail Garfield Schwartz, who is the Deputy Chairwoman of the New York Public Service Commission; Ms. Karen Strauss, who is from the National Center for Law and Deaf, at Gallaudet University; Mr. Merrill Tutton, who is the vice president of Consumer Services, AT&T; and Ms. Linda Hershman, general manager, Government Relations, of the United States Telephone Association.

Dr. Jordan, it is an honor to have here this morning, and we welcome your testimony.

STATEMENTS OF I. KING JORDAN, PRESIDENT, GALLAUDET UNIVERSITY; GAIL GARFIELD SCHWARTZ, DEPUTY CHAIRMAN, NEW YORK STATE PUBLIC SERVICE COMMISSION; MERRILL R. TUTTON, VICE PRESIDENT, CONSUMER SERVICES, AMERICAN TELEPHONE AND TELEGRAPH CO.; KAREN PELTZ STRAUSS, ATTORNEY, NATIONAL CENTER FOR LAW AND THE DEAF, GALLAUDET UNIVERSITY; AND LINDA D. HERSHMAN, GENERAL MANAGER, GOVERNMENT RELATIONS, SOUTHERN NEW ENGLAND TELEPHONE CO., ON BEHALF OF UNITED STATES TELEPHONE ASSOCIATION

Mr. JORDAN. Good morning, Mr. Chairman. Thank you very much, Mr. Chairman, and Mr. Moorhead, it is a pleasure to be here this morning to testify before your subcommittee. I appreciate the opportunity, and I thank Congressman Hoyer for his very kind remarks on my behalf, and on behalf of this bill.

I am very happy to be able to testify for the Americans with Disabilities Act, and, in particular, for Title IV of that Act, requiring telecommunications relay services for the deaf, and speech-impaired.

This is landmark legislation for disabled people, and it is long, long overdue. In fact, it is no less than our emancipation proclamation to lead independent lives in all aspects of America.

Congress mandated in 1934, as you know, that communication services be made available as far as possible to all the people of the United States. But today, 55 years later, more than 55 years later, I and 24 other—24 million other Americans, deaf, hearing impaired, and nearly 3 million speech-impaired Americans, still don't have full access to telephone service.

As a deaf person, I know very well the frustrations and inconveniences of not being able to use the telephone. The simplest task often becomes a major burden when we don't have access to the telephone.

Easy examples, like when a sick person needs to call a doctor, or a worker who has to inform his boss that he can't show up for work that day, or a homeowner who needs a plumber fast. Any example like this that is routine, simple, and something you don't think twice about, becomes very, very difficult when you don't have access to the telephone.

What should take no more than 5 minutes, often becomes an hour's drive around the city to get the same services. Try to imagine yourself without the use of a telephone for a day for the tasks that you have to do. Just imagine showing up in your office and not using a telephone all day. That is what I confront every day.

I know how important the telephone is, and in fact, it is so important to me that I have installed a TDD in my car. I actually may have the only TDD in this country that is installed in a car, but with my schedule the way it is, when I am held up at one meeting and will be late for another, I need to use that telephone, and I use the telephone in my car regularly.

But I have a very severe limitation on that telephone. I can only call other people with TDD's. I can't call someone who doesn't have a TDD, and that is not acceptable to me. It is not acceptable to 24 million other hearing-impaired Americans.

Last year, I testified on the Telecommunications Accessibility Enhancement Act of 1988. That Act set up a wonderful national relay service, and it is really the first step in our goal to full telephone access. However, it is just that, a first step.

The ADA will complete the task at hand. By requiring a national relay system, it will help deaf and speech-impaired people achieve independence in their lives.

The Senate by floor amendment has given telephone companies or the Federal Communications Commission a 1 year waiver to any company that could show undue burden to meet the 3-year deadline. The deadline was 2 years before it was amended to 3 years on the Senate floor.

This means that we may have to wait for up to 4 years from the enactment of the Act to benefit from the law's telephone relay services. I strongly believe that this 1 year waiver is not necessary.

We have waited more than 55 years already, and the technology is there, and there is no reason to have to wait 1 more year after that. In your remarks this morning your talked about communication impaired individuals, and related to telecommunications we are communication impaired, but there is no reason for us to be communication impaired.

We have the technology, and all we need is this law to ensure that it happens. Thank you very much.

Mr. MARKEY. Thank you very much, Dr. Jordan. I will recognize Gail Garfield Schwartz, the Deputy Chairwoman of the New York Public Service Commission.

STATEMENT OF GAIL GARFIELD SCHWARTZ

Ms. SCHWARTZ. Thank you, Mr. Chairman. Mr. Chairman, and distinguished members of the committee, I am very honored to be here today to testify on this very important piece of legislation.

As you know, New York has been working on a deaf relay hearing-impaired and speech-impaired relay system for about 3 years now, and although our experience is recent, it has been very successful, and we are eager to see it duplicated across the Nation.

I hardily commend your effort here, and that of your counterparts in the Senate, because until now the main problem with the New York plan is that hearing and speech-impaired persons have not been able to communicate with nonhearing and speech-impaired persons nationwide.

Let me just say a couple of words about the New York experience, so that I can move directly to comments on the proposed legislation. Since its inauguration in December 1988, the usage of our system has increased steadily.

As an indication the substantial increase in demand for services, the number of communication assistants, that is, the personnel who the chairman mentioned, who actually handle the relay calls in the statewide Relay System Center, has more than doubled, from 58 at the beginning, to over 132 presently.

We are gratified by the increasing use made of the system, and attribute the success to the concerted efforts of many parties, including our own staff at the New York Public Service Commission, members of the hearing-impaired and speech-impaired community themselves, AT&T, and the local exchange carriers in the State.

A very significant component of this joint effort has involved informing and educating both the hearing and speech-impaired and non-hearing and speech-impaired communities to the tremendous advantages and potential of the system. I believe that similar efforts would contribute greatly to the success of a nationwide system.

The operating parameters of New York's system have been good and also steadily improving. For example, the average percentage of calls answered over the first 6 months of this year was 93.7 percent, and by the end of June, the percentage of calls answered within 10 seconds, a very short time indeed, was nearly 86 percent.

It is testimony to the performance of the system that the majority of the few consumer complaints received, and I emphasize that they are few indeed, that we have received concerning the inability of the New York system to complete interstate calls.

I believe our success also confirms the soundness of some fundamental decisions made by the New York Public Service Commission concerning operations which are relevant to this proposed legislation. We determined that provision of this service is a basic service obligation of the local exchange carriers in the State. We also determined that the relay system should be operated by one entity with experience in telecommunications.

AT&T Communications of New York, is actually operating the system on behalf of all the local exchange carriers. The funding mechanism is a monthly surcharge on the bills of residence and business customers, although we do exempt Lifeline customers, that is, those customers who get special rates because of income based eligibility for them. This surcharge amounts to 11 or 12 cents, depending on the type of customer and location.

Now, moving directly to the legislation before you. I am sure that you all are aware that it does represent an extension of FCC jurisdiction over intrastate telecommunications services. Nowhere else, to my knowledge, is the FCC authorized to certify the manner in which intrastate communications services are provided. Regulation of the telecommunications industry historically has been exercised pursuant to a joint Federal and State framework, with regulators in each jurisdiction free to pursue their preferred regulatory approaches in their respective jurisdictions.

It is this framework that has allowed and encouraged States to serve as experimental laboratories for the development of new ideas, services, and technologies, and indeed, this is precisely what has happened in the case of relay services for the hearing and speech impaired.

California and New York were able to serve as laboratories for the development of the service; lessons learned in California, which started before New York, and elsewhere, were applied in New York, and with one exception, we have a phenomenally successful service today.

So, therefore, I can endorse the general approach taken in the legislation, because it will overcome the obstacle prevented by the one exception; the inability to complete interstate calls.

The approach, which is FCC certification of States that meet minimal standards, appears to be minimally intrusive as a means of making interstate relay services a reality, but I do have some concerns with the details of the certification process, and this is the meat of my comments today.

I believe the scope of the FCC's certification review is unnecessarily broad. That review should be limited explicitly to ensuring that relay systems developed in the various States and by the FCC are compatible, just as the various networks available across the country today to the non-impaired community are compatible.

The more detailed standard setting by the FCC called for in section 225(d) is unnecessary, at least insofar as it pertains to the intrastate portions of this service. The requirements specified here relate to matters traditionally regulated by the States, such as terms of access to the local network, operator practices, and so forth.

These are matters with which the States have tremendous experience and expertise. Therefore, aside from the compatibility issue, we believe that the criteria specified in this section should be limited to the interstate functions of a relay service over which the FCC must exercise primary jurisdiction.

Therefore, I would urge you to amend section 225(d) in two particular ways. In particular, section 225(d)(1)(D) specifies that users of relay services should not pay rates greater than those paid for functionally equivalent voice communication services.

It is important for States to have the option of providing these services at discounted rates to compensate for the generally longer transmission times involved in completing a relay-assisted call.

While the report language of the Senate Compromise Package indicates an intent to permit this pricing flexibility, some ambiguity remains, as well as ambiguity in the meaning of the term "functionally equivalent".

Therefore, I believe that this language should be clarified to ensure retention of States' ability to provide such discounts. In addition, section 225(d)(1)(E) should be modified I would propose to allow for justifiable restrictions on relay system calls.

For example, the exclusion of coin sent-paid calls to the system is necessitated by the technical inability to collect coins. Another instance where the service in New York cannot guarantee call completion is calls placed in a language other than English.

Such calls can be relayed only if there is an operator on duty who can speak and understand the other language that the caller wants to make the call in.

And, finally, calls to some information services cannot be successfully completed given the current state of technology. One example is the simultaneous conversation conducted on a group bridged line, which is popularly known as gab lines.

States' ability to make such judgments concerning allowable call restrictions should be preserved under the legislation. In sum, Mr. Chairman, I appreciate the opportunity to testify here today, and I again commend your effort, and I look forward to helping in any way that I can to shape a bill that will make interstate relay services a reality.

Mr. MARKEY. And we would like to work with you on that as well. Any questions? If not, our next witness will be Mr. Merrill Tutton, who is the vice president of Consumer Services of AT&T. Mr. Tutton.

STATEMENT OF MERRILL R. TUTTON

Mr. TUTTON. Thank you, Mr. Chairman. AT&T and myself appreciate very much the opportunity to present our comments on Title IV of the "Americans with Disabilities Act of 1989." AT&T supports very much the efforts to establish universal telecommunications rely service.

And we feel that Title IV provides a very unique opportunity to bring about a nationwide relay service that establishes a new communications structure for a whole segment of the population that has not existed before.

As you know, AT&T, through its Bell Laboratories and our manufacturing arm, has researched and developed new technologies and designed new products to serve the disabled persons for a long time. As well, AT&T has provided telecommunications services and products to those with hearing disabilities through Operator Services for the deaf, and our National Special Needs Center.

We have a fair amount of experience in this area. For that reason, I think we provide a very unique and a valuable perspective on the requirements for a successful relay system, because we have been at it.

We have learned a number of things over the past few years from operating relay systems in three different States. Two specific lessons that we have learned I would like to share with you that I think that have a valuable insight in shaping this bill.

First, the dual party relay benefits the entire community, and just not the speech and hearing impaired. Now, in recognition of these benefits, many States have structured the service so that users pay only the costs that otherwise would have been paid for the telephone call, but have spread the remaining costs over the entire population, recognizing that the entire population receives the benefit of this infrastructure and these people being able to communicate.

Second, States have placed the responsibility for the implementation and administration on a central agency, one entity that provides functions, such as selecting who the service provider ought to be, and collaborating on the development of outreach programs to market the service to the speech and hearing-impaired community, so that they understand what is available, and the education on how to use it.

As well as a very valuable aspect of managing the administration and the other financial tasks that go along with a successful operation.

Now, based on the lessons that we have learned and the experience that we have had over the years, as well as the three States that we are currently operating in, where we have been selected as the provider of the dual party relay—California, New York, and Alabama—and that we have been selected in the State of Illinois, and are currently in contract negotiations on how to make that exactly meet the needs of the citizens of Illinois, I strongly suggest that the ADA bill can be strengthened in two critical areas.

One, the bill places a direct obligation to provide the dual party relay on over the 1,500 carriers around the United States. Now, although Title IV recognizes the benefits of centralization, it does not specifically authorize nor direct the Federal Communications Commission to select individual service providers.

Now, we believe that unless the FCC is mandated to structure a nationwide system in the most efficient manner, there will result an unnecessary confusion, duplication of effort, cost inefficiency, and potentially incompatible systems. We think that is a severe problem.

Second, an area that needs to be strengthened is that the bill places restrictions on interstate funding that threaten the creation of a successful interstate relay service. Now, while preserving the State flexibility in funding the relay service, Title IV denies such flexibility to the FCC, by prohibiting the Commission from permitting carriers to: "Propose a fixed monthly charge on residential customers to cover the cost of providing interstate telecommunications service."

We believe that is a restriction that needs to be removed, and that the Federal Communications Commission should be given the flexibility to tailor the appropriate funding mechanism that puts the proper economic incentives to deliver the high quality service that I believe you all envision with this bill.

I summarize my recommendations by saying that, one, the FCC should have flexibility, similarly to what has been accorded the States to exercise its authority and to determine the appropriate funding vehicle, and this probably ought to be done in cooperation with the States, as was suggested by Commissioner Thorpe.

Proper planning should be similar to that which has been adopted in those States that have implemented successful relay services. We should take a lesson from those who have had success, and apply a broad based funding mechanism across the general population, recognizing that everyone receives a benefit.

And, last, the primary incentive for efficiency and innovation in the provision of the relay service is clearly a requirement that the service provider must satisfy the end user through some sort of central agency that is selecting and administrating the service, or administering the service so that the best possible service is provided to the users.

In closing, I want you to clearly know that AT&T supports very strongly the goal of a nationwide relay system, and wants to ensure that such a system will provide the quality service that the hearing and speech-impaired people expect and deserve. Thank you for the opportunity to make a comment.

STATEMENT OF MERRILL R. TUTTON, ON BEHALF OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY

AT&T welcomes the opportunity to present these comments on Title IV of the "Americans with Disabilities Act of 1989." AT&T has a long history of providing services to persons with disabilities. As you may be aware, it was during his efforts to help people with hearing disabilities that Alexander Graham Bell invented the telephone in 1876. Over the years since then AT&T, through Bell Laboratories and our manufacturing arm, has researched and developed new technologies and designed many new products to serve disabled persons. In addition, AT&T has provided telecommunications services and products to those with hearing disabilities through our Operator Services for the Deaf and our National Special Needs Center, including Telecommunication Devices for the Deaf ("TDDs").

AT&T strongly supports efforts to establish universal telecommunications relay services, and has filed comments supporting such a system with the Senate Subcommittee on the Handicapped and the FCC. We believe Title IV presents a unique opportunity to ensure an efficient, innovative telecommunications relay system that will truly meet the needs and expectations of those with hearing disabilities. Because of our experience in providing relay service at the State level, we believe we provide a unique and valuable perspective on the requirements of a successful relay system.

AT&T currently provides state-wide telecommunications relay services in three States—Alabama, California and New York. In California alone, AT&T regularly processes more than 250,000 calls each month. AT&T also has been awarded via competitive bid the contract to provide relay service in Illinois, and is in the process of negotiating a contract there. In each of these States, we have observed certain characteristics that are critical to the successful implementation of relay service.

First, these four States have recognized that provision of relay service benefits the entire community, and not just the hearing or speech impaired. Relay service permits those without disabilities to communicate with those who heretofore may have been inaccessible as a practical matter via the telephone. It permits businesses to market more easily to those with disabilities. It makes available to the hearing and speech impaired a greater array of products and services so they may have greater control over their lives. Relay service also offers disabled persons employment opportunities that would not be available without telephone access to the hearing population.

In recognition of these benefits to the community at large, all States providing relay service have structured the service so that the relay service user pays only the costs he or she would otherwise have incurred for the telephone call. The States have spread the remaining costs of the service across the entire population of the State. Alabama, for example, funds relay service via a 20cts per month charge included in the local telephone rate for basic exchange service. California imposes a surcharge (presently 0.3 percent of intrastate telephone charges). Illinois will fund its relay service by a 30 per month surcharge per local telephone line. And in New

York, relay service costs are spread across the community by allowing the local exchanges companies ("LECs") to recover such costs in their non-competitive revenue requirements.

Other States funding relay service using a monthly surcharge on local exchange lines include: Arizona (6cts); Louisiana (5cts); Minnesota (10cts); Oklahoma (5cts); Oregon (10cts); South Dakota (10cts); Utah (10cts); and Washington (10cts). Recently enacted legislation calls for funding of State relay service via a monthly surcharge in Colorado (10cts), Montana (10cts), and North Carolina (unspecified). Other States that have proposed funding by use of a surcharge are: Georgia (unspecified); Michigan (10cts); and Nebraska (10cts). In several States, these surcharges also fund TDD distribution programs.

Second, these States have placed responsibility for relay service implementation and administration on a central agency or entity. In California, the Deaf Equipment Acquisition Fund Trust (the "D.E.A.F. Trust") and its administration committee are responsible for administering the service, and are in the process of negotiating a contract with AT&T. In Illinois, the Illinois Telecommunications Access for the Deaf and Severely Hearing-Impaired Corporation, a not-for-profit corporation, issued a Request for Proposal, evaluated AT&T's response, recommended awarding of the contract to AT&T, and currently is negotiating a contract with AT&T. In Alabama, a Fund Administration Committee authorized by the Alabama Public Service Commission administers the relay system and the funds received as a result of the 20cts monthly charge. Even in New York, where the Public Service Commission requires each LEC to provide relay service, the LECs and the Commission recognized the need to centralize the provision of such service and, at the Commission's urging, each LEC contracted with AT&T to provide the service.

Based on our experience with successful State relay service, we believe that an efficient, innovative, nationwide relay service should be based on funding by the general public and should be implemented and administered by a central organization. This organization should select a provider or providers for the service via competitive bidding so that end users can realize the efficiencies and innovation which competition promotes. Title IV reflects Congressional recognition of the importance of these two requirements, broad-based funding and centralized implementation and standard setting, by vesting in the FCC the responsibility to set standards for a nationwide relay service and giving the States the discretion to continue spreading the costs of State relay service across the entire community. Yet, in two critical areas, Title IV contains shortcomings that could very well destroy its promise of effective access to telecommunications for disabled Americans.

First, while providing the FCC the authority and responsibility to establish "functional requirements" and "standards" for the provision of relay services by common carriers, the bill does not explicitly direct the Commission to select specific relay service providers via a competitive process. Instead, the bill places a direct obligation on over 1,500 intrastate and interstate common carriers to provide relay service. Although Title IV recognizes the benefits of centralization by providing that such carriers can provide the required services "through designees, or in concert with other carriers," it does not specifically authorize nor direct the FCC to select individual service providers. We believe that unless the Commission is mandated to structure a nationwide system in the most efficient manner and select the service providers necessary to provide such service, unnecessary confusion, duplication of effort, inefficiency, and potentially incompatible systems will result.

In this regard, we note that the FCC recently has proposed centralized administration of interstate relay service with the National Exchange Carrier Association ("NECA") administering the funding and operation of the system, including the selection of service providers via competitive bidding. CC Docket No. 87-124,, Order Completing Inquiry and Further Notice of Proposed Rulemaking, July 21, 1989. While AT&T has serious reservations regarding this proposal, especially the FCC's proposed funding vehicles, the Commission has properly recognized the importance of centralized administration of any relay system.

Second, the restrictions placed on interstate funding threaten the creation of a successful interstate relay service. Title IV implicitly recognizes that those States that have successfully implemented relay service have done so by spreading the cost of such service across the entire community, either by a monthly surcharge on telephone bills or by recovery in rates for non-competitive LEC services. Thus, Title IV provides for certification by the FCC of State systems that meet minimum service standards, and specifically provides that the Commission "shall not refuse to certify a State plan based solely on the method such State will implement for funding intrastate telecommunication relay services." Yet, while preserving State flexibility in funding relay service, Title IV denies such flexibility to the FCC by prohibiting the Commission from permitting carriers "to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunications relay services." We believe this restriction on FCC flexibility is ill-advised.

We believe that the primary incentive for efficiency and innovation in the provision of relay service is the requirement that the service provider satisfy the end user through a central agency implementing and administering the service—both initially through a competitive bidding process and periodically as contracts expire and are re-bid, that the best relay service possible is being provided consistent with the funding that is available. If, however, each interstate carrier is required to provide relay service and is unable, as a practical matter, to recover its full cost of providing the service, economic incentives will pressure the carrier to shift its focus from one of providing quality service to one of providing the minimum service possible in order to cut costs.

As the subcommittee is aware, the long distance business today is highly competitive. Any carrier that undertook the additional costs of providing relay service in such a market would find its self at a cost disadvantage with its competitors. Moreover, many of AT&T's competitors have chosen not to market their services to those they deem less profitable. As a result, about 90 percent of zero and low long distance users are AT&T customers, because AT&T's competitors do not promote their services to such customers. If these carriers cannot fully recover the costs of mandated relay service, they will have every incentive to discourage disabled persons from using their networks, thereby shifting such costs to AT&T, the carrier which is committed to serving all Americans.

It is unrealistic to assume that interstate carriers can recover the cost of providing relay service in their charges for other competitive services. The competition for all interstate services will not permit a carrier to increase arbitrarily the prices of its services. Moreover, because AT&T has chosen to serve all telephone users and serves a disproportionate share of disabled customers, AT&T would incur the overwhelming proportion of such costs.

We believe the proper funding approach should be similar to that adopted in those States that have implemented successful relay services, i.e., broad-based funding across the general population. Such funding ensures that those that benefit from the implementation of telecommunications relay service, e.g., all potential users of telephone service, share in its costs, and that no one party is forced to shoulder a disproportionate burden.

For these reasons, AT&T recommends that the FCC be accorded flexibility similar to that accorded the States to exercise its authority and determine the appropriate funding vehicle for the interstate portion of a nationwide relay system. Such flexibility was recommended by Attorney General Richard Thornburgh when he testified before the Senate Committee on Labor and Human Resources:

> Establishment of a telecommunications relay service is clearly a vital step toward full integration of deaf persons into the mainstream. Legislation addressing this issue, though, should take into account the ongoing Federal Communications Commission inquiry mandated by the Telecommunications Accessibility Act, and preserve the degree of freedom for the FCC to use its expertise in determining which specific requirements will result in the most efficient and cost-effective system. (Testimony of June 22, 1989 (emphasis added).)

The FCC has pending a rulemaking proceeding in which it is evaluating methods of providing and funding telecommunications relay services. AT&T agrees with the Attorney General that the Commission should be granted the maximum degree of freedom to design, fund, and implement an efficient, cost-effective and innovative relay system, and recommends that language restricting such freedom be removed from Title IV.

In closing, AT&T strongly supports the goal of a nationwide relay system, and wants to ensure that such a system will provide the quality service which the hearing and speech impaired expect and deserve.

Mr. MARKEY. Thank you. Thank you very much. Our next witness is Ms. Karen Strauss, here from the National Center for Law and the Deaf.

STATEMENT OF KAREN PELTZ STRAUSS

Ms. STRAUSS. Thank you, Mr. Chairman. The National Center for Law and the Deaf is a public service of Gallaudet University. We have provided legal services for deaf and hearing-impaired people throughout the country since 1975.

Earlier, Dr. Jordan pointed out the critical need for nationwide relay services. Without relay services, deaf and speech-impaired people have been forced to depend on others in order to make simple telephone calls that you and I consider a part—a regular part of our daily lives.

No close telephone access for these individuals can be so burdensome, and lack of such access as caused these individuals social and economic isolation from their community.

The need for federally mandated relay services becomes clear when one takes a look at the State relay programs that now exist. There was a lot mentioned today about the State programs, and I would like to show you that most of these programs are understaffed and underfunded.

As a consequence, many of the programs impose severe restrictions on telephone use by their users. To date, there are only 17 States, far fewer than half of all States, with formal relay programs are actually up and running.

Relay systems are hopefully scheduled to begin in approximately 10 more States within the next few years; and still other States, including Florida, Michigan, Rhode Island, are considering legislative or regulatory measures to develop statewide relay services.

Unfortunately, as I said, most of the State programs that exist fall short of meeting the basic telephone needs of their hearing-impaired residents. Many of the State programs, including New York, California, Illinois, and Louisiana, and Alabama, do not allow interstate calls through relays.

One can imagine the hardship that this imposes on deaf people. Many other relay programs have imposed restrictions on the number of lanes and types of calls that can be relayed in their States.

For example, the relay program in Arkansas limits users to a period of 15 minutes per call, and disallows personal telephone calls. In Kansas, calls are only accepted for relaying Monday through Friday, from 8 a.m. to 5 p.m., and are not accepted at all on State holidays.

Massachusetts places a 10 minute limit on personal calls, and a 20 minute limit on business calls; and New Hampshire limits the number of calls that may be relayed by any one person to five per day, with a limit of 15 minutes per call.

Even those relay programs that don't impose specific restrictions on their residents, suffer from delays and blockage rates far in excess of that to which voice users are accustomed.

In many of these States, it is not uncommon for a relay user to call the relay line and either get a busy signal, or have a long delay before they can actually make a call.

Other sections of the ADA will not mean very much for deaf people if they do not have equal access to the telephone. For example, Title I proposes to prohibit discrimination on the basis of employment. This section offers hope to deaf people that they can one day receive equal opportunity in the business world.

Yet, this promise of equality is meaningless for a deaf entrepreneur who is told that he can only use the telephone a few times a day during certain hours of the day. The economic hardship that such an individual would face would put into serious question his ability to run a business as successfully as his hearing colleague.

Another section of the ADA promises equality in a provision of State and local government services, yet we all know what it is like to try and call a local city office and be put on hold for an indeterminate amount of time.

What happens when the relay operator tells the deaf relay user that they must hang up, because their 15 minutes is up. In effect, that individual has been cut off from that city service that is otherwise guaranteed by the ADA.

The same situation could occur when there are times to purchase theatre tickets for a desirable showing. A person can call up, and be put on hold, and be told by the relay operator to hang up before she has gotten any tickets

Yet, the ADA again promises equality of access to theatres and other public accommodations. Despite the many shortcomings of all of these State programs, there has been an overwhelming response to the relay services where they can be available.

As you pointed out earlier, the numbers in California are approaching 245,000 calls per month. In New York, the figures are projected at 100,000 calls per month, and in Minnesota, 20,000 to 30,000 calls per month are typically relayed.

The relay section of the ADA will ensure that nationwide relay services truly provide equal access to the telephone network. I disagree in part with some statements made earlier by Gail Garfield Schwartz that FCC standards are not necessary.

I think that the past experience that we have seen with State programs, showing how inadequate they have been, demonstrate the need for detailed standards to ensure minimum guidelines for all relay systems.

Under the legislation, relay services would be made available 24 hours a day, 7 days a week, without any restriction on the type, length, or number of calls made by any relay users.

As I said, the FCC will issue minimum standards and guidelines under the ADA, and it is critical that deaf and speech-impaired relay users partake in this decisionmaking process.

At the same time that the ADA mandates these minimum requirements, the act gives telephone companies a great deal of flexibility in determining how to establish and fund their systems. In addition, States that already have systems or plans to begin a system in the near future, can continue to operate and govern those systems as long as they meet minimum FCC guidelines and standards.

In conclusion, this is not the first occasion on which this subcommittee has considered the issue of telecommunications access for disabled people. On at least two prior occasions, the Telecommunications for the Disabled Act of 1982, and the Hearing Aid Compatibility Act of 1988, this subcommittee has acted to expand telephone accessibility for hearing-impaired persons.

In passing the 1982 Act, this committee explained that one of the most frustrating aspects of hearing impairments and deafness is the inability to use the telecommunications media on which modern life has grown so dependent.

At that time, the committee declared a national policy, that all persons, including the disabled, should have available the best telecommunications service that is feasible.

The establishment of nationwide relay services will finally take the giant step towards achieving this goal. The access to full telephone service that the ADA guaranteed will give deaf and speech-impaired individuals a fair chance to enjoy the opportunities created by other sections of the ADA.

Thank you for this opportunity to testify on behalf of the relay provision. I encourage this subcommittee to do whatever is necessary to ensure that this dream for equal telephone access comes true. Thank you.

[Testimony resumes on p. 42.]

[The prepared statement of Ms. Strauss follows:]

Statement of Gallaudet University and The National Center for Law and the Deaf[1]

Before the House Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce

INTRODUCTION

Mr. Chairman, thank you for this opportunity to express our views on The Americans with Disabilities Act. Gallaudet University and the National Center for Law and the Deaf[2] wish to express our overwhelming support for this legislation. We believe that this legislation, and, in particular, Title IV of the Act, requiring intra- and interstate relay services, is long overdue and will vastly improve the lives of deaf, hearing impaired, and speech impaired Americans.

In 1934, the Communications Act set forth a mandate that access to telecommunication services at reasonable charges be made available "so far as possible to all the people of the United States. . . " 49 U.S.C. § 151. However, this promise of universal service has excluded hearing impaired citizens for the past five decades. Without equal access to the telephone, individuals with hearing and speech impairments have been denied the opportunity to fully participate in the mainstream of society. Without access to telephone service, these individuals have been unable to enjoy other civil rights guaranteed by the Constitution and Federal statutes. Forced to depend on others in order to engage in basic telephone communication, hearing impaired and speech impaired persons have been isolated from the social and economic lives of their communities.

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[1] Prepared by Karen Peltz Strauss, Supervising Attorney of the National Center for Law and the Deaf, with the assistance of Bob Richardson and Angela Campbell, Attorneys with the Institute for Public Representation.

[2] Gallaudet University is the only four year liberal arts university for deaf students in the world. The National Center for Law and the Deaf is a public service of Gallaudet University that has provided legal services to hearing impaired individuals throughout the country since 1975.

The nationwide relay services that will be required by the ADA will break down barriers in employment, businesses, and recreation for deaf persons. Without relay services, the simplest task over the telephone becomes a major excursion through a town. For example, voice telephone users take for granted being able to make or cancel a doctor's appointment, inquire about a job opening or call a repairperson. Yet all of these things become burdensome to the hearing impaired or speech impaired individual who does not have access to relay services.

The ADA will require all common carriers to provide telecommunications relay services for phone calls made between users of TDDs and users of voice telephones. A TDD - a telecommunication device for the deaf - is a machine that can be used to send and receive coded signals over telephone lines to other TDDs. The signals are received on paper and/or a screen or display terminal. However, even with TDDs, persons with speech and hearing impairments cannot talk over the telephone with friends, family, or business establishments that do not have TDDs. Telecommunications relay services are services that enable persons who use TDDs or other nonvoice terminal devices to carry on real-time telephone conversations with persons who do not use such devices. In other words, relay services enable TDD users to communicate with anyone who has a telephone, rather than only with those individuals who have TDDs. In providing this service, relay systems provide a basic tool for independence and mobility for hearing impaired and speech impaired individuals.

To use a relay service, a caller who uses a TDD dials the relay service's number and types her message on the TDD. Relay service personnel receive this message and then place a voice call to the called party. Relay service personnel then receive a voice message from the called party and transmit it to the caller via TDD. This process continues until the call is completed, with relay personnel converting all voice messages into typed text and all TDD messages into voice.

STATE RELAY PROGRAMS

State relay programs that now exist plainly demonstrate the need for federal legislation mandating relay services. Underfunded and understaffed, more often than not, these programs impose severe restrictions on their users.

Currently, there are seventeen states with formal relay programs now in operation.[3] In ten additional states, relay systems are scheduled to begin operation within the next one to two years.[4] In at least three other states, legislative or regulatory changes have been proposed to establish statewide relay systems.[5] Finally, in other states, organized efforts are under way to study the means by which to establish and maintain a relay system or to propose legislation requiring a system for those states. For example, in Maine, legislation was recently enacted which assesses a small fee on the intrastate revenues of telephone utilities to provide funding for a study on a Maine relay system. Similarly, a study is under way to consider introduction of relay legislation by the Georgia Senate.[6]

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[3] Alabama, Arizona, Arkansas, California, Connecticut, Kansas, Massachusetts, Minnesota, New Hampshire, New York, Oklahoma, Oregon, South Dakota, Utah, Vermont, Virginia, and Wisconsin.

Notwithstanding the relay activity of the various states mentioned, to date, most states still do not have relay systems up and operating. More importantly, even those systems which have begun relay operations typically fall short of meeting the basic telephone access needs of hearing impaired residents. Many of the state relay programs, including those in New York, California, Illinois, Louisiana, and Alabama, do not permit their residents to relay interstate telephone calls. This has caused a severe hardship on individuals with speech and hearing impairments wishing to call individuals across the states.

As mentioned, most of the relay programs also suffer from funding and staff shortages. As a consequence, they have imposed restrictions on the number, length, and types of calls that can be relayed in their states. For example, the relay program in Arkansas limits its users to a period of fifteen minutes per call, and disallows personal telephone calls. In Kansas, calls are only accepted for relay Monday through Friday, from 8 A.M. to 5 P.M. and are not accepted at all on state holidays. Massachusetts places a ten minute limit on personal calls and a twenty minute limit on business calls. Calls that are not made for emergency purposes in Massachusetts may only be made between 7 A.M. and 11 P.M.[7] Finally, New Hampshire limits the number of calls that may be relayed by any one person to five per day, with a limit of fifteen minutes per call.

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[4] Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, North Carolina, Tennessee, Texas, and Washington. Many of these states are now in the process of promulgating regulations and guidelines to govern their relay services.

[5] Florida, Michigan, and Rhode Island.

[6] Other states considering relay systems are Nevada, New Jersey, New Mexico, Ohio, and Pennsylvania.

Even those relay programs that do not impose specific restrictions on their residents suffer from delays and blockage rates far in excess of that to which voice users are accustomed. In many of these states, it is not uncommon for a relay user to confront repeated busy signals or interminable waiting periods when trying to access a relay line.

We are sure that most people cannot begin to imagine the consequences of having similar restrictions imposed on their use of the telephone. Consider the economic hardship imposed on the deaf entrepreneur who needs to use the relay system to successfully run a business, but who can only make a few telephone calls each day. Or imagine the frustration of a consumer who must wait "on hold" to clear up a mistake on a utility bill, only to be told that his fifteen minute time limit has ended, and he must hang up and call again. In one particular situation that we learned of, a deaf woman was required to pay excessively high legal fees because of the fifteen minute policy in one state. It seems that her law firm charged clients a set amount for telephone calls lasting one hour or less, rather than prorate the charge according to the length of the call. Because the woman was required to call back the firm each fifteen minutes, her telephone calls to the firm cost more than those made by the hearing clients of that firm.

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[7] Vermont, Virginia, and Wisconsin are among other states that limit the times of day that their relay services operate.

Although the shortcomings of several of the existing relay programs have been many, the response to the availability of these services has been overwhelming. In New York alone, the projected volume of relayed calls is expected to be 100,000 per month this year. Moreover, as the relay programs increase in popularity, the number of calls relayed multiplies. In California, for example, 1.8 million calls were relayed in 1987, 2.6 million were relayed in 1988, and AT&T projects that 2.75 million calls will be relayed in 1990.[8] These figures serve to illustrate the critical need for these communication services.

Title IV of the ADA will ensure access to telephone service for TDD users which is equal to that available to users of voice telephones. By requiring all carriers to offer relay services, the legislation will ensure uniformity of service across the states. In addition, because some states may have smaller populations of persons with severe speech or hearing impairments, they may not have had sufficient incentive to begin their own relay programs. The coordinated, nationwide system envisioned by the ADA would allow for regionally based relay centers to handle calls from more than one state, thus reducing overall costs. Operational costs could be shared, including costs associated with facilities, labor, administration, publicity, and research.

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[8] Call volume in other states with relay programs are: Massachusetts - 20,000/month; Minnesota - 20,000-30,000/month; Oklahoma - 13,000/month; Utah - 12,000/month; Vermont - 1,800/month.

MINIMUM STANDARDS

Under the pending legislation, relay services will be available twenty four hours each day, seven days a week, without restrictions on the type, length, or number of calls made by any relay user. Moreover, under the Act, relay users are assured confidentiality of their calls. They are also given the promise that the rates they pay for any relayed call will be no greater than the rates charged for a direct dial call with the same points of origination and termination. Although the legislation pending does not so specify, the Senate Report also makes clear that the blockage rate for relayed calls should be no higher than the blockage rate for voice telephone users under industry standards. We urge as well the inclusion of language in the Conference Report that requires relay systems to accept and relay calls originating from TDDs that use either the ASCII or Baudot format.

The Senate Report to the ADA emphasizes that relay service centers are to be staffed by professional operators. These operators must be thoroughly familiar with the culture and language of the hearing impaired community. Moreover, operators should be sufficiently skilled in typing, spelling, and grammar in order to facilitate the flow of communication between the relay users.

The Senate Report also discusses "the unique and specialized needs of the population that will be utilizing telecommunications relay services", and recommends that the FCC obtain input from these populations in a formal manner. Specifically, the Senate recommends the establishment of an advisory committee made up of relay service consumers and telephone carriers that would advise the FCC on the development and continued operation of the relay systems. We cannot state strongly enough the need for such a committee. Deaf and speech impaired users of relay systems have first hand knowledge of their relay needs. Any system approved or designed by the FCC must incorporate the opinions and advice of these individuals.

MAXIMUM FLEXIBILITY

At the same time that the ADA mandates these minimum requirements, the Act affords considerable flexibility to both common carriers and states that set up their own relay systems. For example, under the Act, states that already have relay programs may continue operating those programs. The state need only meet the standards and guidelines promulgated by the FCC pursuant to this law, in order to receive certification permitting it to maintain and oversee its own relay system.

Moreover, the ADA grants common carriers sufficient flexibility to provide relay services in the most efficient and effective manner they see possible. For example, it allows state regulators to designate an entity to provide relay service to customers in their states. Thus all the companies in a given state might contract with a single entity to provide relay services on a statewide basis. This approach was adopted in New York, where all local telephone companies are required by the New York Public Service Commission to provide relay services. Those companies contracted with AT&T for the provision of relay services on a statewide basis.

In addition, the Act leaves to the discretion of the common carriers the means by which relay systems may be funded. Financing for state systems which are already in place has been obtained through a variety of methods. Many states have chosen to add a nominal surcharge to the monthly telephone bills of their telephone subscribers.[9] Other states, such as Arkansas, Kansas, Massachusetts, New Hampshire, Vermont, Virginia, and Wisconsin, appropriate money to finance their programs through general revenues. Still other states assess the relay costs to the telephone companies, who treat them as normal operating expenses and recover them in their general rates. Two such states that finance relay systems in this way are New York and Delaware.

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[9] Alabama - $.20, with a $.25 cap; Colorado - $.10 cap; Hawaii - $.18; Illinois - $.03; Connecticut - $.05; Louisiana - $.05; Michigan - $.10; North Carolina - $.25; Oklahoma - $.05; Oregon - $.10; South Dakota - $.10; Utah - $.03-.07; Washington, - $.08. In Arizona, telephone bills are increased .6%, and in California, .5% each month to pay for their relay systems.

It is important to remember that relay services are beneficial to all members of our society, not just those with hearing or speech impairments. Relay communication is a two-way process between both TDD and voice telephone users. In any event, telecommunications relay services are much less expensive than available alternatives. Unless relay services are provided, society must incur the costs associated with isolating people with disabilities from the rest of the population. These costs include the costs of lost productivity, unemployment and underemployment, and diminished markets for certain goods and services.

By not restricting the type of relay services that may be provided to those that rely on TDDs, the ADA also leaves the door open to new technologies that might further facilitate telephone communication for individuals with hearing and speech impairments. Indeed, technological advances are likely to lower the costs of relay services in the future. As technology develops to automate relay functions through, for example, voice synthesis and speech-to-text conversion, costs can be expected to decrease significantly. The advent of these technologies may allow calls to be relayed without human intervention.

TIME FOR COMPLIANCE

As originally passed by the Senate Committee on Labor and Human Resources, the ADA would have required telephone companies to begin relay operations within two years after enactment of the ADA. As passed by the Senate Committee, the ADA would also allow the Federal Communications Commission (FCC) to grant an extension of up to one additional year to any telephone company that could prove it would suffer an undue burden if required to meet the two year deadline.

By floor amendment, the Senate extended the time for carrier compliance from two to three years. Given the fact that the Senate has provided all carriers with an additional year by which to begin operations, we see no purpose in also leaving in the ADA the one year waiver provision. The technology needed to begin relay operations already exists. In comments to an earlier proceeding before the FCC, AT&T made clear that the carrier industry already has the technical equipment, standards, and knowhow necessary to begin a nationwide relay system. Moreover, our experiences with the various state programs illustrate that a relay system can be set up - from start to finish - within a period of one to two years. The FCC is required to issue regulations setting forth minimum standards and guidelines for relay services within one year; this leaves more than enough time for all carriers to start up relay operations under the new Senate floor amendment.

For the above reasons, we urge the committee to delete that section of the legislation which would permit a one year extension for those carriers alleging undue burden. Failure to delete this waiver provision may result in denying telephone access to individuals with hearing and speech impairments for as much as four years after the ADA is enacted. This may spell four more years of isolation and dependence on others for these populations.

CONCLUSION

This is not the first occasion on which this Subcommittee has considered the issue of telecommunications access for disabled people. In 1982, this Subcommittee facilitated the passage of the Telecommunications for the Disabled Act of 1982. In report language to that Act, the House Committee on Energy and Commerce explained that "[o]ne of the most frustrating aspects of hearing impairment and deafness is the inability to use telecommunications media on which modern life has grown so dependent." H.Rep. No. 97-888, 97th Cong., 2d Sess., 4 (1982). At that time, the Committee declared a national policy, that "all persons, including the disabled, should have available the best telecommunications service that is technologically and economically feasible." H. Rep. No. 97-888 at 7-8. The establishment of nationwide relay services will finally take a giant step toward achieving this goal. The access to full telephone service that the ADA guarantees will create new opportunities so that all persons - including those with hearing and speech impairments - will have a fair chance to participate and succeed in the mainstream of society.

We wish to thank you for the opportunity to submit this testimony in support of the relay section of the Americans with Disabilities Act. We encourage this Subcommittee to do whatever is necessary to ensure that our dream for equal telephone access comes true.

Mr. MARKEY. Thank you very much. And our final witness will be Linda Hershman, who is the general manager of Government Relations for the United States Telephone Association.

STATEMENT OF LINDA D. HERSHMAN

Ms. HERSHMAN. Thank you, Mr. Chairman. I am here today to testify on behalf of the United States Telephone Association, and its 1,100 member companies and SNET. I would like to mention that with me is Margaret Gerard, an attorney at our company, who has been directly involved in this issue in Connecticut.

We are pleased to have the opportunity to testify in support of congressional action, establishing the availability of message relay service to all Americans as national policy.

Implementation of this policy will not be simple, but we do believe that it is both feasible and necessary. We have had considerable experience in Connecticut in addressing the issues surrounding the provision of message relay service. Statewide message relay service for both interstate and intrastate calls has been available in Connecticut since 1974.

The service is provided by a nonprofit corporation, Converse Communications Center, and there are approximately 1,500 TDD users in Connecticut, and the monthly volume currently averages 10,000 calls. This is expected to grow to 14,000 calls per month. Until July of this year, funding for the service was obtained from a mix of private contributions and State grants. Growth in demand and constraints in funding resulted in a minimum number of hours of operation, and difficulty for users in obtaining an available operator.

In response to this situation, Governor O'Neil of Connecticut directed the Connecticut Commission on the Deaf and Hearing Impaired to work with SNET, the Connecticut utility regulatory agency, and Connecticut's consumer council, to come up with a plan to provide full-message relay service. We were all committed to the task, but it wasn't easy.

Because we had a system in place, funding was the critical issue. Despite efforts to contain costs, the annual budget for service is almost $1 million per year. The issue was resolved by an agreement, under which SNET accepted responsibility for funding this service as part of its franchise obligation, in return for the ability to increase local rates to raise the additional money. After a public hearing on the agreement, the Department of Public Utility Control approved a 5 cent increase in SNET's local rates to provide the necessary funding.

Based on our experience in Connecticut, we believe that it is possible to provide for a nationally available message relay service. In applying our experience to the national scene, we have the following observations.

One, policy direction is necessary. Despite our national commitment to universal service, millions of Americans are not able to use the telephone to communicate unless the person they are calling has specialized equipment.

Message relay service provides the bridge that makes communication possible. Federal policy should support nationally available message relay service.

Two, someone needs to be in charge of implementation. We believe that the FCC should be given flexible authority to implement this policy. There are difficult issues that must be resolved if a cost efficient and readily accessible means of providing the service is to be developed. We believe that the FCC should have the authority and flexibility to address these.

Three, all of the players need to be involved. The States should be given a meaningful role in the planning and implementation of this service. Specific provision for their participation should be made. The FCC joint board mechanism would be one means to accomplish this.

Four, existing systems must be taken into consideration. Integration of existing systems into the national scheme should be provided for, and States which have provided for intrastate message relay systems, should be permitted to retain jurisdiction.

And, five, the funding of the service is a critical issue, and probably the most difficult. Carriers must be permitted to recover the costs incurred to provide message relay service. To assure quality service, care must be taken to provide for adequate initial funding, and frequent review to accommodate growth and upgrade requirements.

In conclusion, I would like to thank you, Mr. Chairman, for the opportunity to testify today in support of congressional action to make message relay services available nationally. We are supportive of Title IV of S.933 as a basis for action in the House, and look forward to a continuing partnership with Congress and the FCC in our efforts to ensure that the full benefits of telecommunications services are available to all Americans. Thank you.

[The prepared statement of Ms. Hershman follows:]

STATEMENT OF LINDA D. HERSHMAN

Mr. Chairman, members of the subcommittee, I am Linda D. Hershman, General Manager, Government Relations of the Southern New England Telephone Company (SNET). With me is Attorney Margaret F. Girard, also of SNET who has been directly involved in establishing an agreement providing for the funding of message relay service in Connecticut. We are here to testify on behalf of the United States Telephone Association, (USTA) and the Southern New England Telephone Company. USTA is the primary trade association of the local exchange carrier industry, representing over 1,100 members which provide in excess of 98 percent of this country's local telephone access lines. SNET is a local exchange carrier, providing service to virtually all of the State of Connecticut. I am pleased to testify in support of congressional action to further the goal of universal service, mandated in the Communications Act of 1934, by providing for a nationally available message relay service for the speech and hearing impaired.

The legislation currently before this subcommittee is Title V of H.R. 2273, The Americans With Disabilities Act of 1989. However, the compromise recently passed by the Senate (Title IV of S.B. 933), resolves many of the numerous concerns raised with H.R. 2273 as currently drafted. We would recommend, therefore, that section V of the House bill be amended to incorporate in full the Senate compromise and that it be used as the basis for further action and debate in the House.

As requested by Chairman Markey, our testimony will address four specific issues that are critical to the implementation of a nationwide message relay service, namely: (1) the need for an interstate relay system, (2) the technical feasibility of implementing an interstate relay system, 93) what would be the best funding mechanism, and (4) which entity, or entities would be best suited to implement and oversee such a system. I would like to add that a statewide message relay service which handles both intra- and interstate calls is currently in operation in Connecticut. The service has been provided since 1974 by a nonprofit corporation and funded through a combination of private and State funding. When a funding crisis occurred in 1987, Governor O'Neil requested that the Connecticut Commission on the Deaf and Hearing Impaired work with SNET, the Connecticut Department of Public Utility Control and the State's Consumer Counsel to find a way to provide and fund adequately a full time message relay service in Connecticut. it took considerable effort and commitment, but we were successful. We had to resolve for Connecticut each of the issues identified by Chairman Markey, and we would be pleased to answer questions that members of the subcommittee may have concerning Connecticut's experience.

In the Communications Act of 1934, Congress established universal service as a national communications goal. It mandated the Federal Communications Commission (FCC) to make communications service available "so far as possible, to all of the people of the United States." USTA and its members have worked cooperatively with the FCC in its efforts to further the Nation's commitment to universal telecommunications service and we support efforts to extend this commitment to members of the speech and hearing-impaired community. Many of our members are already participating in the provision and establishment of relay systems within their service areas. Such systems are not readily available from many systems. Without such systems, the ability of speech or hearing-impaired persons to use the telecommunications network is limited to communication with other persons who have specialized equipment.

The economic and social costs which result from of the isolation of the millions of Americans who are speech or hearing impaired are substantial. Imagine being unable to call a doctor because it is the middle of the night and there is no one to speak or hear for you. Imagine being unable to communicate on the telephone with your child's teacher, unless someone else is available to speak or hear for you. Imagine being unable to take a job that requires you to communicate using the telephone? A message relay service allows someone who is speech or hearing impaired to make that call themselves and expands their employment opportunities. As we consider what universal telecommunications service in the year 2000 should include and as we debate the nature of the telecommunications infrastructure that will be needed in the year 2000, we should include the nationwide availability of message relay service among our priorities.

In addition to Connecticut, statewide message relay systems are now in operation or in the process of being established in a number of States, including California and New York. Less extensive systems are in place in many States. Some of these systems, including Connecticut's handle both intra and interstate calls. While a nationally available interstate system would be more complex because of its size, we are aware of no technical reason why an interstate system cannot be implemented.

The impediments to the implementation of an interstate system, or additional intrastate systems for that matter, lie, not in its technical feasibility, but in the complex policy issues that must be resolved. Principally, these are: How will it be funded and what is the appropriate level of funding; Who will provide the service; Who will oversee the provision of service?

It is our experience in Connecticut, that if there is a commitment to find a resolution, all of the appropriate parties are involved, and a thorough analysis of alternatives is undertaken, these policy decisions can be made and a system implemented that provides the necessary service without creating an unmanageable financial burden for those who use the service, the provider(s) of the service, or consumers of telecommunications services in general. Clearly, resolution of these issues becomes more complicated where the system is national in scope and the number of parties involved and the costs are substantially increased. However, we believe that with the appropriate legislation and a national commitment similar to the commitment to universal service, a national interstate message relay service can be implemented.

As we indicated above, determining the most appropriate funding mechanism and selecting the best way to provide the service and maintain the appropriate oversight are difficult decisions. We do not have the solutions to these questions at this time. Further, we are not convinced that a record has been developed that contains the necessary information and analysis. Based on our experience, we strongly urge that the House adopt legislation that establishes nationwide message relay service as a national goal and also that they direct the FCC, in concert with the States, to implement it. To accomplish this we recommend that the legislation be adopted that meets the following guidelines:

—Expands the FCC's mandate to implement universal service to include the nationwide availability of intra- and interstate message relay service for the speech and hearing impaired.

—Provides a meaningful role for the States in the initial planning and implementation of the service.

—Recognizes that many States have taken the lead in supporting the establishment of message relay service within their boundaries and permits States to choose to retain jurisdiction over the provision of instate message relay service, provided Federal standards are met, and in this way permits the integration of existing relay systems into the anticipated national relay scheme.

—Assures that costs incurred by carriers to provide message relay service are recognized as costs of providing telecommunications service and are fully recoverable from customers.

—Constrains as little as possible the options available for cost recovery.

The difficult balancing of costs and obligations needed to maximize the public benefit to be obtained from the provision of message relay service requires that the FCC play a central role in the implementation and oversight of the service. Congress has placed with the FCC the authority and responsibility to implement measures designed to support the goal of universal service. It is appropriate that the Congress look to the FCC to play a central role in determining the most efficient and effective means of assuring universal access to message relay service for the speech and hearing impaired.

The role of the FCC should include responsibility for establishing the national relay system contemplated by the act and for defining a framework for efficient, cost-effective operation. While funding is clearly a concern, so is the manner in which the service should be provided. Should each carrier establish and operate a message relay center? Would it be preferable to establish a jointly planned or integrated system? These are issues that require the development of a full record to be optimally resolved. The FCC has already spent considerable effort investigating the manner in which message relay service optimally should be provided an on July 27, of this year issued a Further Notice of Proposed Rulemaking (FNPRM) to establish an interstate relay system. In that notice, the FCC identified specific alternatives and requested comments from interested parties. This process should be specifically authorized in the legislation. Both H.R. 2273 and S.B. 933 require that carriers provide the service and provide for the FCC to establish standards for service. By not providing for involvement by the FCC in the planning and design of a plan for providing the service, both bills leave the role of the FCC in the process rather vague.

The placement of the responsibility on individual carriers to provide message relay service to their customers is a concern for all USTA member companies. For some of these companies, the cost of compliance could drive up prices for all of their services to unreasonable levels. This would not be in the public interest. As an alternative, the FCC could be authorized to provide for the establishment of a nationwide relay system to which access could be provided through systematic connection to national or regional operators. Also, carriers could be allowed to develop an independent or cooperative organization which would accept responsibility for relay operation. This would foster the development of efficient, coordinated service and help to control costs.

The States have an interest in the manner in which message relay service is to be provided and funded. It is conceivable that the most efficient manner of providing the service is to establish a system that provides message relay service for both interstate and intrastate calls.

Congressional approval of a joint program between the FCC and the States would ensure that the system is comprehensive, uniform, and smoothly integrated among interstate and intrastate systems. It would also permit the experience of the States in establishing intrastate systems to be utilized. The FCC should have the authority to explore this option in concert with the States. The legislation could specifically provide that a Federal-State Joint Board be established to recommend minimum standards of service, define cost requirements and recovery mechanisms, and set necessary guidelines for relay service implementation. In the alternative, the legislation could be drafted so as to encourage the States to participate in the creation of a nationwide network.

In addition, this legislation will not be implemented in a vacuum. In the absence of a national program, many States have encouraged the development of message relay service within their States. In many cases, including Connecticut, the service is not provided by a common carrier. These efforts should not be preempted. While SB 933 would permit States to retain jurisdiction over intrastate service if the FCC certifies that Federal standards have been met, the language should be amended to clarify that the direct provider of the service need not be a common carrier.

Determining the appropriate mechanisms to fund the service is the most difficult issue to resolve. It was the "show-stopper" in Connecticut for some time before a resolution was reached. Congress should not constrain the options available to the FCC for cost recovery, but provide simply that cost recovery should balance economic pricing with any identified need that requires special cost recovery alternatives.

In addition, the problem addressed by the legislation is a broad societal concern. Therefore, while common carriers may be charged with providing the required service, the costs of doing so must be recognized as legitimate costs of doing business and therefore recoverable from customers. The Senate specifically states that this is its intention in its Report language and we request that the House do the same.

In Connecticut we found that it was unrealistic to expect that the users of the service would be able to cover its costs. Private contributions and government funding were not sufficient to meet the need. The issue was resolved by SNET accepting responsibility for covering the costs of the service as art of its franchise obligations, in return for inclusion of those costs in the expenses associated with local service. This was possible in Connecticut because the existence of the local franchise has been reaffirmed by the legislature. We would be remiss, however, if we did not point out that this might not have been possible in Connecticut if the franchise structure did not exist and that we are concerned that changing national and State policies may erode our continued ability to fund such programs through rates.

In conclusion, USTA and SNET support Congressional action to assure that message relay service is available to all Americans who need it, so that they may have full access to the public switched network. There are many difficult policy issues involved in the implementation of nationally available message relay service however, and we strongly recommend that the FCC be given the authority and the responsibility to resolve these issues, with participation by the States.

We appreciate the opportunity to share our comments and our experience with the subcommittee and look forward to a continuing partnership with Congress and the FCC in our efforts to assure that the full benefits of telecommunications service are available to all Americans.

Mr. MARKEY. Thank you very, very much for your testimony as well. And what we would like to do is to enlist our panelists here today in the effort to resolve some of these questions that have arisen during the course of your testimony here this morning.

And I think we can begin the effort and perhaps get through it this morning, but what I would like to do is just to ask each of you if you would make yourself available to the subcommittee, because we would like to just as quickly as possible, with some intensive efforts, to try and work out something that makes some sense and get the results that all parties are looking to, and I think rather than debate over what is common interest that is shared on how we solve the problem, let's do it from a technical aspect if possible.

Let's turn to you, first, Dr. Jordan, with regard to some of these questions of technically how the FCC should handle the key issues, where interstate and intrastate levels of the FCC should now be a party to solve some of the questions. Do you have any guidance for us, Dr. Jordan, on this?

Mr. JORDAN. I would defer to Ms. Strauss on that.

Ms. STRAUSS. OK. I have a few answers to that. First, probably it is most important for the FCC in developing any guidelines to contact the people that are going to be using the relay system. In other words, it is one of the items that we have requested—and we had originally actually requested it to be in the bill, and now it is in the Senate report, is to require the FCC to develop a formal Federal advisory committee.

And this committee would be made up of deaf, and speech-impaired, and hard of hearing people, that would offer guidance to the FCC in developing its regulations.

Without such participation, there is no way that the FCC would have knowledge of the unique and specialized needs of relay users. It is clear that the FCC does have jurisdiction and authority to issue regulations over both intra and interstate systems.

However, let me just back up. In addition to having the hearing-impaired population on the Federal advisory committee, it is essential that there be participation from industry as well, so that the FCC does have the full balance of interest represented.

In addition, many of the States have done a fine job at providing relay systems. Like I said, there are severe restrictions imposed by many of the States, but to begin input from the various States that have established systems, in particular New York, California, and Alabama, that have the most comprehensive systems, and are really just missing the intrastate component, their input to the FCC as well would be helpful.

And we would not be adverse to what was mentioned earlier, some sort of joint Federal/State board, where State PUC Commissioners, and the FCC, would gather together to determine the proper guidelines.

The only problem with that board is that it does not by Federal statute now include hearing-impaired people on it, and as I said, that is critical that there be a voice from them.

Mr. MARKEY. As I understand it, California has an advisory board which they put in place and trying to think through the issues, and do you like that composition?

Ms. STRAUSS. Yes. Most of the States that do have systems do have advisory boards, and they have found that those are essential. The only thing that we do ask though is that whatever board the FCC establish that it be on a formal basis, and that it not be an ad hoc type of committee.

That it have ongoing—that there be ongoing consultation, both in the development of the regulation before they are issued and in the continuing operation of the relay system.

Mr. MARKEY. Ms. Schwartz, if we could have your comments on this and how you would define what the State role would be, and what role that the advisory board would be assigned.

Ms. SCHWARTZ. Well, Mr. Chairman, I certainly concur that it is very, very important to have as the primary inputters so to speak the representatives of the hearing-impaired and speech-impaired community, and we have done that as I said in my formal comments in New York, and continue to do that.

The National Association of Regulatory Utility Commissioners, on whose communications committee I serve, has adopted a resolution of severing the establishment of a joint board, and I would not depart from that, except to say that sometimes the more formal the establishment of the administrative recognizism, the longer it takes to get things done.

And it would appear to me that possibly the area of problem solving that would remain before us is, as you suggested, Mr. Chairman, limited to technical questions that could be solved in a less formal environment. That would be my hope, because my greatest fear is that the beneficiaries of this interstate system, a natural system, be held hostage to the bureaucratic maneuverings that sometimes occur from legitimate differences of opinion, of course.

Mr. **Markey**. We have seen that.

Ms. **Schwartz**. Yes, you have seen that from time to time.

So, that would be my only fear. I think we could do something informally. May I comment, Mr. Chairman, on the funding issue very briefly while I have the floor?

Mr. **Markey**. Sure. Please.

Ms. **Schwartz**. Mr. Tutton's testimony was very interesting, but it left out one important fact, and that is the numbers. I always like to know what the numbers are when people tell me that they have a funding problem.

I haven't the faintest clue as to what the price tag, or the cost for the interstate——

Mr. **Markey**. Do you have a ball park figure?

Ms. **Schwartz**. I beg your pardon?

Mr. **Markey**. Do you have an estimate, or a ball park figure?

Ms. **Schwartz**. No, I don't, and I would respectfully request that the chairman request that number, because if we are going to debate who is going to pay it, and how it is going to be paid, and whether there will be a surcharge on this set of customers, or that set of customers, we have to know what we are talking about.

Mr. **Markey**. Mr. Tutton, do you have a number, a ball park number? Is it Yellowstone Park, or make it as broad as you have to, but——

Mr. **Tutton**. Well, the number that I would quote was the number that the Federal Communications Commission used in their request for comments on various proposals for funding; and the number that they used as I recall was $300 million to provide the service, both on an intra and interstate basis nationwide.

When some analysis was done to pull that number apart, since our discussions are now on interstate service, it is my understanding it is between $30 and $50 million on an annual basis.

Now, if that figure was spread over all of the users in America, that would amount to about 3 cents per month per customer in the broad base funding notion that I suggested as something that ought to be considered.

Mr. **Markey**. Well, who has the goal of raising whatever number we might finally come up with? Do you think that Mr. Tutton's formula makes some sense as to how we would——

Ms. **Schwartz**. I think that the interstate costs should be recovered in interstate jurisdictions, and that is my preliminary position on that matter, but I do think it is very important that the FCC, as I said in my testimony, not be permitted to mandate recovery in essentially subscriber lines and surcharging the intrastate jurisdiction. Three hundred million dollars is not a heck of a lot of money. I should think that the interstate charges could recover that almost without talking about it.

I don't mean to be facetious, but——

Mr. **Markey**. Dr. Jordan, did you ever think that we would be talking about $300 million for the deaf, and people saying that is not a lot of money to us?

Mr. **Jordan**. I am concerned when we talk about costs that the burden of the costs not be applied directly to just the hearing and speech impaired, and that is my concern.

Mr. **Markey**. No, that is exactly the point that we are dealing with.

Ms. **Schwartz**. I surely concur with that.

Mr. **Markey**. That is exactly the point that we are getting to and trying to nail down here, you know. Mr. Tutton stated that it ought to be shared by all of the users, and that would basically put it down to 2 cents per month.

Mr. **Tutton**. Two to three, yes.

Mr. **Markey**. A 2 to 3 cents per month burden for all telephone users across the country, and for the interstate market, I guess, we have some agreement that ought to be a way that ought to be levied.

Now, as we move to the intrastate marketplace, the——

Mr. **Tutton**. I don't know if there is an agreement. I heard Commissioner Schwartz suggest that the interchange carrier should bear that burden, as contrasted to some other approach, and that is not what I was suggesting.

I was suggesting that be spread across the American public, or all the lines in America, which is the arithmetic that I used to come up with the 2 to 3 cents. That's different than having the inter exchange carriers in the United States bear that cost, and I just wanted to point that out.

Mr. **Markey**. Theoretically, though, the distinction that you are making is a fine one, and I just want to understand it.

Mr. **Tutton**. OK.

Mr. **Markey**. All American telephone users are also part of this long distance network.

Mr. **Tutton**. That is correct.

Mr. **Markey**. So that they are all theoretically part of the universe that would then be assessed this 2 to 3 cents levy?

Mr. **Tutton**. Right.

Mr. **Markey**. But where would that break then, and how Ms. Schwartz would——

Mr. **Tutton**. Maybe I had better ask her, but I am under the impression that the suggestion was that the inter exchange carriers, through their costs, could recover this through a rate somehow, and I disagree with that premise.

And that the inter exchange carriers are, as you well know, in a very competitive marketplace, and do not have the luxury of being able to raise prices to pass on costs that are not related to the services that they provide, as contrasted to a little different approach. That is my point.

Mr. **Markey**. So—and just so we have this correct, what you want is to set aside, like a special item, or a special line item; is that what you mean?

Mr. **Tutton**. Well, as far as setting aside, I am not trying to debate that issue at all. The point is that it needs to be collected somehow through everybody, as everybody derives the benefit of it.

Some sort of a fund established that people compete and is administered by some central group, which is the other part of my suggestion, and that various providers compete to use those funds to provide the service for all of the people, and the price that the speech and hearing-impaired community pays is the price of the call, or slightly less, but this fund pays for the additional costs in handling the call, which is——

Mr. **Markey**. Well, let me then walk through what AT&T does right now in Alabama, and in California, and in New York, and the relay systems which you have set up there. How are those systems funded?

Mr. **Tutton**. Well, those systems are funded essentially by a fee that is collected one way or the other from either—either through a monthly charge, or the local exchange carrier recovers the money through——

Mr. **Markey**. Well, let me understand.

Mr. **Tutton**. All of the public in those States; and then a fund is established, that the carriers were asked to bid to provide service in that State. The user of the service pays a price for the actual call itself, which is not unlike anybody else that would pay for a telephone call.

And the carrier receives back through the fund, as well as from the actual user of the service, the moneys to cover their costs for providing the service.

Mr. **Markey**. And what system would you——

Mr. **Tutton**. I think that works fine.

Mr. **Markey**. You think that works fine. Commissioner Schwartz.

Ms. **Schwartz**. Mr. Chairman, I think that the part of Mr. Tutton's argument is that he doesn't wish to see the competitive services of the interstate provider burdened with the extra costs of this relay service, and that he would like to have the costs imposed on the rate payers who are paying for noncompetitive services, which by definition is going to mean the intrastate local exchange carrier services.

And his goal, I believe, is to do it through a surcharge on the subscriber line charge, which I think you will recall engendered when slick was under debate, quite a lot of dissention between the FCC and the States.

Mr. **Markey**. Dr. Jordan, just one thing I would like to know is the difference between slick and slew in this whole debate.

If you never learn anything about this you will be a better man.

Ms. **Schwartz**. Amen. That is true, and that is why I say about not seeing the beneficiaries of the service held hostage to that kind of a debate. The question, I think, can be turned around and I know that we don't want to do this, to decide this today, but I think that this issue is one of the many issues that are going to come before this committee, and all of this involved in this new environment, about what this universal service really is.

And if the notion is that any extension of universal service, or any maintenance of universal service in this technological evolution is to be all passed along to the intrastate jurisdiction, eventually we will be in trouble.

That does not necessarily preclude the possibility of an agreement to agree on this, but either it should be recovered in the prices charged by the interstate services, or in an extension of the FCC's universal service fund, off the Lifeline Customer's concept. One or the other.

But it should not be mandated to be imposed on the intra rate subscribers.

Mr. **Markey**. Ms. Hershman. Could you enlighten us on Connecticut's experience?

Ms. **Hershman**. Well, as I mentioned, Mr. Chairman, in Connecticut we are charging customers now 5 cents a month, and that is funding both intrastate and interstate, because we have no choice, and we felt that it was so important to make the service available.

However, I think our preference would be to separate the jurisdictions so that our local exchange customers are paying for the local piece, and there is an interstate assessment or cost on the interstate.

Mr. **Markey**. Again, let's get some numbers. Mr. Tutton, how do you think that this will break down, in terms of local calls versus long distance calls, and interstate versus intrastate. What do you think the numbers are?

Ms. **Schwartz**. If I may, Mr. Chairman. In Connecticut right now we find that approximately 10 percent of our calls are interstate.

Mr. **Markey**. Interstate.

Ms. **Schwartz**. Yes.

Mr. **Markey**. So, does that sound right to you, Mr. Tutton?

Mr. **Tutton**. It doesn't sound unreasonable. I mean, the——

Ms. **Strauss**. Well, we have no way of knowing.

Mr. **Markey**. I just want to narrow it down. So, then we don't have any problem then with regard to how intrastate will be levied; is that correct?

Ms. **Strauss**. As long as there is no mandate for recovery of slick, and each State may recover it in the way that each State chooses, and that is no problem at all.

Mr. **Markey**. But when we move to the interstate, we have an issue that——

Ms. **Hershman**. Well, I think we would feel comfortable if it were feared that this cost could be recovered on an interstate basis, and reviewed periodically as there is the need to update the equipment. I do want to say that about interstate.

Mr. **Markey**. Well, I think that is probably—that this particular discussion now is being narrowed down, and is probably something that should be discussed in a back room here.

But I am very confident that we will be able to resolve it, and come up with a resolution. Can I ask you, Mr. Tutton, what kind of a program do you have in place to train operators so that they can handle the calls?

Mr. **Tutton**. In the locations where we have set up the dual-party relay service, we have discovered through working with people in the hearing and speech-impaired communities, that there is a significant amount of sensitivity training, and other things to be able to understand this very special need culture that many people don't even realize exists.

So, there is a training program for the people who will be the attendants for the dual-party relay system, to help them understand the needs and the sensitivities of the situation, as well as the imperatives of privacy, and respect for the individuals who are communicating.

That they are really performing a transparent translation service, and we go to great pains to make sure that the sensitivity, the speed and the quality of the service that they provide are covered in the training, as well as the requirement for total privacy.

This is the only service that I am aware of where the carrier, and in this case AT&T, is involved in the actual communication itself, and an individual hears that, and so the privacy issues are utmost of importance in our mind.

Mr. **Markey**. Do we need some type of minimal standards that should be established for the carrier because of the special sensitivity of the responsibility that the operators are going to be performing?

Mr. **Tutton**. I would prefer if I could think about that a little further. From what we have found so far, the things in the Communications Act, and the other kinds of things that govern our behavior and our responsibilities to the American public are seemingly working very, very well.

But I would like to think about that a little bit, and write you a letter that contains our thoughts if that would be acceptable to you.

Mr. **Markey**. All right. That would be very helpful. Dr. Jordan.

Mr. **Jordan**. May I speak briefly to that, to about his concerns about sensitivity, and I just want to raise the point that it is very important that members of the community being served be involved in the training programs that we are talking about.

In order to ensure that sensitivity, you have to have the people who will be served provide the training.

Mr. **Markey**. Ms. Strauss, do you have any guidance you can give us?

Ms. **Strauss**. Sure. I would just like to add that as you are probably aware of, American sign language has its own grammatical structure, and syntax, and grammar. It is imperative that operators have minimal training in interpreting calls that come in, in ASL American Sign Language to English.

So, we do believe that there is some minimal training involved, and also, there should be minimum standards for typing, and grammar. If an individual types with one finger, a call would be very burdensome.

Mr. **Markey**. So, you do believe that some type of special category has to be set up if someone is going to be given this type of job in the telephone system?

Ms. **Strauss**. We do, yes.

Mr. **Markey**. Mr. Tutton, your statement also recommends a centrally implemented and administered nationwide relay service contractor that would be tentatively awarded by the FCC.

Would you specifically recommend that the National Exchange Carriers Association, or an NECA type entity as the FCC recommended in its July 27 proposal for an interstate relay service, and do other carriers support your centralized proposal?

Mr. **Tutton**. I am not sure that I would want to comment for the other carriers, since sometimes we do disagree on a few items, but I think conceptually, yes.

First, I am not so sure that I would be so bold to say there ought to be one single nationwide provider. I would like that to be us, obviously, but the notion of, yes, a central administrative agency is most appropriate.

And NECA—I think NECA Life would be a better term, because the composition of NECA, I think, needs to be supplemented a bit to get the appropriate stakeholders represented in the central group to be able to provide the kinds of leadership that the central group ought to have, but that is the notion.

Mr. MARKEY. Commissioner Schwartz.

Ms. SCHWARTZ. I think that is a possibility, Mr. Chairman. I don't think there is clarity at this point as to what the model would be, and of course some of the funding questions will depend on what type of model there is. In Connecticut, we use a nonprofit corporation.

Mr. MARKEY. We will ask you for a recommendation before we pass it on the Hill. Commissioner Schwartz, maybe you could give us some guidance on how you feel it should be constructed?

Ms. SCHWARTZ. I always think that competitive bidding is a good idea, except in the situation where one potential bidder has clearly a lead track on both the technology and the administrative experience.

Although I would not want to speak against opening it up to a bid, and I think that should be something which the legislation leaves in the hands of the FCC. I wouldn't be surprised if the winning bidder would turn out to be that organization that has the experience.

NECA doesn't strike me as the type of organization that has the expertise to be the central brain, and that has the technological and administrative experience for this system, and be the technological clearing house of the system.

So, at this time I wouldn't want to be on record as saying that I think that NECA is a proper organization to be that central brain.

Mr. MARKEY. Using a relay system, and being communications impaired, clearly leads to much longer telephone calls for the person who is trying to communicate. What is the billing rate for someone who is using such a system? Almost by definition, the call is going to be at a minimum twice as it would be for someone who is not communications impaired.

Ms. SCHWARTZ. Yes, that is absolutely right, Mr. Chairman. I don't have the actual rate with me, although I will be happy to provide it to the committee, but that is the reason why we said that it should be left to the States to determine whether they want to discount the rates for TDD users.

The question of whether the Congress would want to mandate that the rates for TDD users interstate also be discounted is one which I deliberately avoided, because I think that is a very thorny issue, but——

Mr. MARKEY. And as you can imagine, we would not want to pass a law and then have the majority of the States then construct a system that discourages its use, and have to continue to revisit this issue.

We would like to deal with it once and for all, and be fairly confident that even if we didn't put in the specific way in which it could be billed, that we would have a fairly consistent response across the country, that would encourage rather than discourage usage.

Ms. Schwartz. One thing that I could offer is that it would be very easy to quickly poll the members, the State members of the NERU, as to what they can do——

Mr. Markey. Can you do that for us?

Ms. Schwartz. I would be glad to do that.

Mr. Markey. OK. That would be very helpful to us. Mr. Tutton, how do you handle this now, in terms of what the rate would be?

Mr. Markey. Well, there is no interstate service per se today, and so we don't, but the way it is handled in the States, you know, that typically there is a modest discount on the actual message that is provided to the actual end user, and then the fund is paying the difference.

It is paying the difference in the actual transport of the call, as well—recognizing its added length, and as well as paying the difference in the labor intensive aspect of actually handling it. So, that is the purpose for the fund.

Mr. Markey. Does that make sense to you?

Mr. Tutton. That makes sense, yes.

Mr. Markey. Ms. Schwartz.

Ms. Schwartz. I beg your pardon. I had a lapse, because I was thinking of how I could poll the people.

Mr. Markey. Let me ask Mr. Tutton another question and let's see if we can wrap this up. Regarding the TDD technology, Mr. Tutton, what can we expect to see developed which will automate the relay function in the future?

Mr. Tutton. I think that there are a number of things. AT&T is investing for a variety of reasons, this being one, in some technologies on voice to text, and text to voice, and this clearly is a beautiful application that serves a fundamental need in our society for that type of service.

And so I would see on the horizon, and I would not want to predict a date, but I would see on the horizon the application of that technology, either in the network, or in the terminal, both of which could work, the capability of being able to do this translation capability in the network or in the terminal.

So, that would, one, it would make it more avouches in nature, as well as drive the costs down, because it removes the labor intensive element, which is essentially the price today, is that we are paying for a human being to do that translation.

Mr. Markey. Can you give us some estimate of the time that it might take for us to reach that point?

Mr. Tutton. Well, there are things today, you know, that do speech to text, and text to speech.

Mr. Markey. But I am talking about automated, and also cost effective.

Mr. Tutton. Right. May I please write you on that also?

Mr. Markey. Certainly. Also, as they are developing this are they conscious on an ongoing basis of the needs of the deaf and hearing impaired as they are developing this?

Mr. Tutton. Yes. Yes, and that has been input into what we are doing; but, yes, I will write you on that also.

Mr. **Markey**. And how quickly after we pass this legislation and it is signed by the President and passed by the President could we expect the telephone companies to be able to implement this mandate?

Mr. **Tutton**. I would say on an interstate basis, if AT&T were selected, I know what we can do, and the responsibility would lie within my organization, and——

Mr. **Markey**. Think of this as your first sales presentation.

Mr. **Tutton**. I think we could do it in much less than a year.

Mr. **Markey**. Very good. Let me——

Mr. **Tutton**. And I would accept that as a challenge.

Mr. **Markey**. I like it.

Mr. **Tutton**. Right now. I have my pen.

Mr. **Markey**. If you could have this thing done in 6 months——

Mr. **Tutton**. If we can resolve the funding issues, and the central administration.

Mr. **Markey**. Let me wrap up the hearing this way. Let me ask each of you to give me a 1 minute, and no more, summary of what it is that you want us to retain from your testimony as we are now moving forth to resolve the questions which are—that are still remaining in this legislation and for markup. We will begin in reverse order to the opening statements. We will begin with Ms. Hershman.

Ms. **Hershman**. I would say, Mr. Chairman, very briefly that there are issues that need to be resolved, and that all of the players have to be involved in the resolution of those issues.

And that we have to have someone responsible for implementing the legislation, and making sure that technology does keep up with the needs.

Mr. **Markey**. Thank you. Ms. Strauss.

Ms. **Strauss**. I would just say that our goal is to provide nationwide relay services that finally do achieve equality in telephone access, and that means blockage rates in turn, and no greater than that for voice users.

And systems that will be consistent with one another throughout the country, and meet certain minimum standards to ensure quality of service.

Mr. **Markey**. Mr. Tutton.

Mr. **Tutton**. AT&T and myself clearly think that this is a unique opportunity. We want to see this service brought to the public, and we support it. I think there is a funding issue that I think can be solved.

I think the Federal Communications Commission should be given the power and the authority to be able to solve this problem with grants and suggestions, and I think that the issue of some sort of central administration control needs to be addressed.

We debated on that, and I am very confident that this committee in its wisdom will come up with the appropriate solutions, and we, and I personally, and AT&T stand ready to help in any way we can.

Mr. **Markey**. Thank you. Ms. Strauss.

Ms. **Strauss**. This is obviously long overdue and a very timely extension of universal service. The funding problem ought to be able to be solved, because it is not an extremely high price tag that we are talking about.

Clearly, the costs should not be imposed upon the hearing impaired and the speech impaired, and speaking for New York, and I am sure for those fellow State Commissioners, we will be happy to work with the Congress and the FCC to resolve the matters that remain outstanding.

Mr. **Markey**. Before we conclude, I would like to ask you one other comment, and that is on the subject of mandating a federally funded public service announcement to be close-captioned, or open-captioned.

We are aware that although many prime time television shows are close-captioned, that public health announcements are not available. Can you give us some guidance or a comment on that?

Mr. **Jordan**. Let me say, first, to the Federal relay. The national relay system, I think, I can sum up very easily by saying that it needs to be a national system that provides full and equal accessibility and does not place a cost burden on the hearing-impaired users, and has no restrictions, such as length of call, or number of calls.

And that in training programs and so forth that deaf people are involved in making the plan. The public service announcements are a very, very important area. Captioning is another accessibility. We now have accessibility to the television that we didn't have just a few years ago.

And public service announcements often provide emergency information that it is essential people see and understand. So, I would very strongly support open captioning on PSA's.

There are millions and millions of older hearing-impaired people who don't have captioners for their televisions, because either they can't afford to buy them, or they won't buy them because of the stigma of having something that is meant for hearing-impaired people.

So, I would strongly support open captioning. If I may be so bold, I would like to add a third area of communication accessibility. We talked about telecommunications accessibility, and we talked briefly about captioning for television communication accessibility.

I want to mention that the accessibility to this conference, this hearing, has been provided for me by sign language interpreting, and Mr. Adams came with me from Gallaudet University. He is one sign language interpreter who has stayed for 1½ hours, which really goes beyond what the physical limitations of his ability are.

And I think it relates to the issue of sensitivity. I would ask that the next time the committee holds hearings that other sign language interpreters be provided to make it accessible for us. Thank you.

Mr. **Markey**. Thank you, Dr. Jordan, very much; and your comments are well taken. We very much appreciate your participation here today. We would like to work towards reaching a closure on this part of the Disabilities Act as quickly as possible.

What I would like to do is to ask each of you and the interests that you represent to work very closely with us to produce a final product in a relatively brief period.

And, we, as well, would like to note our gratitude to the signer from Gallaudet University. Thank you very much. Thank you all very much. The hearing is adjourned.

[Whereupon, the hearing was adjourned.]

[The following statements were submitted for the record:]

STATEMENT OF HON. STEVE CUNDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Chairman Markey, Vice Chairman Rinaldo, members of the subcommittee, it is indeed a privilege to be with you today as you open hearings on the Americans with Disabilities Act. This bill has been called the most significant piece of legislation ever to affect the disabled community of our country, and I sincerely believe we can work within ADA to truly empower all handicapped individuals.

In the Education and Labor Committee, of which I am a member, we heard testimony attesting to discrimination in the workplace and the need for the employment and accommodation provisions of this bill. And yet, Mr. Chairman, there is a quieter and far less apparent form of discrimination impeding the full participation of some 26 million Americans in our society. These 26 million Americans are the hearing and speech impaired, and for them discrimination comes in the form of denied access, access previously assured in the Communications Act of 1934.

Franky Ramont, an employee in my office, is deaf. She is a bright and lively individual, a full participant in our society and in her workplace in every sense, except when it comes to communicating with others. Although she is fluent in sign and can read lips very well, Franky is restricted to calling only those individuals proficient with and possessing a TDD device.

Calling the local pizza parlor or the child care center where her son Elijah is cared for, is a difficult and sometimes impossible task. Deafness does not discriminate and yet our communication system, largely because of insensitivity, has created a two-tiered communication society between the hearing and the hearing and speech impaired. Clearly this must come to an end.

Last year many Members of Congress indeed, many members of this subcommittee joined me in supporting the Telecommunications Enhancement Act of 1988, a bill which provided the hearing and speech-impaired community full access to the Federal Government. Today the House begins its journey to provide these individuals with universal telecommunications access to society at large.

Mr. Chairman, members of the committee, I need not dwell on the difficulties of Title V as it exists in H.R. 2273. The penalty provisions in H.R. 2273 are enormous, $10,000 a day for those who fail to offer services. Imagine what this would do to the smaller mom and pop operations, who traditionally have been the slowest to comply with Federal law.

Furthermore, I would offer that civil rights law is not the proper vehicle for communication enhancement, there is little or no precedent. The Communications Act of 1934 is the appropriate vehicle. Thus, the communications provisions in H.R. 2273 are not the proper bridge to ensure access for the hearing impaired. The Senate provisions as amended are the necessary bridge.

I introduced, in H.R. 3171, the same provisions Senator McCain successfully incorporated into the Senate's ADA bill as Title IV of Senate 933. In essence, H.R. 3171 builds on various State initiatives directing common carriers to provide improved access for the hearing impaired and speech impaired by providing relay services individually, through designees, or in concert with other carriers. This service would allow a deaf person to call your office, a business or a restaurant even if the destination of that person's call did not have a TDD on site. The relay service would translate the impulses of the TDD into voice automation and the voice of the respondent into TDD impulses.

I would urge you to seriously consider incorporating H.R. 3171 into the ADA. In so doing, you will provide the communications industry with a feasible formula for implementation, and you will provide the hearing and speech-impaired community with universal access.

Thank you.

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Written Testimony for
the Americans with Disabilities Act of 1989
House Subcommittee on Telecommunication and Finance
Robert B. Yeager
September 27, 1989

My name is Robert Yeager and I am the Unit Manager of the Direct Connect Minnesota Relay Service (a program of Deafness, Education and Advocacy Inc.), one of the newest and the most technologically advanced of the eight state-wide relay services in the country. I was previously the coordinator and one of the original operators with the Massachusetts Relay Service, the third state-wide relay service in the U.S.

I am writing in support of the Americans with Disabilities Act of 1989, specifically to address the desperate need for comprehensive intrastate and interstate, Deaf Consumer controlled TDD/telephone relay services across our country.

Each day we think nothing of phoning to make a doctor's appointment, do business with a person or company in another city, state or country, chat with a friend or relative, do our banking or investing, contact a parent whose child is sick at school, make travel arrangements or just order a pizza. How many times do you pick up the phone to make or answer a call everyday? Can you imagine having to leave your home or office and physically travel to handle the business for each of those calls?

Millions of Americans are denied the freedom and convenience of this device, the telephone, which sits on our desk and with the touch of a button connects hearing people to the largest telecommunication system on the planet.

As a former Relay Operator myself I have witnessed the difference these services can make in people's lives. Consumers have written to say the service has opened doors for them, provided a tool for independence, a means to live their own life. A woman calls an ambulance when her husband has a heart attack. Someone sets up an interview and gets their first job. A teenager gets their first date.

A hearing father who never learned sign language has the first complete, genuine conversation of his life with his adult deaf daughter.

The need for TDD/telephone relay service has been proven in eight states across the country. Now hundreds of thousands of calls are made each day by deaf, hearing impaired and speech impaired people who previously had to wait and depend on a hearing friend or relative (or sometimes a stranger) to make their business and personal phone calls for them. This includes numerous people who were denied jobs on the age-old pretext that "you might have to make a phone call in the course of your job so a deaf person could not handle this position." Millions of people have been denied the right to live their own lives independently because major telephone corporations have not taken the extra steps to provide simple phone service to that segment of the population until relay legislation is passed in their state. The technology necessary to provide relay service has existed for at least a decade.

A TDD/telephone relay service provides a vital link between people, hearing and deaf, who could not otherwise communicate over the telephone. A deaf, hearing impaired or speech impaired caller who uses a TDD (Telecommunication Device for the Deaf) calls into the service and types to a Relay Operator over the operator's computer terminal. (In Minnesota, an IBM PS2 Model 50-Z is used with an Ultratech Intelemodem as a large screen TDD and for intrastate long distance information. No record of a caller's conversation is kept on paper or disk to insure confidentiality.) The operator calls the voice user on a separate phone line. When both parties are on line, the operator reads the deaf caller's words aloud to the hearing person and types the hearing caller's words to the deaf person. The Relay Operator is only responsible to pass the conversation from one person to the other and acts as a "human telephone wire". Like a telephone they do not censor, edit, correct, protect, advise, counsel or otherwise interfere with the business of the call. All calls and information are kept completely confidential. Often the operator needs to translate the grammar of American Sign Language to spoken English and back again. This requires a knowledge not only of ASL grammar but also of the culture of Deaf people and the Deaf Community.

These services are more than just telephones and computer terminals. A relay service is comprised of both telecommuncations equipment and human beings. Neither functions without the other. Certainly it is important to have the best up to date equipment, but that's not enough. It's not only phone lines and fiber optics, it's about ethics, responsibility and cultural understanding. Just passing words is not sufficient. A Relay Operator must facilitate communication. That is a task which requires human intervention. Some Deaf callers type standard English, some type ASL grammar. Some callers feel they should try to use English, even if their English skills are not strong. Occasionally a caller has had no formal training in ASL or English and invents their own grammatical structure. Here are some examples of relay conversations:

- "Avoid of me to pick on you for smoking?" (Have you been avoiding me because I picked on you for smoking?)
- "Touch finish New York you ?" (Have you returned from visiting New York?)
- "I ask you question must my something mean prove or not have only interview?" (Do I need written proof, resume, references, or just an interview?)
- "Thats well I very hope wait for open job that you will be much hard work doing that well I am good record that show it that too patience." (I hope you have a job opening. I will wait for it. I work hard and have a good record and I have patience.)

- "Time yesterday I called you but was not there I message someone but I waited for no answer on the phone but now I just calling you that is why." (I called yesterday but you were not in so I left a message with someone. Nobody returned my call so I'm calling now.)

- A Deaf Caller wants to phone the auto body shop where his car is being painted. The manager says to the deaf caller (through the Relay Operator) "We are behind schedule so your car isn't ready. Things have been hectic here." Then the manager uses a common English idiom hearing people use all the time. "We'll have all the pieces together by Friday." The Deaf caller, typing in ASL grammer, is unfamiliar with this common spoken English expression. He explodes, typing furiously on his TDD "Why pieces? Why you take apart my car? You must paint it only!" The Operator needs to translate the idiom and type in "Friday all finish ready".

- A Deaf caller gives the operator a number to dial to call a friend. The Relay Operator dials and gets a phone company recording saying that number is temporarily disconnected. When informed that the number is disconnected, the Deaf caller types "Check the other phone in the living room. Maybe that's still plugged in." Hearing people are familiar with these recordings. We have heard them all our lives. A Deaf caller will not be that familiar with the ins and outs of the phone system.

- After five o'clock a Deaf caller wants to phone their doctor. The office is closed and the answering service answers, saying "Dr. Smith's office". The Deaf caller is not familiar with answering services and begins to ask medical questions, assuming the live person at the doctor's office must be a doctor or nurse.

These are typical examples of relay conversations. The callers are not using bad English. They are not ignorant people. They are using their own language, ASL, and encountering aspects of telephone use with which they are unfamiliar, aspects and events we take for granted. At the Minnesota Relay Service, operators are trained by a number of deaf consumers and interpreting experts in Deaf Culture, Language and ethics.

The "common carriers" and interstate phone companies mentioned in the bill are phone companies which have the technological capabilities but may not have the humanistic capabilities and cross-cultural understanding necessary to provide quality relay service. It is a natural assumption to see "TDD/Telephone Relay Service" and think that a telephone company is the right choice. But the telephone/telecommunications aspect comprises perhaps 30% of the components of a relay service. It is far easier and more cost effective to put the 30% telecommunications aspect where the 70% Deaf Culture and Language expertise already reside.

At AT&T's California Relay Service (CRS), already operating for several years, an advisory commitee with a majority of deaf and hearing impaired consumers is currently "in the works" to provide the CRS with input and feedback from the community it serves. In Minnesota, the state board which contracts for the Minnesota Relay Service (MRS) as well as the Board of Directors of D.E.A.F. Inc. both have a majority of Deaf and hearing impaired members. The other Services in this country which are run by non-profit agencies are similarly Deaf controlled. We do not need to set up a separate committee for feedback from the Deaf Community because we are the community. The people who control these services also use it every day. To leave the daily decisions and policy implementation of a TDD/telephone relay service in the hands of a hearing-controlled corporation is as absurd as running the National Organization for Women with an all-male board of directors.

Within the first three sentences of it's testimony for this hearing, AT&T demonstrates it's "sensitivity" to Deaf people and Deaf culture by invoking the name of Alexander Graham Bell. It is true that Bell invented the telephone while trying to design a hearing amplification device for the Deaf, largely because his wife and mother were deaf. Bell also considered Deaf people to be aberrations of nature and felt they looked "freakish" if they used sign language. He forbade his wife to sign and supported such educational measures as tying deaf schoolchildren's hands so they could not use their own language. He attempted to pass legislation which would prohibit two deaf people from marrying because they might produce deaf children Bell's name is considered a curse word in much of the Deaf Community. Do they feel this person is an appropriate representation of their commitment to persons with disabilities?

AT&T's California Relay Service claims to process 250,000 calls per month In an article in the August edition of Silent News, Bill White reports this figure includes those incoming calls put on hold that give a recording informing the caller that all operators are busy, please wait, etc. These are counted as calls handled even though a percentage of these callers hang up and never reach a Relay Operator. At the same time, because the call has been picked up by the phone system, it generates cost on the incoming WATS line. The cost of this time on the incoming WATS lines is paid for by the CRS from the revenues generated by the legislated surcharge. The money is paid to the company which provides the WATS lines. AT&T provides those lines. If the service is insufficiently staffed or operator speed and quality of service is low, callers must wait before they get through to a Relay Operator. This is the equivalent of you or I picking up our phone receiver and staring at it for ten minutes before we dial the number However, income is generated for the company whenever callers are put on hold for these very reasons.

Mr. White also reports that many of the California Relay Service's problems were anticipated by user groups during the planning stages, but deaf consumer representatives were shut out of key meetings. CRS is currently being sued by the California Deaf Community through an organization named Greater Los Angeles Deaf.

I would like to clearly state that I do not question the motivation, dedication or personal commitment of individuals such as Merril Tutton or any of the AT&T Relay managers across the country. In our testimonies we have agreed on a number of important points. I merely wish to point out that a large, hearing-controlled telecommunications corporation is not necessarily the best provider of relay service. These services work best when they are created and controlled by and constantly accept input and feedback from the consumers they were designed to serve.

I also wish to express my alarm that the Federal Communication Commission is using the AT&T California Relay Service as it's sole model for the development of policies, procedures, guidelines and regulations to cover all relay services across the country. The FCC has no intention, as of our last contact, to actively seek input from deaf and hearing impaired consumers, interpreters, linguists or persons with experience in relaying. This is somewhat akin to writing a medical manual on a surgical technique without seeking the input of qualified medical experts or even an experienced surgeon who has actually cut into a patient.

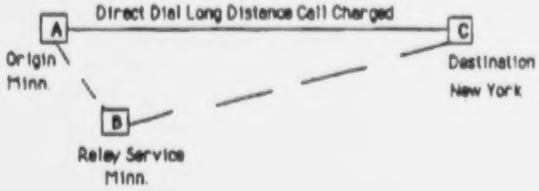
One of the worst problems facing any relay service is the lack of legal or bureaucratic precedent. As relay services are so unique and different from anything that has been done before, there are no existing laws, rules, regulations or bureaucratic systems designed to fit our unusual purpose and policies. Many problems arise as a direct result of people trying to cram the Relay Service into preexisting categories that don't apply to us.

We are not an answering service, we are not a long distance service and we are not an information service. We are a unique system comprised of humans and machines designed to facilitate communication between two people who could not otherwise communicate over standard telephone lines. Our "invisibility" while accomplishing this must be acknowledged by those persons in positions of authority over the services. They need to be made aware that precedents have to be set to fit the Service, instead of the Services and the Community we are here to serve being hindered and frustrated by inadequate and inappropriate laws and regulations. It is imperative that regulations be established to insure the deaf and hearing impaired community's needs and rights are respected.

The bill touches on this briefly by prohibiting Relay Operators from disclosing the content of relayed calls. This is vitally important but the measure is insufficient. The confidentiality of relayed conversations must be protected as privileged information, the same as doctor-patient or lawyer-client conversations are protected. For any police officer to be able to walk into a relay service and insist on getting information regarding a call is akin to obtaining evidence through an illegal wiretap. (Not to mention that it would rely on the memory of an operator who takes 30 to 40 calls in a six-hour shift and may have relayed the call in question weeks or months before.)

Other problems have stemmed from relay services being treated as long distance carriers or recently (with Bell Atlantic) as an information service because of the necessary translation between English and ASL.

Much of the language of the ADA deals with setting up separate intrastate and interstate relay service. Even a single nationwide system has been suggested. This is unnecessary and potentially wasteful. Currently all the services run by non-profit agencies are providing both intra and interstate service. (Using third-party billing for out-of-state calls.) Callers in states with AT&T services cannot call out of their own state. The technology exists which would allow a caller at point (A) to call through a relay service at point (B) to the destination at point (C) and only be charged for a direct-dial call from (A) to (C).



We are currently using this system in Minnasota for in-state toll calls (intrastate long distance). If interstate carriers (AT&T, MCI, Sprint, etc.) would implement this system to function whenever the Relay Operator dialed in a code after accessing the long distance company's lines, this could be done for interstate calls anywhere in the country, or anywhere in the world. However, no long distance carrier has bothered to do so as the only people with an application for this function are people calling through a relay service.

The Americans with Disabilities Act of 1989 must be passed. The millions of deaf and hearing impaired people in this country have waited long enough for access to the communication equipment that hearing people have enjoyed all their lives.

I strongly believe that the concept of consumer empowerment is integral to the spirit of the Americans with Disabilities Act. Deaf Americans and disabled Americans are not asking for "parents" or pity, they are only saying that everyone deserves an equal chance. Clearly Equal Access is every person's civil right, but until consumer controlled TDD/telephone relay services are available nationwide, the phrase Equal Access is just empty rhetoric.

AMERICANS WITH DISABILITIES ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
TRANSPORTATION AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 2273 and S. 933

BILLS TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

SEPTEMBER 28, 1989

Serial No. 101-95

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AMERICANS WITH DISABILITIES ACT

THURSDAY, SEPTEMBER 28, 1989

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Transportation
and Hazardous Materials,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2318, Rayburn House Office Building, Hon. Thomas A. Luken (chairman) presiding.

Mr. **Luken**. The Subcommittee on Transportation and Hazardous Materials will come to order, and we will proceed with a hearing on the Disabilities Act, H.R. 2273 and S. 933, properly titled the "Americans With Disabilities Act of 1989".

This bill is the most sweeping civil rights bill for the disabled that has ever been considered by the Congress. The bill seeks to end discrimination against the 43 million Americans who suffer from some disability, in such critical areas as employment, transportation, public and private accommodations, and communications.

There is no doubt that progress has been made in the past few years in many areas with regard to the disabled, but it is also clear that there is much more to be accomplished, that the full accessibility which we all desire and want to work for is not available at the present time.

The premise of the bill is unassailable. Discrimination, whether produced by overt actions or thoughtless attitudes, produces segregation, exclusion, impoverishment, and denial of equal and meaningful opportunities. By denying the benefits of equal treatment and participation to millions of disabled Americans, our country suffers as a whole.

This bill can bridge a significant gap in our current civil rights laws. While significant legislation has established the general pattern of prohibiting discrimination on the basis of race, color, national origin, gender, and age, the fact of the matter is that significant discrimination against the disabled exists in our country today. This bill, if properly crafted, will help to remove the barriers which continue to impede the disabled.

Our subcommittee's jurisdiction in this matter focuses on the transportation provisions of the bill which relate to Amtrak and commuter railroads. All of us recognize the crucial role transportation plays in our lives. It is the veritable lifeline which enables all persons to enjoy the full economic and social benefits which our country offers.

The bill prohibits discrimination against the disabled in the provision of transportation services. In the railroad area, it requires Amtrak and commuter railroads to provide accessible vehicles and stations for disabled persons.

While the ultimate goals of the legislation deserve our full support and efforts, the specifics of the legislation must be clear. Clarification of many of the provisions of this bill are needed. Our mission is to require that the legislation creates well-defined, achievable and enforceable requirements.

As we proceed with today's hearing and toward a prompt markup of this bill, we should focus on the particular obligations which the legislation creates. By assuring that clear and achievable means are spelled out in the bill, we will better serve both the interests of the disabled community and the transportation industry.

We also should be mindful of the costs of achieving compliance with the obligations imposed by the bill. For example, earlier this week, the House of Representatives passed a bill which authorizes funds for Amtrak over the next 3 years.

As the members of this subcommittee recognize, Amtrak's reliance of Federal assistance has declined dramatically in the past decade. But Amtrak's need for continuing funding for capital improvements is acute. The requirements in this bill for making equipment and facilities accessible will create an additional strain on Amtrak's budget. If funds are insufficient to meet either the accessibility requirements or Amtrak's other capital and operating expenses, neither the interests of the disabled nor Amtrak will be served.

We know this bill enjoys broad bipartisan support. President Bush has endorsed the Senate bill. The leadership of the House has indicated that this bill is a major priority of this Congress and we have assured the leadership that we will work swiftly on it.

If we are successful in crafting clear, specific and achievable objectives in this legislation, we will be furthering the goals of individual equality, dignity, and responsibility for disabled Americans. I look forward to considering this matter.

I am pleased to call upon the gentleman, the ranking minority member from Kansas, Mr. Whittaker.

[Testimony resumes on p. 109.]

[The text of H.R. 2273 and S. 933 follow:]

101st CONGRESS
1st Session

H. R. 2273

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1989

Mr. Coelho (for himself, Mr. Fish, Mr. Hawkins, Mr. Conte, Mr. Owens of New York, Mr. Ackerman, Mr. Atkins, Mr. Beilenson, Mr. Bennett, Mr. Borski, Mr. Bosco, Mrs. Boxer, Mr. Campbell of California, Mr. Cardin, Mr. Clay, Mr. Crockett, Mr. de Lugo, Mr. Donnelly, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edwards of California, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Frost, Mr. Fuster, Mr. Gejdenson, Mr. Gordon, Mr. Hayes of Illinois, Mr. Hoyer, Mr. Hutto, Mr. Jacobs, Mr. Jontz, Mr. Kastenmeier, Mr. Kleczka, Mr. Levin of Michigan, Mr. Lewis of Georgia, Mr. Manton, Mr. Matsui, Mr. McCloskey, Mr. McDermott, Mr. McHugh, Mr. Mfume, Mr. Miller of California, Mr. Mineta, Mrs. Morella, Mr. Oberstar, Mr. Pallone, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Connecticut, Ms. Schneider, Mr. Shays, Mr. Smith of Vermont, Mr. Solarz, Mr. Studds, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Waxman, Mr. Weiss, Mr. Wise, Mr. Wolpe, Mr. Florio, Mr. Williams, Mr. Roybal, Mr. Morrison of Connecticut, Mr. Brown of California, Mr. Dellums, Mr. Sabo, Mr. Espy, Mr. Dixon, Mr. Miller of Washington, Mr. Young of Alaska, Mr. Foglietta, Mr. Rangel, Mr. Garcia, Mrs. Saiki, Mr. Martinez, Mr. Mavroules, Mr. Conyers, Mr. Markey, Mr. Visclosky, Mr. Kildee, and Mrs. Collins) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Energy and Commerce, Public Works and Transportation, and the Judiciary

---

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
Sec. 502. Telecommunications relay services.
Sec. 503. Regulations.
Sec. 504. Enforcement.

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TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
Sec. 602. Prohibition against retaliation.
Sec. 603. State immunity.
Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity,

full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an indi-

vidual or class of individuals, directly or through contractual, licensing, or other arrangements, on the basis of disability, to any of the following:

(A) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(B) Affording an opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity that is not equal to that afforded others.

(C) Providing a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(D) Providing a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the individual or class of individuals with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(E) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates.

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY.—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

(C) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES.—

(1) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by

applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS.—The term "qualification standards" may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any

State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management

committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

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SEC. 203. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 204. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 205. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–8, and 2000e–9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

TITLE III—PUBLIC SERVICES

SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, commission or other instrumentality of a State and political subdivision.

SEC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) **REMANUFACTURED VEHICLES.**—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) **PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.**—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) **COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.**—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) New Facilities.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) Alterations of Existing Facilities.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by

intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this

Act, or regulations promulgated under section 304, concerning public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any foreign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) IN GENERAL.—The term "public accommodation" means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) INCLUSIONS.—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) **Construction.**—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature [illegible] existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by

individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403—

(A) a failure to provide a level of transportation services to individuals with disabilities, including individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by

individuals with disabilities, including individuals who use wheelchairs.

SEC. 404. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) OTHER PROVISIONS.—Not later than 240 days after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of

coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) Penalties.—

(A) In general.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in carrying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) Separate offenses.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) Recovering forfeitures.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) RELATIONSHIP AMONG TITLES.—The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

SEC. 602. PROHIBITION AGAINST RETALIATION.

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 603. STATE IMMUNITY.

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 605. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 606. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

Printed as Passed

October 16 (legislative day, September 18), 1989

Ordered to be printed as passed

101st CONGRESS
1st Session

S. 933

AN ACT

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
Sec. 204. Regulations.
Sec. 205. Enforcement.
Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and potential places of employment.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemptions for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Congressional inclusion.
Sec. 510. Illegal drug use.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusion-

ary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our

free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the

essential functions of the employment position that such individual holds or desires.

(8) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) DETERMINATION.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship

includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such

covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE INQUIRIES.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) QUALIFICATION STANDARD.—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs.

(b) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements

established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITION.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. DISCRIMINATION.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light

rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—

(1) IN GENERAL.—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

(2) UNDUE FINANCIAL BURDEN.—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to

the extent that providing such services would not impose an undue financial burden on such entity.

(3) REGULATIONS.—

(A) FORMULA.—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) ADDITIONAL PARATRANSIT SERVICES.—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair

transportation services in the community served by the public entity.

(f) CONSTRUCTION.—

(1) IN GENERAL.—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) FRAUDULENT APPLICATION.—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used

for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Intercity, rapid, light, and commuter rail systems.—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) Key stations.—

(A) In general.—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL SYSTEMS.—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) INTERCITY RAIL SYSTEMS.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. REGULATIONS.

(a) Attorney General.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) Secretary of Transportation.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible

format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 205. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

SEC. 206. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) POTENTIAL PLACES OF EMPLOYMENT.—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) PUBLIC ACCOMMODATION.—The following privately operated entities are considered public accom-

modations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(4) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) READILY ACHIEVABLE.—

(A) IN GENERAL.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) DETERMINATION.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of budget;

(ii) the type of operation of the covered entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(B) INTEGRATED SETTINGS.—Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General), the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) EQUIVALENT SERVICE.—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.

(a) Application of Term.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) potential place of employment;

the term "discrimination" as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs

(except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 6 years for other providers, except as provided in section 305(d), that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 305. STUDY.

(a) PURPOSE.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) CONTENT.—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;.

(2) the degree to which over-the road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) In General.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a–3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) Injunctive relief.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

SEC. 309. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of

1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance:

Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on

Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) Title iv.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) Grants and Contracts.—

(1) In general.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) Dissemination of information.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) Failure to Receive Assistance.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) Study.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of Report.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

Notwithstanding any other provision of this Act or of law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

SEC. 510. ILLEGAL DRUG USE.

(a) For purposes of this Act, an individual with a "disability" shall not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

(b) However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

SEC. 511. DEFINITIONS.

Under this Act the term "disability" does not include "homosexuality", "bisexuality", "transvestism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", or "pyromania", "gender identity disorders", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following:

"Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

"(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(D) For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term 'illegal drugs' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

SEC. 513. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

Passed the Senate September 7 (legislative day, September 6), 1989.

Attest:

Secretary.

Mr. **Whittaker**. Thank you, Mr. Chairman.

I want to commend you for calling this hearing on pending legislation to enhance the access of disabled Americans to the mainstream of economic and cultural life in this great country. All thinking and caring Americans endorse the goal of providing the means for disabled Americans to become self-supporting and fully participating members of our society.

Under the current jurisdictional division of responsibility for the bill, our subcommittee is empowered to examine the rail transportation aspects of the bill. These address, in a nutshell, passenger access to intercity trains and stations, commuter railroads and facilities, and other rail passenger service open to the general public, notably scenic and excursion operations.

I am sure our subcommittee will benefit from the expert testimony of the public and private sector executives who are here today to give us their evaluations of the bill. Although we are all supportive of preventing discrimination against our disabled citizens, we also have a responsibility to examine the practical aspects of this legislation. In particular, we would be remiss if we did not examine the cost and the availability of resources to cover those costs that are expected to be borne by private businesses, and particularly by our public sector rail enterprises like Amtrak, in a time of fiscal stringency.

I hope that based on firm, factual information elicited at today's hearings, we will be better able to evaluate and refine the provisions of the bill that address rail transportation.

Thank you, Mr. Chairman.

Mr. **Luken**. Thank you. The gentleman from North Carolina, Mr. McMillan.

Mr. **McMillan**. Thank you, Mr. Chairman.

I am glad we have the opportunity today to explore with our witnesses the possible ramifications for the transportation industry of this country if H.R. 2273 becomes law.

I have long been supportive of efforts to encourage the handicapped and the disabled to return to work as a matter of sound public policy and of proper health policy as well, and have sponsored legislation in that context.

Studies have shown that returning to work has a substantial positive affect on the psychological and emotional health of those disabled individuals who can work, and this hearing today certainly has a direct affect on their ability to get to and from the workplace to earn a living, as well as an affect on their travel needs for every reason.

I am interested particularly as to how we can best achieve the goals of H.R. 2273 without incurring an impossible cost to the transportation sector of the economy which would forestall implementation of that act. This includes the capital investment required, the operating costs that may be associated with it, and even possibly litigation costs that might arise due to some of the ambiguity in the legislative language.

I hope this hearing will shed light on how we can reconcile some of these questions in this subcommittee and in others before it reaches the floor for a vote.

I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. Luken. I thank the gentleman. The gentleman from Alabama.

Mr. Callahan. Thank you, Mr. Chairman.

I certainly will support the concept of H.R. 2273. We are going to ensure that our American disabled have access to trains. I think, though, we ought to be cautious as to how we move in this direction to ensure that, No. 1, we accomplish the goal that the disabled want and that this committee wants and this Congress wants, but at the same time we must recognize that there are some areas that we must investigate.

I have received a call, and I know it is not within our jurisdiction because it involves buses, but I think it will explain my point. I received a call last week from a charter bus company in my district in Mobile, a small company that has 20 charter buses that does not run a regular route. Its purpose is for people to either go to a football game or come to visit us in Washington here. The law as drafted would require that all 20 of his buses be modified.

In my opinion, if that is the case, we ought to find some relief. For instance, he could modify 5 of his 20 buses, and if someone were to order such a bus or to give an indication that there was a need for handicapped access, he could live with modifying 5. But if we enforce upon him the necessity to modify all 20 of his already aging buses, it is going to put him out of business, and therefore, the very citizens that are using these buses to go on these various trips at a very reasonable cost are either going to have to take up that cost factor or either they are not going to have buses available. That doesn't mean that the bill is bad. It just means that we should move very cautiously.

The same thing would apply to trains, Mr. Chairman. Are we going to require that each and every car on an Amtrak train, for example, be accessible or are we going to require that only one or two or a certain percentage of cars be modified to ensure that the disabled have accessibility?

We all are moving in the same direction. We were all moving in the same direction about this time last year when we passed catastrophic insurance. All of us wanted to do something good for our senior citizens, only to wake up and find that we had a nightmare on our hands. So let's don't get in that mode. Let's ensure that we have a goal and that goal is to provide accessibility for the handicapped on all public transportation as well as some areas of the private sector, but let's do it in a responsible manner.

Thank you.

Mr. Luken. Thank you, Mr. Callahan.

If there is nothing further in the way of preliminaries to the hearing, we will proceed with Mr. Jeffrey Shane, representing the Department of Transportation.

I believe, Mr. Shane, you wish to represent the Department in this matter; is that right?

Mr. Shane. Yes, Mr. Chairman.

Mr. Luken. We have a written statement which, without objection, will be received into the report of the subcommittee.

You may proceed in any way you think will be helpful.

STATEMENT OF JEFFREY N. SHANE, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN CLINE, ASSOCIATE ADMINISTRATOR FOR BUDGET AND POLICY, URBAN MASS TRANSIT ADMINISTRATION; AND MARK LINDSEY, CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION

Mr. SHANE. Thank you very much, Mr. Chairman. If I can put the full statement in the record, then I would like to summarize for the benefit of the subcommittee my remarks.

Mr. Chairman, appearing with me today are John Cline on my right, who is the associate administrator for budget and policy of the Urban Mass Transit Administration, one of the Department of Transportation's component administrations.

On my left is Mark Lindsey, the Chief Counsel of the Federal Railroad Administration, and they are here, of course, to assist in answering any questions which the subcommittee may have.

We are pleased, of course, to have this opportunity to appear before you today to present the views of the Department of Transportation on the Americans With Disabilities Act, which the Senate passed on September 7, 1989. As I am sure you know, the administration strongly supports enactment of Federal legislation extending civil rights to Americans With Disabilities.

Despite the considerable efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, the fact is that many persons with disabilities in this Nation still lead their lives in a state of isolation and dependence. Although 16 years have gone by since the Rehabilitation Act was passed, persons with disabilities are still too often shut out of the economic and social mainstream of American life. The Americans With Disabilities Act would directly address that problem.

In brief, the purpose of the act is to provide a clear national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life, to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

While the administration fully supports this bill, it would be useful to review the considerable progress made in improving transportation services for persons with disabilities over the last 20 years when the Department of Transportation, under congressional direction, first became involved in this activity.

For example, persons with disabilities can utilize airports today with much less difficulty than was true 20 years ago. Every federally subsidized mass transit system in the country provides some transportation services that can be utilized by persons with disabilities. While the older rapid, commuter, and light rail transit systems' stations and equipment are not as accessible as those utilized for bus transit systems, progress is being made in adding accessibility features during major alterations to these facilities. Intercity systems, and I am talking about Amtrak, are generally accessible to and usable by persons with disabilities, but some stations need major alterations to bring them into conformance with the Uniform Federal Accessibility Standards.

Highway rest area facilities either comply or are in the process of being brought into conformance with the Uniform Federal Accessibility Standards. Urban streets that are being renovated and altered with Federal financial assistance are being brought into conformance through installation of curb cuts or ramps that accommodate wheelchairs.

Let me now briefly summarize for you some of the key provisions in the Americans With Disabilities Act, as passed by the Senate, affecting transportation. Under that bill: One, public entities must purchase or lease accessible vehicles—bus, rail, and other fixed route vehicles—in any solicitation for new vehicles made 30 days of more after enactment of the act. If purchasing or leasing used vehicles, the public entity must make a good faith effort to obtain accessible vehicles. Remanufactured vehicles should, to the maximum extent feasible, be made accessible;

Two, DOT may "temporarily relieve" a public entity from purchasing a lift-equipped bus if a lift is unavailable and the public entity had made a good faith effort to locate a lift-equipped bus;

Three, a public entity providing fixed route transit service must provide comparable level paratransit service to handicapped individuals who cannot otherwise use the fixed route service. The Department would issue service criteria in this regard. If providing such service presents an "undue financial burden," the Department may allow the public entity to limit its service pursuant to a "flexible numerical formula";

Four, a public entity only providing demand responsive service must buy or lease accessible vehicles unless it can demonstrate that its system provides a level of service to disabled people equivalent to that provided to the general public;

Five, new facilities built by a public entity must be accessible. Existing facilities with major alternations will, to the maximum extent feasible, be made accessible in the altered areas;

Six, regarding rail systems—intercity, rapid, light, and commuter—at least one car per train must be accessible, as soon as practicable, but in no less than 5 years. All newly purchased cars must be accessible. Existing key rapid, communter, and light rail stations must be made accessible within 3 years except that DOT may extend that time to 20 years for "extraordinarily expensive structural changes . . ." necessary to achieve accessibility. All intercity rail systems shall be accessible, as soon as practicable, but in no less than 20 years.

Seven, The ADA also extends to public transportation provided by private entities, including terminals used for public transportation. Hotel and airport shuttle services and around-the-mall parking lot vans, when they offer demand-responsive services, would be required to provide adequate levels of service to individuals with disabilities, but they do not need to equip vehicles with lifts; and

Eight, the bill will require substantial changes in private intercity bus operations. Within 7 years, all new buses purchased by small operators must be accessible. A similar requirement will be in effect within 6 years for all other intercity bus operators.

If I may, Mr. Chairman, I would like to turn now to the specific concerns of this committee. In those areas where rail transit is available, in whatever form, it is just as important to provide access for disabled riders to that system as it is to provide access to the fixed route bus system. The ADA thus requires that with respect to new fixed route vehicles that are purchased or leased by public entities 30 days or more after enactment of the act, the vehicles must be readily accessible to and usable by disabled individuals. Provisions designed to encourage acquisition of accessible vehicles are also provided for the purchase of lease of used vehicles and for the remanufactured vehicles.

Moreover, within 5 years, all rail systems must have one car per train that is accessible to disabled riders. This provision of the legislation would apply to vehicles operated by intercity, light, rapid, and commuter rail systems. The report accompanying the Senate-passed bill notes that implementing regulations issued by the Department of Transportation should ensure that the rail car that is accessible stops at an appropriate place in the station that is level with the car and that appropriate signs are used to indicate where such cars will stop.

The Senate-passed bill also provides that new facilities used to provide transportation services must be accessible, and when major alterations are made, the altered area must be accessible to the maximum extent feasible. Further, the bill provides for retrofitting of existing key stations in light, rapid, and commuter rail systems within 3 years of enactment of the act. The transit agencies and members of the disabled community would work together to plan the strategy for key station accessibility. The Senate report accompanying the ADA emphasizes that exactly what will be determined "key" is a decision best left to the local community. The report notes that the pattern of New York and Philadelphia, which already have worked out agreements to retrofit key stations, would serve as an excellent model in this regard for other cities. The ADA, as passed by the Senate, would require no incremental effort by New York and Philadelphia.

In New York City, for example, the agreement worked out with the representatives of the disabled community identifies 38 particular stations out of 465 as key stations. A similar agreement arrived at between representatives of individuals with disabilities and SEPTA in Philadelphia identified 11 out of some 53 stations on the high speed line, and 31 out of approximately 172 commuter rail stations were determined to be key stations.

The Senate-passed bill also provides that this 3 year deadline may be extended by the Department of Transportation up to 20 years for extraordinarily expensive changes to, or replacement of existing facilities necessary to achieve accessibility. As with other provisions of the bill, the specific criteria regarding this exception would have to be detailed in regulations issued by the Department of Transportation.

Finally, the Department supports provisions adopted in the Senate-passed bill that appropriately distinguish the obligations of employers with respect to active alcoholics and drug abusers, on the one hand, and those who are no longer using illegal drugs or abusing alcohol, on the other hand. Moreover, these provisions would allow an employer to prohibit the use of illegal drugs by an employee and prohibit the use of alcohol in the workplace.

Mr. Chairman, 25 years ago Congress and the President were finalizing enactment of the Civil Rights Act of 1964, one of the most comprehensive civil rights laws ever passed. We now have the chance to extend the Nation's civil rights guarantees to the disabled community and the Department and the Administration are pleased to support this landmark legislation.

That concludes my remarks. We would be happy to answer any questions that any of you may have. Thank you.

Mr. **Luken**. Mr. Shane, with regard to that last statement that you made, current DOT regulations do not mandate alcohol tests for railroad employees; do they?

Mr. **Shane**. Let me ask Mr. Lindsey to address that.

Mr. **Lindsey**. Yes, Mr. Chairman, they do, under certain circumstances. For example, in postaccident testing, testing for alcohol is required.

Mr. **Luken**. But not random testing?

Mr. **Lindsey**. Not random testing, no, sir.

Mr. **Luken**. Not preemployment testing? So what Mr. Shane told us wouldn't be accurate then, because current DOT regulations don't provide for the significant testing for alcohol; right?

Mr. **Lindsey**. We believe this is significant testing for alcohol, Mr. Chairman.

Mr. **Luken**. Not random? You don't believe in random, Mr. Lindsey?

Mr. **Lindsey**. Yes, I do.

Mr. **Luken**. Isn't that the key, random? You don't include random testing. Everybody we talk to in the industry says random is the most important thing.

Mr. **Lindsey**. Random is an important additional element in our program, Mr. Chairman.

Mr. **Luken**. Well, maybe you ought to get around to putting random alcohol testing into your regulations. It is about time; don't you think?

Mr. **Lindsey**. It is under consideration, Mr. Chairman.

Mr. **Luken**. It has been under consideration for a long time, Mr. Lindsey.

Mr. **Lindsey**. Yes, sir, it has.

Mr. **Luken**. We have had this discourse for a long time, you and I and other representatives.

Mr. **Lindsey**. Yes, sir, we have.

Mr. **Luken**. One other little point here which maybe isn't so little on the drug testing. Title I of the Senate bill says you can't discriminate against a qualified individual with a disability; right, Mr. Shane?

Mr. **Shane**. Yes, sir.

Mr. **Luken**. But the bill only excepts users of illegal drugs from this definition. That is what you described. What about persons who use prescription drugs—legal prescriptions—and are addicts? They would be covered under the bill; wouldn't they, and would be protected? Do you intend that that would be the case?

Mr. **Shane**..I would like to turn to my colleagues for anything they would like to add to this, but my guess is that some of those kinds of details are going to have to be worked out in regulations. I think the operative concept is "qualified individual." I would think that in certain work circumstances the required use of certain prescription drugs might be inconsistent with the requirements of the workplace, such as the operator of a transportation service, but perhaps somebody else can offer enlightenment.

Mr. **Luken**. Would anybody else like to add anything?

Mr. **Lindsey**. I would like to. We have certainly cases in the railroad industry where prescription drugs or over-the-counter medicines have been misused in the workplace, but I don't think any of those uses that we have observed could fall under the definition of handicapped under the bill, whereas someone who is addicted to an illegal drug might be able to make such an argument absent something in the statute that would defeat that argument.

I believe that that is the important distinction, Mr. Chairman.

Mr. **Luken**. You mean you can't be addicted to legal drugs? Are you saying there aren't such people?

Mr. **Lindsey**. No, I am not sure there are not, Mr. Chairman. There may be. I don't think we have observed a case of that in any of the people in the railway industry where we have a problem.

Mr. **Luken**. See no evil, hear no evil; is that the administration's position?

Mr. **Lindsey**. No, sir.

Mr. **Luken**. Then we have to deal with it. We have to decide that question in order to properly frame this legislation.

Mr. **Lindsey**. Yes, we do.

Mr. **Luken**. Aren't there people who are addicted to and on legal drugs? And wouldn't that be a concern for an employer?

Mr. **Lindsey**. Yes, sir, it would.

Mr. **Luken**. The employer wouldn't be able to discriminate against such a person under the bill as drafted; is that right?

Mr. **Lindsey**. I believe it would still be possible under the qualification provision that Mr. Shane referred to say that, as employers now may, people who are using prescription drugs that might affect their performance must report that to the company and the company may bar them from service in certain areas, at least—certainly, for example, in safety-sensitive jobs in the rail industry, if prescription drug use is inconsistent with the stated performance of their job.

Mr. **Luken**. You are saying something that sounds reasonable, but it doesn't have any foundation in this bill as far as I can see.

Mr. **Lindsey**. I believe that that——

Mr. **Luken**. If the bill made an exception for persons who are users of illegal and legal drugs or, as Mr. Shane suggested, if you could adopt regulations that would so provide—then what you are saying, I think, would be correct.

Mr. **Lindsey**. I believe that certainly is the result we would like to see obtained, if I may——

Mr. **Luken**. It may not be the biggest issue in this legislation, however, I think it is important enough to try to settle it.

Mr. **Lindsey**. If I am mistaken in my view——

Mr. **Luken**. It is unsettled in my mind. I am certainly not accusing anybody of any shenanigans or anything. It is just a problem we are bringing up. Mr. Shane?

Mr. **Shane**. Mr. Chairman, perhaps I could just add that there are really two circumstances I think that you are referring to. One is where you do have habitual use of a legal drug for medicinal, maybe legitimate medicinal purposes. It would, as Mr. Lindsey says, be incumbent upon the employee to notify the employer of the use of that substance in order that there be a determination whether the use of the substance would impair the user for purposes of his or her responsibilities in the workplace. That is one situation.

Mr. **Luken**. But if I may interrupt, you say it would be incumbent. But would that requirement in itself be discrimination under this bill?

Mr. **Shane**. If, in fact, there were an impairment of the ability of——

Mr. **Luken**. I bet it would. I bet a court would so hold under this bill.

Mr. **Shane**. Would hold what, Mr. Chairman?

Mr. **Luken**. Just what I said, that the requirement to report the use of legal drugs would be discrimination under the bill.

Mr. **Shane**. I am confident that if there were any impairment of the user's ability to perform a job that was suffused with a safety responsibility because of its location in the transportation industry, that that user would not be protected by any provision of the Senate bill. I don't believe any provision of the House bill would, either.

Mr. **Luken**. If you could speak for the Supreme Court, I might be more confident of your confidence. I am not sure what you base that confidence on. However, we may be getting to a circular point in the discussion. If you want to submit anything for the record after you review this that might clarify it in any way, the record will certainly be held open.

Mr. **Shane**. It is an important point, Mr. Chairman. I would like to take a closer look.

Mr. **Luken**. It is a very difficult point. You may well be right in your interpretation. I would just like to have a better explanation.

On the issue of the obligation for Amtrak under this bill, all newly purchased, remanufactured and used vehicles must be accessible. Do you have an estimate? Does this administration currently have an estimate of how much this will cost Amtrak?

Mr. **Shane**. I think the first point to be made is that the requirement imposed by the legislation on Amtrak is not, in fact, a new requirement for Amtrak because the DOT section 504 regulation, implementing the Rehabilitation Act of 1973, as I understand it, has precisely the same effect.

I just wanted to get to some numbers in response to your question. Ignoring the difference between the section 504 regulation and the ADA, just looking at what we understand to be the real out-of-pocket cost of the requirements, and, obviously, we will want to hear from Amtrak on this question, we believe that the range is somewhere between $35 and $50 billion.

Mr. **Luken**. Mr. Claytor says in his testimony today that the cold reality of Amtrak's capital budget is that a priority must be placed on projects that keep Amtrak's operation safe and reliable:

We simply have not had nor do we presently have the appropriated capital to fund the costs of achieving station accessibility to our national system.

Do you have any comment on that?

Mr. SHANE. That requirement has been in place since 1979. I guess my comment is that I am discouraged to hear that. We had obviously intended when the section 504 regulations were first promulgated that the program be implemented immediately, that over a period of time would culminate in fully accessible stations.

That is not the case. Now we have legislation that goes to exactly the same effect. I can't talk, frankly, very effectively to Amtrak's capitalization or their revenue stream. I think we really need to hear from Amtrak's management on that.

Mr. LUKEN. You haven't heard from them? You say you have to hear from Amtrak's management on what?

Mr. SHANE. We certainly talk to Amtrak. I am talking about in the context of this hearing.

Mr. LUKEN. In the context of this bill?

Mr. SHANE. Of this hearing this morning. I am just saying that—you have asked me a question about Amtrak's costs, and I am offering you our view of those costs, but I simply defer to Amtrak on the matter.

Mr. LUKEN. Mr. Claytor goes on further to say that compliance with the act's intercity station accessibility requirements be made subject to the appropriation of funds specifically authorized for that purpose. Do you think that that addition should be made to the legislation?

Mr. SHANE. No, sir, I don't. I go back a long way in the Department of Transportation. I was there when we actually tried to implement the National Rail Passenger Act which created Amtrak, and it was our intention that Amtrak be created as a for-profit corporation, that it not be a subsidized entity.

That hasn't worked out that way, as everybody knows, and in fact we continue to subsidize it, but it is still the administration's intention that eventually they operate as a for-profit corporation.

Mr. LUKEN. That's a nice high aspiration. That would be all of our hope, like a pie in the sky, but it was never a realistic one, and only the administration entertains such illusions at various times. In fact, regularly the Reagan administration and now the Bush administration entertains that illusion, but here we now have the reality. The administration has opposed the funding levels in the authorization bill which we just passed and has in the past opposed such funding levels, so it seems to me that the position of the administration is somewhat in conflict.

How do you reconcile the administration's support of the ADA bill with its opposition to Amtrak's funding?

Mr. SHANE. Well, again, as to Amtrak, the implications of the bill are not new. The requirements that the bill would impose on Amtrak are requirements that have been in place a long time. It is, if you will, an old story for Amtrak's purposes, and we haven't seen any reason to suddenly change our view of Amtrak funding simply because we now have incorporated the old section 504 requirements.

Mr. LUKEN. If it serves as a reminder of the fact that your position is unrealistic, couldn't you deal with it?

Mr. **Shane**. If, in fact——

Mr. **Luken**. I mean, it is an irreconcilable conflict that you have in your position. The fact that it isn't new doesn't mean that it isn't still true.

Mr. **Shane**. You will have to understand, Mr. Chairman, that no one has authorized me to come here and make any different arrangements with respect to the funding of this legislation.

Mr. **Luken**. I think I am about running out of time, not out of questions, but out of time. The gentleman from Kansas is recognized.

Mr. **Whittaker**. Thank you, Mr. Chairman, Mr. Shane. Following back up on some of the aspects of the drug situation, what about the situations where—and these already exist—where drug or alcohol testing is mandated not by Federal regulation, but by employer policy and or collective bargaining agreements, and in that context, then, how can we be sure that such arrangements will continue to be legal when section 104(c)(2) says that the bill is not meant to encourage, prohibit, or authorize drug tests and says nothing at all about alcohol tests?

Mr. **Shane**. Congressman Whitaker, this is a very interesting area of inquiry, and I will be perfectly honest with you. I don't know how effectively I can respond this morning to that. What I would like to do is go back and take a harder look at that provision and see whether or not it does create a problem in terms of our obligation to keep the workplace drug free and keep the transportation system as safe as possible.

Mr. **Whittaker**. The chairman has already indicated he is going to keep the record open, so we would appreciate your submitting your opinions and thoughts.

Mr. **Shane**. Thank you, sir.

[The following material was supplied:]

It is appropriate for section 104 of the bill to protect the employer's right to take adverse action against a worker who uses illegal drugs, whether or not that use can be shown to result in impairment, unsafe behavior, or poor performance. With respect to legal drug use (e.g., under a medical prescription), however, the bill properly ties the employer's discretion to take action against an employee to job performance. Under section 103(a), an employer may establish job-related qualification standards consistent with business necessity. Even if legal use of drugs were considered to be a disability under the facts of a case (e.g., a situation in which an individual is addicted to painkillers prescribed for a medical condition), an employer may take adverse action against an employee because the employee, owing to his use of the drugs, is unable to perform job functions safely or adequately according to the employer's standards for its employees.

Mr. **Whittaker**. Mr. Shane, are you familiar with the amount of appropriated funds supported in the fiscal year 1990 budget for Amtrak and how that compares with funds Amtrak received in 1989? Let me just follow on. It is essentially the same. You are not providing Amtrak with any additional support.

In fact, we had to struggle to get what we got, but if Amtrak's not even being supported by the administration for funds that keep up with inflation, then how is Amtrak supposed to pay for implementation for all the equipment and station modifications specified in this bill?

Mr. **Shane**. Again, Congressman, we are imposing costs on transit companies and private companies and public facilities across the country. Most of those, those operators, are not in a position to come to the Federal Government and ask for some increment in the amount of money the Federal Government supplies by virtue of these new requirements—requirements which are designed to extend what the civil rights law was designed to extend to all Americans, but at last they are being extended to citizens with disabilities.

We have not seen any policy justification for suddenly saying, well, we now are extending civil rights to another classification of Americans, and therefore it is important to change our budgetary approach to the subsidy of some of these systems. It is an obligation that is inherent in the common carrier requirements of the companies that we are talking about, and it has not been seen as a justification for increasing Federal subsidy.

If anything, of course, the administration has been looking for ways to shrink Federal subsidy and impose a greater share of the financial burden on the local areas, State governments to some extent, and on the users, in order that we keep these systems as up to date as possible without recourse to the Federal Government year after year.

Mr. **Whittaker**. That places you in an ideal situation, I might suggest where you mandate, but then don't appropriate to help them out. It is a common problem we have with the Federal Government doing that to either the cities or States or municipalities.

It is, say, to recommend something, but if we don't fund it, it puts the burden on somebody else. That is all the questions I have, Mr. Chairman.

Mr. **Luken**. Thank you, Mr. Whittaker. Mr. McMillan.

Mr. **McMillan**. Thanks, Mr. Chairman. Mr. Shane, you have described New York and Philadelphia, which I guess basically are modifications to computer service primarily, isn't that what you were referring to?

Mr. **Shane**. I was thinking about the transit system.

Mr. **McMillan**. Subway system?

Mr. **Shane**. Yes.

Mr. **McMillan**. In your judgment have they demonstrated that the technology is there to do what this law requires?

Mr. **Shane**. Mr. Cline is a little closer to that, Congressman, if I could ask him to answer you.

Mr. **Cline**. The specific agreements in New York and Philadelphia did not necessarily address the technology available, but identified which stations would be rehabilitated to accommodate the needs of the disabled.

The technology required in what we refer to as the "old rail cities", the older systems, is a little bit more difficult because of some of the barriers in the original construction of those facilities, some of it dating to the last century. But mainly the negotiations concerned the availability of funding and the stations necessary to meet the needs of the disabled.

Mr. **McMillan**. Well, in terms of station modification, that is more an architectural question that probably varies from one situation to the next. I was thinking more in terms of equipment, the rail equipment itself. Have they demonstrated workable technologies that get the job done?

Mr. **Cline**. Most of the technology that's required for the vehicle itself, if we are not talking about the station modifications to platforms and elevators and the like, that technology is available. It has mainly been just a matter of widening doors and making accommodations in the aisles to move a wheelchair-using person through.

Mr. **McMillan**. In some cases does that mean elevator-type lifts?

Mr. **Cline**. Yes, there would be a need for an elevator or ramp-type system on light rail vehicles. Philadelphia has some, and there are some in other cities where they have street level operations. Boston is another city that had modified its light rail system to accommodate persons with disabilities.

Mr. **McMillan**. Shifting back a minute to the estimated, and I realize you are not necessarily fully up to speed on what Amtrak's cost estimates are, but you mentioned that Amtrak was basically in compliance with previously existing legislation on this or did I misunderstand you that maybe what you said was that this legislation reaffirmed what essentially had been imposed on Amtrak previously. Is that a more accurate description?

Mr. **Shane**. That's correct. As I understand it, they are not in compliance with the preexisting legislation. The requirements that are imposed on them by the new legislation are essentially the same requirements as have been in effect for Amtrak since effectively 1979.

Mr. **McMillan**. And that estimate of, you said $35 to $50 million, is that an Amtrak estimate of meeting that, the standards in that prior legislation?

Mr. **Shane**. Yes, it is.

Mr. **McMillan**. And so the fact that it is not in place has been a budgetary issue, I suppose?

In other words, funds have not been appropriated by the Congress to meet that?

Mr. **Shane**. Mr. Lindsey.

Mr. **Lindsey**. Yes, that is the case, Mr. McMillan. Those costs represent primarily station accessibility costs. On the equipment side, Amtrak comes very close to meeting the requirement now. Virtually, all trains have at least one car that is accessible, and the other requirement that's in place is that new equipment that's purchased be accessible.

And I believe you will find when Amtrak is up here that they will tell you that the additional cost on new equipment isn't primarily in the cost of acquiring that equipment, but rather in a tradeoff of revenue receipts. To the extent more spaces are made accessible to the handicapped, there is a sacrifice in revenue receipts and therefore a tradeoff in revenue rather than a major capital cost.

So most of the capital costs are involved in making stations accessible, and the trade off there is between direct accessibility or some kind of special services to enable the handicapped to get around barriers.

Mr. **McMillan**. There was a point made, I think, by Mr. Claytor at one point having to do with a number of station locations of Amtrak, somewhere in the 400 range out of a total number of stations of approximately 450 or 460, something like that.

Many of those stations have very limited use, maybe average boardings of four or five in which the cost of modifications to the station would exceed the total revenue over a period of 1 year. What is the resolution of that kind of problem?

Would the law mandate that those stations remain open or is that still at the discretion of Amtrak based on the revenue generated and the number of people using the service?

Mr. LINDSEY. It is at Amtrak's discretion under the Rail Passenger Service Act. There are under that statute route and service criteria with which Amtrak must comply on discontinuing services or starting new ones, and any decision on closing a station or changing Amtrak service is made under those criteria. This bill would not affect that.

Mr. McMILLAN. Well, is it possible, then, that if this law is adopted and if Congress appropriates the funds to meet the requirements of the law for Amtrak that Amtrak might in that process say:

> Well, this set of stations, because of limited use, and the capital requirements that are needed to comply with the law are not worth maintaining any longer, and therefore cease service in some locations?

Mr. LINDSEY. Yes, sir, that is a possible outcome.

Mr. McMILLAN. Does the law impose the cost entirely upon Amtrak, or does it recognize that many stations are maintained at the request of the local community, and in some cases are owned by the local community or some other transportation authority, and that that cost perhaps should be borne by them rather than Amtrak.

Has that been reviewed at all in terms of the cost estimates on compliance?

Mr. LINDSEY. In terms of the substance, yes, and the costs, no, sir. It is the case under the statute that if someone else owns the station, be they public or private, they, too, would have an obligation.

The statute doesn't directly say "Amtrak shall." It says "intercity rail transit stations shall." So, the obligation, I think, falls arguably both on operator and owner where they are different. It has also been the Department's view that many of the improvements that Amtrak would like to make for stations, either to accommodate the disabled or otherwise, may be done with other public and some private funds, as Amtrak is doing at the 30th Street Station in Philadelphia.

We don't have a good fix on how many of the 400-odd stations that would need some improvements could be handled in that way. And the improvements vary from relatively minor and inexpensive ones, such as lowering the height of the ticket counter or adding bars to assist the handicapped in a restroom, to relatively major structural ones.

We don't have a firm fix on what the total of those costs is, or who would bear them as between Amtrak and others. Perhaps Amtrak has a better one.

Mr. McMILLAN. That would be a negotiable issue, then, between the owner of the station and Amtrak?

Mr. LINDSEY. I believe so, sir. I think of Amtrak's 499 stations, it owns 81, and of those 81, many are in the Northeast Corridor and are fully accessible.

Mr. WHITTAKER. To follow up on that, I am a representative of a rural area, and I was listening to your testimony concerning Philadelphia that had a percentage of their stations accessible. Rather than to lose the availability of all rail passenger service in some local areas—if the ridership is very low, that is probably their only choice, to stop service, they would just shut the station down—how about on a regional basis, with say, six stations—can it be patterned that a handicapped individual could maybe commute to the next town to find a facility that they could board on? Is that anywhere in the thinking?

Mr. LINDSEY. The statute doesn't seem to contemplate that, Mr. Whittaker. It is not an unreasonable solution. That is a lot like the key station provision for the transit systems. I would offer the observation, though, that many of the low-density stations, the ones with four or five passengers a day or something, that Mr. McMillan referred to, and that presumably you are referring to also, wouldn't require very much capital investment to fix.

It might be a ramp that would accommodate a wheelchair or something, and ramps are pretty inexpensive. Those would not be large structures requiring extensive renovation, so I think most of those would be small investments.

Mr. McMILLAN. The location, for example, would an inclined ramp be an acceptable mode of access to an elevated car level?

Mr. LINDSEY. Under the statute, there would have to be a ramp that would reach a level where the wheelchair could roll directly into the car, also.

Mr. McMILLAN. But that is not a very expensive modification. If you take a very low-use stations that is essentially ground level that amounts to a parking lot, and a small structure and the ground level adjacent to the track, a relatively inexpensive ramp system could meet the requirements under this legislation?

Mr. LINDSEY. Yes, sir, I believe so.

As long as the person in the wheelchair would have access, and a person using crutches or something would have access, I believe that would meet the requirement. There wouldn't be any other facilities there requiring modification.

You wouldn't hit the major structural things that you would in a large structure, so I believe it would be a small cost.

Mr. McMILLAN. Is it now, or is it contemplated that the alternative might be done, so that an elevator-type system is put on the car itself so that the modification is made to the rolling stock and not the investment made in multiple points of access along the way?

Is that a feasible alternative?

Mr. LINDSEY. I would like to think that one over and supply an answer for the record, if I may, Mr. McMillan. I have not thought that one through.

[The following material was supplied:]

Amtrak has informed us that they believe that attaching an elevator-type system to each car would be costly in install and difficult and costly to maintain. Because their capital resources have been and are expected to continue to be tight, Amtrak has preferred to proceed with more reliable nonmechanical systems to be available at the station. However, Amtrak has agreed to take another look at the possibility of proceeding with a car-by-car approach.

Mr. McMillan. One final question. It has to do with the liability under the act. Amtrak is, and I think is being encouraged by circumstances to try to utilize more private sources of funding in financing its capital expenditures, which I think is an appropriate thing to do.

Does this impose any liability upon the lender under this legislation?

Mr. Lindsey. I don't believe it does, Mr. McMillan, but perhaps that merits a closer look, too. I am not aware of any provision that would do that.

Mr. McMillan. Certainly, that would simply elevate the cost of borrowing, and is something perhaps we should address if we possibly can. Thank you very much.

Mr. Luken. As I indicated, there are more questions, but little time. But there is one that I believe we have to go into a little bit, and that is the question of paratransit. Paratransit could be a very costly proposition, right? Paratransit, as I understand it, appears to be directed primarily at urban transportation, to bus systems. If the buses in use are not accessible, the bus system must, on request, provide some alternative transportation to the disabled.

Is that about your understanding of it, Mr. Shane or Mr. Cline?

Mr. Shane. That is indeed the way we read the Senate bill, and we base that reading to a great extent on the Senate report, which talks about fixed-route bus transportation in the discussion of the paratransit obligation.

Mr. Cline may want to supplement that answer, but I think by and large, that is the way we see the paratransit obligation coming down.

Mr. Luken. Well, does it apply to Amtrak as written?

Mr. Shane. No, it would not, and we don't see that it would apply to even commuter rail service.

Mr. Cline. The bill says that the paratransit provisions are applicable to fixed-route transit. The bill did not define fixed-route transit, but the Senate report language defined fixed-route transit as being bus transportation.

Mr. Luken. That is as simple as it is? Do you think that is very clear?

Mr. Shane. I wouldn't want to promise you that anybody won't make an argument that paratransit applies to either Amtrak or commuter rail, but we think that would be a reach in terms of what we understand the legislative intent to have been.

Mr. Luken. We will ask Mr. Claytor the same question, and if you have any thoughts on the way home about this, something that you would like to elaborate on, I think we should tie that down. It would appear not to be intended to apply to commuter rail or any rail transportation.

I suppose—even the commuter rail, any kind of rail, is that right?

Mr. Shane. The distances involved in commuter rail or intercity rail are both beyond that which we think paratransit was designed to cover.

Mr. LUKEN. It would apply to light rail, right?

Mr. SHANE. Light rail would be——

Mr. LUKEN. Trolleys, that is light rail, right?

Mr. SHANE. Again, we saw fixed-route bus systems being the principal target, but light rail and fixed-route bus systems essentially serve the same market, so I think light rail would be the exception. That would be one rail system for which the entire transit would be a required supplement.

Mr. LUKEN. Could you give us further written reports on that?

Mr. SHANE. We will be happy to, Mr. Chairman.

Mr. LUKEN. It would seem like the trolley or the light rail might somewhere conceivably fall in between, and I am not sure what would be the intention. Would it be your thought at this time, or do you want to reserve judgment of whether the bill applies to trolleys or light rail? Subways?

Mr. SHANE. I think it might be better if we took some time and gave you a thoughtful answer for the record.

[The following material was supplied:]

Section 203(c) of the Senate-passed version of the "Americans With Disabilities Act" provides requirements regarding paratransit service for the disabled as a supplement to a fixed route public transportation system. An issue has been raised as to whether these paratransit requirements apply only when a public transportation system provides fixed route bus service, or whether the requirements apply in connection with the provision of rail service by a public transportation system. Since the term "fixed route" is not defined in the Act, the bill itself does not provide specific guidance on this issue. The bill's legislative history, however, is quite clear. The Senate Report, at page 47, specifically defines the term "fixed route" to mean ". . . a bus system that operates on a continuing and regular basis on a fixed pattern and schedule."

Reading the language of the bill and its legislative history together, it is thus evident that the intent of the Senate-passed bill is to impose the paratransit requirements under section 203(c) only on those public transportation systems operating fixed route bus service. The requirements of the Senate-passed bill accordingly do not apply in connection with the provision by a public transportation system of rail service, whether commuter, light, or heavy rail.

A question also has been raised regarding which entity is responsible for providing the paratransit service, a transit authority or some other governmental unit. It is clear under the law that the public transportation system, if it operates a fixed route bus system, is responsible for ensuring that paratransit service is provided. In doing this, however, the public transportation system can take into account paratransit services made available by other entities and need not duplicate those services already being provided.

Mr. LUKEN. Not just subways, subways would be one in big cities, but in others there are light rail, and we are even developing light rail more in some areas.

Mr. SHANE. Yes. Usually, you have parallel systems in communities that have either subways or light rail systems. There is also a surface bus system as well. As to the extent they would enjoy the bus system, they would have fixed-route bus system within the meaning of the Senate report language, and therefore, you would have a paratransit facility available to the disabled community.

Mr. LUKEN. We could assume that, but maybe that wouldn't be a fair assumption to make.

Mr. SHANE. That is why I would like to go back.

Mr. LUKEN. Under the bill, does the obligation fall upon the local governmental unit or upon the system?

Mr. SHANE. Mr. Cline tells me it is the transit authority, that is the object of the legislation.

Mr. **Luken**. There could be some vagueness there? There are transit authorities and transit authorities. All shapes and sizes.

Mr. **Shane**. Well, my understanding is——

Mr. **Luken**. Put that discussion of that in your written submission.

Mr. **Shane**. Yes, sir.

Mr. **Luken**. While we are at definitions, what is a "vehicle" as used in this bill?

Mr. **Shane**. So glad you asked, Mr. Chairman. We think that the vehicle within the meaning of the act is a passenger vehicle, so that we don't think, for example, that for purposes of accessibility in the transportation provisions of the legislation, a locomotive would be a vehicle.

There is a locomotive issue; the locomotive, it seems to us, is a workplace issue, but for purposes of providing transportation, the purposes of the obligation to provide accessible transportation, we don't think the locomotive was meant to be included in the legislation.

Mr. **Luken**. I will settle for that.

Any further questions? Thank you very much. We will be interested in your further submission. We appreciate your willingness to testify and help us out in this matter.

Next, if nobody objects, we would like to give Mr. Graham Clayton an opportunity to testify—even though he was listed as the third panel. Those on the second panel will probably recognize it is a more orderly and better presentation to get Mr. Claytor and Amtrak's views on the record first. It would probably help the second panel to know what those are in advance of their testimony.

Mr. Claytor, it is always nice to see you.

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT, NATIONAL RAILROAD PASSENGER CORPORATION, ACCOMPANIED BY DAVID CAROL, GOVERNMENT OPERATIONS-PUBLIC AFFAIRS DEPARTMENT

Mr. **Claytor**. Thank you, Mr. Chairman.

Mr. **Luken**. We are pleased with the House approval of the Amtrak reauthorization bill.

Mr. **Claytor**. Yes, sir, it is always a pleasure to appear before this committee, Mr. Chairman. I have with me David Carol of our government operations-public affairs department, who is better acquainted with the details of this statute than I am.

Mr. **Luken**. That remains to be seen.

Mr. **Claytor**. Thank you.

Mr. Chairman, I would like to ask that my prepared statement be included in the record, and I will try to be as brief as I can and summarize the important points.

Quite apart from any statutory or regulatory requirements, Amtrak as a matter of policy, has been and is committed to avoiding discrimination against the handicapped to the maximum extent we can. We welcome handicapped and elderly passengers and make every reasonable effort not only to take care if them, but to make their trip as comfortable as possible.

We have special reduced fares for handicapped or disabled passengers. We have a 7-day-per-week special services bureau to help passengers who need help. Last year, some 120,000 disabled passengers used these services, and tens of thousands of others have traveled on Amtrak without assistance.

Mr. Chairman, practically all Amtrak trains now have equipment that meets the bill's accessibility requirements, including sleeping accommodations on all overnight trains. In other words, we already meet the requirement that all of our trains must have at least one handicapped-equipped car.

So, we are in pretty good shape with respect to compliance so far as equipment is concerned. Both the Senate and House bills, however, as has been pointed out already, contain the requirement that all new cars purchased must be handicapped-equipped.

Now, we have no problem with this with our superliners and sleeping cars since that is already our policy, anyway. But it is neither necessary nor feasible for this rule to be applied to all coaches, so long as there are handicapped-accessible coach accommodations on every train, a standard we will have meet and will continue to meet.

I want to make it very clear that the capital costs of building handicapped-accessible toilet and seating facilities into each low-level car, and that is single-level car, the kind we make in the East, is quite high. But that is not the big point.

The big point is that when we do that in a relatively small car that seats only 60 to 80 people anyway, we reduce the capacity of that car by a total of five seats. We have to point out we put in a special handicapped toilet and seating accommodation.

This reduces the revenue that we have to count on to meet our continuing objective of ever decreasing our need for subsidy and undermines the economics that justifies the cost purchase.

We feel that we can meet all requirements, over-meet all requirements if 20 percent of the new coaches that we purchase are handicapped-accessible. That actually is our current plan and policy subject to statutory requirement that this statute would have.

So, we have suggested an amendment which is attached to my prepared statement, attachment No. 1, that would allow us to purchase new coaches only that are—20 percent of which are handicapped-accessible. The other 80 percent are not. This will give—more than give us enough cars so that we can always meet the requirement of having one or more handicapped-accessible coaches on every train, a standard we already meet.

I think that is very important from the standpoint of Amtrak's financial future. We are committed to continuing to reduce the need for subsidy every year. This year, we are making about 72 percent of our total—covering about 72 percent of our total cost of our revenues. We hope to make 75 percent next year, and we have an objective that by the end of the century, we will make it 100 percent.

But we can only do that if we have capital funds that will enable us to increase our capacity and cut our expenses, as well as increase our revenues. This type of restriction would have a serious adverse effect on that. I think we ought to get rid of it. I think it is not necessary, and we can meet all the standards without it.

So, we ask that amendment. As Mr. Shane has pointed out, our principal problem is in the station area. We have about 500 stations scattered around the country, 499 I think is the exact figure today, and serve more communities than all the major airlines put together.

Most of these, of course, are not owned by Amtrak, but are owned by the fright railroads or by local communities. We have surveyed these and found that some 88 of the 499 stations used are now essentially in compliance with the bill. That leaves over 400 that will require modification or even total reconstruction.

Of course, these include all categories, fully staffed stations which are the largest stations, stations manned only by a caretaker, some of those with restrooms and some without restrooms, and about 117 totally unstaffed facilities that consist of shelters and platforms.

Now, there has been a discussion about what do you do about these very small, unmanned stations that probably have a handful of passengers using them every day? What would have to be done there in most cases, the platform is accessible, but you have to get the passenger from the platform into the car. These are low-level platforms and, of course, to take a wheelchair into the car, you have to lift it about four feet.

Now, we have manual wheelchair lifts that cost about $3,500 a piece that we are using, and under this bill, we would have to have those at every low-level station that we have. We would be prepared to do this if we get the necessary funding.

The problem of whether or not it really makes sense to have that kind of expense at an unmanned station with practically nothing but a platform is a serious question. One of the difficulties is you not only have to buy the lift, you have got to build housing to house the lift, because the lift has to stay there. It would have to be operated by the conductor from the train, who would get off and operate the lift for a handicapped passenger.

Then he would have to put it back in the little house that is built for it and locked up. That will cost some thousands of dollars on every one of these installations. I agree that there is a serious question in my mind whether a station that is as lightly used as that really should be required to have that kind of expense, but I leave that to the committee.

We think not. We think in truth and in fact, if it were our money that has to be spent on it, we would discontinue the service, we would discontinue the station, looking at all the various circumstances. But the chances are that rather than spend $5,000 to $10,000 on providing a lift there that may never be used, we would just discontinue the station, which we have the right to do in most cases.

Now, we have looked at the roughly 400 stations that are not in compliance, and we think it would cost today in current dollars about $34 million to make them, to meet the requirements of the statute.

It would be totally impossible for Amtrak to do this in the 3 years allowed by the House bill, but if provided with the required capital, we could on a year-to-year basis manage to do this and would provide full accessibility to all the stations in the 20 years provided in the Senate bill.

The problem is that if you extend this over that period of time, the $34 million figure starts to escalate. We figure on a 4-percent—assuming a 4-percent annual escalation, the total cost of this over the 20-year period would be about $52 million.

Now, we cannot possibly survive, and I don't think we will survive, unless we continue to reduce our need for subsidy. We can't possibly continue to do that unless we get capital funds for our own needs, expansion of equipment, repair and improvement of shops and the like, which we are getting this year for the first time in about 8 years in substantial amount.

We have go to have that. Now, we can't add to that, just take out of that, this $34 to $52 million for these stations. So, what we are asking is that this bill ought to include an authorization for $52 million available over the 20-year period as appropriated to give Amtrak separate appropriations to take care of these problems.

We could then each year—what we would propose to do would be to submit to the committees our request for operating funds, for Amtrak capital and for special capital to be used to improve our stations.

We would then use that money exclusively to improve the stations on a year-to-year basis. I think that would make sense. It would enable us to keep going. What I am afraid of is that President Reagan was unable to put us out of business after 5 years of trying, but if we started to have to take all this money out of our earnings and appropriations, we could get put out of business by this.

I don't want to take any chance on doing that. I think we are doing well. We have a great future. We have a plan to get self-sufficient in 10 years. But we have got to have Federal money to take care of these extra expenses on all these stations, which so many of you have pointed out, most of them are not owned by us.

Unless the community or a special appropriation is done, I don't think we will make it. Now, I have—there one other amendment that I have suggested that is a clarification. The statute doesn't make clear that Amtrak, which is a privately incorporated company with Federal assistance, is not treated in this statute as a public transportation system. It should be.

The Senate bill, the Senate report said that that was what was intended. But as the statute is drawn in both the House and the Senate, it refers only to State agencies and State operation companies. I ask that just to make this clear that Amtrak be included, the National Railroad Corporation be included with the list of State agencies and instrumentalities so there can't be any question that we come under the section that deals with public transportation and not private transportation.

I think that is—we have an amendment on that that is included here, too. So, I have proposed then three amendments. One is to permit us to acquire 20 percent of our coaches that are handicapped-equipped and 80 percent that are not. The second one is an appropriation—not an appropriation, an authorization, over the 20-year period of the estimated $52 million we would require to do the work on all these stations.

And third, a clarifying amendment that would make sure that Amtrak is included in the—as a public transportation agency for purposes of this act.

Now, there is one other thing that I want to mention. I want to emphasize the practical importance to Amtrak of continuing the regulation that exists under the Rehabilitation Act that requires individuals needing special transportation service to give Amtrak advance notice of this.

There has been some criticism of this, that this is discrimination of some sort against handicapped people. In a nationwide system that includes all kinds of manned and unmanned facilities, it is absolutely essential for us to get notice if someone wants special service that they are going to go.

We require that they notify us in advance and tell us what train they were on and what station they are going to get on, what station they are going to get off. Then we can take care of them. If that is not done, particularly when they are going to a small station that is unmanned or only partly manned, they won't get the service that they are entitled to.

I think this is a reasonable provision. It is in the regulation now, and nothing ought to be done to cancel that out. We think if we are going to really give the handicapped people the service that we want to give them, we need notice about this so as to make sure that they are taken care of.

Finally, Mr. Chairman, we urge the adoption of the Senate bill's provisions on drug and alcohol users. Amtrak has been a leader in the railroad industry in establishing employee assistance programs, and this option is always available to a drug or alcohol user at Amtrak.

Any limitation on our right to take action against drug or alcohol abuse by our employees with the EAP option always available to them, in my opinion, would be disastrous. For safety and other reasons, we try to have a workplace free of drug and alcohol abuse. The Senate bill takes care of this, and we accordingly urge its adoption in this area.

Mr. Chairman, I would be delighted to try to answer any questions.

[The prepared statement and attachments of Mr. Claytor follow:]

PREPARED STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL RAILROAD PASSENGER CORPORATION

My name is W. Graham Claytor, Jr. I am President and Chairman of the Board of the National Railroad Passenger Corporation [Amtrak]. I should note that I also serve as Vice Chairman of the Board of Directors of the National Rehabilitation Hospital in Washington, D.C. I am pleased to be here today to discuss the Americans With Disabilities Act [ADA] and to describe to the subcommittee the steps Amtrak has taken to improve access to intercity rail passenger service by individuals with disabilities. References in my testimony to the ADA refer to the proposal as recently passed by the Senate.

Amtrak applauds the effort to provide a comprehensive policy against discrimination on the basis of disability. As the nation's only intercity rail passenger carrier, we have strived to eliminate barriers to the use of our trains and stations by individuals with disabilities and I believe that we provide many disabled persons an increasingly important means of transportation. We provide special reduced fares for disabled passengers and operate a Special Services Bureau seven days a week that assists special needs passengers with ticketing and transportation. Indeed, more than 120,000 mobility-impaired and other disabled individuals sought the assistance of our Special Services Bureau last year and many tens of thousands of other disabled persons traveled on Amtrak unassisted. Our toll free reservation system can be accessed by the hearing-impaired through use of a Telecommunications Device for the Deaf, known as a TTD. In addition, Amtrak works each year with a number of organizations on large, special moves of disabled passengers.

Amtrak strongly believes that all persons seeking to travel by rail—including mobility impaired and other disabled individuals, as well as the elderly—should be accommodated and it is our intention, regardless of whether the ADA is enacted, to take the steps within our means to continue improving access to intercity rail passenger service. In this regard, I am pleased to state that practically all Amtrak trains presently meet the accessibility requirements of the ADA, and we offer accessible sleeping accommodations for disabled persons on all of our overnight trains. Amtrak's Viewliner prototype sleeper, our low-level car of the future, includes a handicapped-accessible bedroom with shower, as do all of our Superliner sleeping cars.

Accordingly, it already is our intention that all new sleeping cars to be purchased in the future, as well as new Superliner coaches, will be accessible to individuals with disabilities. However, I strongly believe that it is neither necessary nor feasible for all single-level coaches to be so equipped. In addition to the substantial capital cost of building accessible toilet and seating facilities into each of these relatively small, limited-capacity cars, the inclusion of these special facilities reduces the capacity of each coach by five seats, substantially reducing our revenues on trains that frequently are sold out or on which there is standing-room only. On a standard Metroliner train with five or six coaches, this can amount to a loss of some 30 premium revenue seats; some of our trains include as many as eight to ten coaches. The loss of this revenue undermines the economics of new cars and will result in an increase in our need for federal operating assistance at a time when our primary goal is to continue to reduce this federal subsidy. Amtrak accordingly requests that the ADA be amended to require that new coaches be made accessible only to the extent necessary to ensure that all trains have one or more readily accessible coaches, thereby meeting the standard set forth in the ADA. We are satisfied that requiring 20 percent of new coaches to be accessible to individuals with disabilities would more than meet this requirement. I accordingly have attached as Attachment 1 a proposed amendment to make this change.

It must be emphasized that Amtrak has been forced to spend much of the past decade simply fighting for corporate survival. I believe that we finally have turned the corner and that serious efforts to eliminate all federal support for Amtrak have ended, but this in turn is dependent on our ability to continue to cover more and more of our operating costs with our own revenue. In addition, severe budgetary cutbacks have left Amtrak a capital-starved corporation. Each year we are able to fund only a fraction of our most pressing capital needs, many of which are safety-related or must be undertaken simply to keep the trains operating. In fiscal year 1981, Amtrak was appropriated $221 million for capital projects. This shrunk to just $2 million in fiscal year 1986 and has been approximately $25 to $30 million since. Amtrak is suffering a serious equipment shortage that is forcing us to turn away millions of passengers each year. This in turn undermines our primary objective of reducing Amtrak's need for federal operating support. The cold reality of Amtrak's capital budget is that priority must be placed on projects that keep our operations safe and reliable. We simply have not had, nor do we presently have, the appropriated capital required to fund the costs of achieving full station accessibility throughout our national system.

Enactment of the ADA will impose significant capital costs on Amtrak, primarily to make the stations we use fully accessible. I support making these improvements, since they will enhance our service not only for individuals with disabilities, but for elderly and other mobility-impaired passenger as well. Nonetheless, Amtrak's ability to make steady progress toward the improvements required by the ADA will depend on the appropriation from year to year of sufficient capital for this specific purpose, over and above the capital required for our most critical safety and operating concerns, as well as on our ability to continue to increase our revenues. Amtrak cannot survive if capital needed for safe and reliable operations is diverted to station improvements required by the ADA.

Given these capital needs, Amtrak urges that compliance with the Act's intercity station accessibility requirements be made subject to the appropriation of funds specifically authorized for that purpose. In this way, Amtrak would submit a separate request in its yearly budget justification for the funds required for accessibility related projects during the next fiscal year. Funds then appropriated for those projects thus would not compete with Amtrak's capital budget. As discussed more fully later in this testimony, I have attached as Attachment 2 a proposal authorizing $52 million in federal support for Amtrak to be used over the next twenty years to fund modifications required to comply with the ADA.

I now would like to address three areas of the ADA which significantly impact Amtrak. The first more fully discusses the provision of the ADA requiring that all intercity stations be made completely accessible to individuals with disabilities. The second concerns the importance of advance notice to Amtrak by travelers requiring special services. The last relates to deficiencies in the House bill regarding the current use of drugs or alcohol by employees.

Amtrak is the nation's only intercity rail passenger service provider. We carry some 22 million passengers annually in 44 states. Although Amtrak serves 499 stations nationwide, it actually owns or partially owns only 81 of them. Local communities or third parties own a small number of the others, but the vast majority of the stations Amtrak serves are owned by the private freight railroads. Many of these stations are aging relics that are used for only one or two trains a day.

Most stations used by Amtrak presently are accessible from curbside to the platform. Thus, mobility-impaired passengers have access to and can board our trains at most locations. Many of our unmanned stations, which may only consist of a simple shelter, also are accessible. However, at those stations that include ticket counters, bathrooms and other comfort facilities, Amtrak has been able to fund complete accessibility only where the station has been newly constructed or where major renovations have been made. Over 400 stations will require at least some modification in order to comply with the ADA's requirement that all intercity rail passenger stations be fully accessible to and usable by individuals with disabilities. Some modifications will be relatively simple and inexpensive—lowering a ticket counter or making a toilet accessible; others will require complex and expensive design changes.

Under section 303(g)(3) of H.R. 2273, these modifications would have to be completed within three years of enactment, except for extraordinarily expensive structural changes, which must be completed within 20 years of enactment. The Senate changed this provision to require that all intercity rail passenger stations be made accessible as soon as practicable but at least within 20 years of enactment. Despite the significant number of stations which will require at least some modification to be fully accessible, Amtrak believes that it can meet a 20 year deadline, provided funds for the necessary modifications are made available. Amtrak could not possibly comply with the three-year time frame presently included in the House bill, and we urge the subcommittee to adopt the Senate's provision. In this regard, the Report on this bill should make clear that the time frame for station accessibility in the ADA overrides shorter time frames under the Rehabilitation Act and regulations thereunder.

In this regard, because Amtrak by law is not an agency, entity or instrumentality of the federal government, Amtrak urges that sections 301 and 302 of the House bill (sections 201 and 202 of the Senate-passed bill) be clarified to specifically include Amtrak as a public transportation system subject to the Act, along with departments, agencies, special purpose districts, and instrumentalities of a state or local Government. The Senate chose to clarify this issue in the Report accompanying S. 393 (at page 46). A statutory clarification is preferable, and I have attached as Attachment 2 an amendment making this change.

With respect to the cost of modifying the stations Amtrak uses in intercity rail passenger service, we estimate a total cost in current dollars of up to $34 million. This amount will escalate to $52 million in inflated dollars over a 20 year period (assuming a 4 percent rate of inflation) and Amtrak has included this amount in Attachment 3 as the amount to be authorized for this purpose. Our estimate is based on the modifications necessary to comply with the Uniform Federal Accessibility Standards [UFAS], and would provide access for mobility-impaired passengers from curbside to station to platform to train, as well as access to such comfort facilities as are available to any passenger within the station. Because of the excessive cost of installing high-level platforms, and because such platforms are incompatible with our Superliner equipment, our cost estimate includes the acquisition of additional mechanized or manually operated lifts at stations with low platforms rather than the installation of new platforms.

Assuming adequate funding, Amtrak stands ready and able to undertake the modifications necessary to comply with the ADA over the next twenty years. We have assigned a senior Amtrak management employee to oversee and coordinate compliance with existing law and with the ADA when enacted. We would anticipate modification of 20 to 30 stations each year for the next 20 years if Congress authorizes and appropriates specific funding for this purpose. In addition, Amtrak has started a new training program for all on-board service employees and operating crews on assisting customers with disabilities. The training program has been developed with assistance from many of the major disability organizations and will be fully implemented later this year.

Two points should be mentioned with regard to station accessibility. First, the House and Senate bills require that "key stations" used by "commuter rail, rapid rail or light rail" operators be made accessible within three years of enactment. Where Amtrak shares the use of such "key" stations with other operators, we believe that the cost of making the station accessible generally should be borne by the primary user of the station.

Second, Amtrak believes strongly that local and state governments should assist the federal government in the cost of station improvements. The ADA will require costly modifications at many Amtrak stations. At our Denver station, for example, the ramp leading to the platforms, while presently used by our disabled passengers, is too steep to technically comply with UFAS standards. Installation of an elevator to correct this deficiency will cost several hundred thousand dollars. Other stations requiring modifications serve as few as five passengers each day. In some cases, the cost of the modifications may even exceed the revenue generated by the station, in which case it may make economic sense simply to close the station. In any event, we believe that it may be appropriate to require local assistance in financing modifications required by the ADA.

Regulations promulgated by the Department of Transportation in 1979 under the Rehabilitation Act require individuals needing special transportation services to provide advance notice of 12 hours or more, and of at least 24 hours where the services of an attendant are required. As noted, Amtrak has a fully staffed Special Services Bureau, open seven days a week, 24 hours a day, to handle requests for special services by mobility-impaired, other disabled, and elderly passengers. At the present time, when not all Amtrak stations are fully accessible and many stations are unmanned, advance notice is essential to ensure that Amtrak can coordinate and provide the special services desired.

Concern was raised by some disability organizations in hearings before the Senate that the requirement for advance notice was discriminatory and denied persons with disabilities equal treatment. We take strong exception to this. In many, if not most cases, Amtrak can serve the special needs of its disabled and elder passengers only if it has advance notice of the services required by the passenger and the train on which the passenger intends to travel. Only in this way can we can ensure that wheelchairs, lifts or other services are properly manned at the right place at the right time. We strongly urge Congress to permit the retention of existing regulations requiring advance notice.

Amtrak is very concerned with provisions included in H.R. 2273 that could deem discriminatory the actions that an employer might take against an employee currently using drugs or alcohol. The bill passed by the Senate significantly altered this provision and we urge similar changes to the House bill.

Strenuous efforts are underway in the railroad industry to curb use of alcohol and drugs by employees. Most railroads, including Amtrak, prescreen job applicants for drug or alcohol use. Railroads also test employees for drug or alcohol use where there is cause to suspect current use, as well as for periodic and return-to-work physical examinations. In addition, the Department of Transportation has issued mandatory random drug-testing rules that go into effect in January 1990 and require the random testing for drug usage of certain employees involved in safety-sensitive jobs.

Currently, Amtrak and other employers generally are free to refuse employment to current users of drugs or alcohol abusers. In addition, Amtrak can take disciplinary action against an employee who use such substances in the work place, subject to the employee's right to voluntarily participate in Amtrak's Employee Assistance Program. However, the House bill provides that an employer cannot take action against current drug or alcohol use by a drug-abuser or alcoholic unless such use poses a direct threat to property or to the safety of others in the work place. Moreover, the House bill apparently would prohibit tests, such as preemployment drug and alcohol screening, that identify use of alcohol or drugs unless the test is substantially related to the ability of the individual to perform the essential functions of his or her job.

We strongly believe that current drug or alcohol abuse must be eliminated in the work place, even where such current use does not pose a specific threat to safety. It is Amtrak's position that current use of alcohol or drugs seriously undermines the ability of any individual to perform his or her job on the railroad, regardless of the individual's position.

The Senate bill addresses most of these concerns. It makes clear that preemployment screening is permissible provided all new employees are screened. In addition, the Senate bill states that an employer may prohibit the use of alcohol or "illegal" drugs at the work place. However, the term "illegal" drug fails to include the misuse of prescription and other drugs that can impact an employee's performance, and we strongly urge that the House make clear that an employer can prohibit the abuse of any such drugs.

The Senate-passed bill further specifies that an employer may require employees to conform their behavior to requirements established pursuant to the Drug-Free Workplace Act and may require transportation employees to meet requirements established by DOT. Amtrak strongly supports this change and urges the House to incorporate these changes made in the Senate-passed bill, together with a broader definition of drugs that can be prohibited at the work place.

Amtrak is proud of the services it has been able to provide to our disabled passengers and recognizes the importance of completing modifications to the stations we use to make them accessible to and usable by all travelers. With adequate designated capital resources and a reasonable time frame for compliance, we are ready and eager to take the steps needed to comply fully with the ADA, consistent with our overriding mandate to further reduce our need for federal support. Amtrak urges the House to incorporate the three specific recommendations we have proposed, as well as to include provisions incorporated in the Senate-passed bill extending the time frame for completing modifications to our stations and ensuring that the goals of the ADA do not undermine the equally important goal of protecting the public safety through an alcohol and drug-free work place.

ATTACHMENT 1

Section 303(b)[1] is amended by deleting the period at the end of the section and adding: ", except that in the case of new intercity rail passenger coaches acquired by the National Railroad Passenger Corporation, only 20 percent of said new coaches need be made readily accessible."

ATTACHMENT 2

A. Section 301 [2] is amended by deleting the period at the end of the section and inserting: ", or the National Railroad Passenger Corporation."

B. Section 302 [3] is amended by deleting the period at the end of the section and inserting: ", or the National Railroad Passenger Corporation."

ATTACHMENT 3

Section 601(b) of the Rail Passenger service Act (45 U.S.C. 601(b)) is amended by adding the following new paragraph (6): "(6) There are authorized to be appropriated to the Secretary for the benefit of the Corporation for costs incurred in complying with the Americans With Disabilities Act not to exceed $52 million."

Mr. **LUKEN**. Thank you, Mr. Claytor.

As usual, you have made your testimony very clear and, therefore, it is equally clear that it is not totally consistent with the Administration testimony which preceded yours. You are suggesting logically that if these obligations are placed upon Amtrak, that it can't be taken out of the relatively small amount of appropriations allocated for capital improvements, which you are finally getting, in order to advance the kind of service that Amtrak is providing and to improve that service.

The Administration rather clearly said that it would oppose such a suggestion. You heard that, did you not?

Mr. **CLAYTOR**. I think they didn't favor it. I don't think they violently oppose it, from what they said. I would hope after reconsideration, they would realize that imposing additional costs on us with respect to these low-level, low-capacity, low-level coaches, would not accomplish anything affirmative, and would just cost us and the Federal Government in the end money; and also make it harder for us to meet our objective, which is to get out of Federal subsidy altogether.

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[1] Section 203(b) of the Senate-passed bill.

[2] Section 201 of the Senate-passed bill.

[3] Section 202 of the Senate-passed bill.

Mr. LUKEN. And to provide safety. You may have that impossible choice.

Mr. CLAYTOR. That is right.

Mr. LUKEN. The choice of providing safety or accessibility.

Mr. CLAYTOR. A significant point. The capital expenditures we just authorized, including some that we authorized at our board meeting yesterday, involve safety measures recommended by the National Transportation Safety Board. We are moving on that as far as we can get the money. But they take a lot of money.

We give them a very high priority. But again, we can't do it all with not enough money, unless we have a separate appropriation to take care of these stations. See, we are in good shape on everything except the stations, most of which we don't own.

We have taken a position which we are trying to follow up, uniformly, that Amtrak's job is to run safe, comfortable, convenient trains. When we get to the town that wants to be served by the train, the city has got to come up and put up the money for a station if they need a new station.

Most places, they do. When we start a few service along with a new line, we take the initial position that we will make stops only at cities that will provide 100 percent of the cost of building the new station.

In most cases, there is no station there at all. If not, we will run on through if there is no station. We have to do that, I think, if we are going to continue to move ahead financially, as I am determined to do.

This is just another, another expense in connection with stations. We don't want to spend money on stations for any purpose, and if you have to spend money on stations to meet this statute, that has got to come outside of the Amtrak budget.

Otherwise, we are going to be in real trouble.

Mr. LUKEN. You are urging that the requirement of accessibility on the standard train or standard car, be limited to a certain percentage of those cars so that you can provide one per train, is that right?

Mr. CLAYTOR. At least one per train, and this is only with respect to coaches. All of our sleeping cars are going to have handicapped capability. All of our superliner cars, which are these very much larger doubledecker cars that we run in the West, have a far bigger capacity in each car, and it is both less, less—it does less to cut down our capacity, and costs less to put handicapped accessibility in the downstairs of those cars.

When you get to the kind of cars that we have to use here in the East, the low-level coach, it is a substantial diminution of the coach's earning capacity to take out five seats out of every car and put in this facility. We can do this with 20 percent of the new cars we buy and that will give us plenty of handicapped-accessible coaches, to put one on every train and—Metroliners are only five or six cars long.

On longer trains, we could put as many as two or sometimes three. But with this 20 percent, it would give us all the handicapped-accessible coaches that we need to provide the needs of the handicapped. That is what we are asking.

Mr. LUKEN. Well, in order to provide you with that flexibility an amendment would be necessary to the Senate bill, is that right?

Mr. CLAYTOR. Yes.

Mr. LUKEN. Have you given us such an amendment?

Mr. CLAYTOR. Yes, sir. Our suggestions are attached to the back of my prepared statement.

Mr. LUKEN. I just wanted to make sure that that was the case.

Mr. CLAYTOR. Yes, sir.

Mr. LUKEN. Well, I think you have covered the essential parts, and my time has expired. The gentleman from Kansas is recognized.

Mr. WHITTAKER. You suggest on page 7 that it be clarified to include Amtrak explicitly, since it is not covered by current language of the House bill, section 202(a), or the Senate bill, section 302(a). This raises a related inquiry: is Amtrak exempt from the employment discrimination requirements of ADA?

Because it is a "corporation wholly owned by the United States"?

Mr. CLAYTOR. No, no. Let me ask Mr. Carol to respond.

Mr. CAROL. Sir, as I understand it, we would be covered under the employment sections, and we intend to be covered under title VII for all the other type of discriminations as well.

Mr. WHITTAKER. Thank you, Mr. Chairman.

Mr. LUKEN. The gentleman from North Carolina.

Mr. MCMILLAN. Thank you, Mr. Chairman.

Thank you for testifying, Mr. Claytor. With respect to this requirement on new equipment, and you suggested 20-percent requirement, what are the arguments against your approach?

Mr. CLAYTOR. I think only that they would just like to have every car fixed. It would be very nice to have every car fixed, and if you were going to get on a train, you don't have to get on a particular car, you can get on any car.

But it seems to me that this means that in most cases, a very large proportion, and that is true today in fact, already, a large proportion of these special facilities would not be used by any handicapped people, and you would be cutting out five revenue seats out of 60 to 80 seats on the car.

That is a significant percentage of loss of revenues. These are high revenue seats on things like our Metroliner. As long as we can be sure to take care of the handicapped people who want to go, it seems to me that this is reasonable. The statute already requires only that a handicapped car be on the train.

If there is a very long train, we normally would try to have more than one. But that, we are able to do that. Twenty percent, one out of every five cars bought would clearly maintain our stock of handicapped-equipped cars quite adequately.

Mr. MCMILLAN. To me, I think your argument is persuasive. The important thing is that there are enough handicapped-accessible seats on each train to meet the demand.

Mr. CLAYTOR. That is right. This would enable us, clearly, to do that.

Mr. McMillan. Now, if we basically solve this problem through station modification, you see equipment is essentially—you are in good shape, I think is the way you put it, with respect to equipment.

Mr. Claytor. Yes, sir.

Mr. McMillan. With the exception of the 100 percent requirement on future purchases of coaches.

Mr. Claytor. That is on new cars. We hope, we have just gotten enough capital money or are about to get enough to make a substantial purchase of new cars. And to have to put a handicapped seat in every one of the coaches that we buy, we will put it in all the other cars anyway for our own convenience.

It is convenient and not as expensive. But to put them in the small coaches is just an unnecessary expense and an unnecessary loss of revenue.

Mr. McMillan. Could you give us an estimate of incremental capital costs of doing that and the annual loss of the revenue——

Mr. Claytor. Oh, yes. We can estimate—I will give you the clearest-cut case, would be to give you the loss of revenue right here in the Northeast Corridor, because many of these cars——

Mr. McMillan. Or do it by car.

Mr. Claytor. We will do so, and give the cost of the installation. Yes.

Mr. McMillan. Now, if you got the 20 percent that you are seeking, that doesn't present any real operating problem in major locations in terms of the placement of the car on the train and its accessibility to the point at which it stops, at a given station?

Mr. Claytor. No, sir; no, sir.

Mr. McMillan. Because, well, in major traffic centers, the objective would be to have the station platform at the floor car level?

Mr. Claytor. That can only be done in really major stations. It is an extraordinarily expensive thing to do in the country, and we have other problems. Take Chicago. The main terminal in Chicago covering Union Station, that station served both Superliner cars, the doubledecker cars that run in the West, and the low-level cars that run in the East.

A high platform cannot be used by a Superliner car. It is inconsistent. The Superliner car has to have a low platform so that you can't put high platforms anywhere. Anywhere where you have a Superliner train, you have to have a low platform or it can't get into the station.

So, actually, the low platforms will continue to be the usual situation in all except major eastern terminals that do not use the high-level cars.

Mr. McMillan. You mentioned the manual lift——

Mr. Claytor. Yes, it is a lift.

Mr. McMillan. Which you attributed a $3,500 cost to the lift itself and probably an additional cost possibly of equal amount. I have no idea, to house it.

Mr. Claytor. Probably at least an equal amount. The housing would be required, of course, only in the small place that doesn't have a proper station building or baggage room. We normally keep the lifts in our other stations in the baggage room.

Mr. **McMillan**. Is it not feasible to maybe build just a permanent ramp?

Mr. **Claytor**. No, that would not be feasible, for lots of reasons. The ramp would interfere with clearances of freight trains going by, for one thing, the railroad would not permit. We actually explored that in one case and found that the railroad found it would be inconsistent.

Mr. **McMillan**. Even though a raised platform wouldn't.

Mr. **Claytor**. Yes, the raised platform would. They are not, therefore, not used anywhere where freight trains are. The only place we have a raised platform is in Washington, Union Station. Penn Station in Philadelphia, that sort of thing. You, as a matter of fact—New Carrollton station outside of Wasnington has a high platform and one side of that station, freight trains, Conrail freight trains have to go buy. We had to put in a special track that moved the freight train through a switch a little bit out from the platform and then back when it goes past the station.

We could do that at that one place because it is a very important place. But it is not the kind of thing one can do generally around the country. It is extraordinarily expensive. So that is the only way a high platform is inconsistent with freight train operations on the same track—as is any kind of ramp.

Mr. **McMillan**. Is it not feasible to provide a lift on the car itself to meet the requirements?

Mr. **Claytor**. That is—we have attempted to study that. No one has ever come up with anything that one could do that wouldn't be so expensive as to be almost beyond possibility. I very much oppose trying to get a mechanical thing like that, which will be used occasionally once in a blue moon and will almost always not work when you need it, because it is not used most of the time.

I think it is not feasible mechanically, anyway.

Mr. **McMillan**. One final question. With respect to notification, don't you require a notification anyway for any passenger in certain stops?

Mr. **Claytor**. No, no. This is advance notification, 12 or more hours in advance, so we can send messages down the line to make certain to have a lift ready or to have an operator ready, to have a red cap with a wheelchair and that sort of thing.

Mr. **McMillan**. But if I am not disabled and show up at that same stop, do I have to give you notification that I am boarding the train?

Mr. **Claytor**. Only if it is a flag stop. If it is a regular stop, you don't. We have relatively few flag stops. As a matter of fact, a flag stop, you can flag the train yourself. The railroads have always done that. The passenger can wave the train down. The engineer is instructed to look out if there is anyone on the platform who wants to get on, he stops the train.

So, no notification is required for that sort of thing. You tell the conductor if you want to get off at a flag stop, but you don't have to tell a conductor when you want to get on a train.

Mr. **McMillan**. Thank you very much. I yield back.

Mr. **Luken**. Thank you very much, Mr. Claytor. It has been very helpful.

Mr. CLAYTOR. Thank you, sir. It is always a pleasure. We will be glad to submit the information requested. If there are any other questions, we would be glad to submit them in writing.

Mr. LUKEN. We will do that.

Mr. LUKEN. Next we will have the panel listed as the second panel: Mr. Lawrence Roffe; Phil Calkins; Tim Cook; James Raggio; and Dennis Cannon.

Mr. Lawrence Roffe, executive director of the Access Board, for short.

STATEMENTS OF LAWRENCE ROFFE, EXECUTIVE DIRECTOR, ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD, ACCOMPANIED BY DENNIS CANNON, ACCESSIBILITIES SPECIALIST; PHILIP CALKINS, PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES; AND TIM COOK, EXECUTIVE DIRECTOR, NATIONAL DISABILITY ACTION CENTER

Mr. ROFFE. Thank you, Mr. Chairman. I am pleased to be here today on behalf of the Architectural Compliance Board. With me is our general counsel, to my right, Jim Raggio; and to my left, Dennis Cannon, our accessible transportation specialist.

Mr. LUKEN. We have your testimony in writing, which will be received without objection. You may proceed in any way you think may be helpful.

Mr. ROFFE. Thank you.

The Architectural Compliance Board—we like to be called the Access Board—was established by Congress 16 years ago to ensure that buildings which are designed, constructed, altered or leased with Federal funds are readily accessible to and usable by people with disabilities.

The Access Board has been responsible for developing and refining through active research programs, the minimum guidelines and requirements for accessible design. These guidelines represent the state of the art in creating an environment usable by all people and serve as the model for the Uniform Federal Accessibility Standards [UFAS].

Those standards are used to implement the Architectural Barriers Act of 1968 and section 504 of the Rehabilitation Act of 1973. They are followed by post offices, government buildings, and federally financed housing and transit facilities across the country.

The Access Board has studied the many and various architectural, transportation, communication and attitudinal barriers which limit the full participation of disabled citizens in our society, and has published a series of technical papers and staff reports on eliminating these barriers.

For example, lifts and wheelchair securement provides guidance on providing access to buses and paratransit vehicles. Aircraft stowage procedures and battery powered wheelchairs explains how to stow power wheelchairs on aircraft in accord with hazardous materials regulations.

Transit facility design for persons with visual impairments gives guidance to transit facility designers and operators on making transit systems usable by persons with visual impairments.

Through these and other activities, the Access Board has become a national resource and center of expertise on accessibility for persons with disabilities.

The Access Board, along with the President and the rest of the Administration, wholeheartedly support the broad goals of the Americans With Disabilities Act. This legislation would extend basic civil rights guarantees to over 36 million Americans With Disabilities and eliminate discriminatory barriers in public accommodations, places of employment, public transportation, and in communications. The legislation would significantly promote independence, freedom of choice, and productive involvement in the social and economic mainstream for our Nation's disabled citizens.

Through conducting public forums around the country and sponsoring research projects and studies, the Access Board has gathered extensive experience and information about the extent and effects of discriminatory barriers experienced by persons with disabilities in public accommodations and public transportation.

The Access Board has carefully analyzed the provisions of the Americans With Disabilities Act and believes that the act's provisions provide a comprehensive and cost-effective solution to removing these barriers.

In the area of public transportation, the Americans With Disabilities Act would require that all new buses, rail vehicles, and other fixed-route vehicles which are purchased 30 days after the enactment of the act be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs.

In the case of the rail systems, within 5 years, at least one car per train would be required to be accessible to individuals with disabilities, including those who use wheelchairs. Stations on intercity rail systems, including Amtrak, would have to be made accessible within 20 years.

Key stations on commuter rail systems would have to be made accessible within three years, with the Secretary of Transportation being authorized to extend the period up to 20 years for extraordinarily expensive structural changes.

In addition, the Americans With Disabilities Act would require providers of fixed-route bus service to ensure the provision of paratransit service to individuals who could not use the fixed-route buses. The Senate Committee on Labor and Human Resources' report on S. 933 makes it clear that the operator of such bus service need not necessarily provide the paratransit service directly, but is responsible for ensuring that existing services or paratransit provided by other entities are coordinated with the service provided by the operator, especially to ensure that both fixed-route and paratransit systems provide feeder-distributor service to commuter and intercity rail.

It is our understanding that the requirement to provide comparable paratransit to those who cannot use fixed-route bus service was never intended to require providers of commuter of intercity rail service to operate paratransit.

The Access Board would be required to supplement its minimum guidelines and requirements for accessible design to include accessibility standards for transit vehicles and stations, as well as public accommodations.

In particular, the supplemental minimum guidelines would define the accessibility requirements for various types of rail vehicles and station configurations. It is our understanding that Amtrak has already met the requirement to have one accessible car per train, and the accessibility provided by those cars is generally adequate.

The California Department of Transportation [CALTRANS], has also sponsored a study on providing access to some types of commuter rail cars which may be useful in developing minimum guidelines. Also, in cooperation with CALTRANS, Amtrak is currently using an inexpensive, mechanically simple and reliable, hand-operated lift in California which may solve the access problems for many intercity and commuter rail stations.

The Access Board is in regular contact with CALTRANS and other agencies involved in such studies and believes the diversity of information will make compliance with the act for commuter and intercity rail relatively simple.

The act provides that regulations issued by the Department of Transportation and Attorney General under the act would have to be consistent with these standards. The Department of Transportation and the Department of Justice are members of the Access Board and have enjoyed good working relationships with the other Federal agency and public citizen members of the board.

We look forward to continuing this close relationship in the days and months after the Americans With Disabilities Act is enacted in developing accessibility guidelines and standards for public transportation and public accommodations.

As you are aware, the public transit industry has expressed some technical and financial concerns about the act's provisions. To accommodate those concerns, some amendments have been incorporated into the Senate-passed version of the act. We would especially recommend to you the technical assistance provision that was put in the act.

The provision would require the Attorney General, in consultation with the Access Board and certain other Federal agencies, to develop a plan to assist entities covered by the act to understand their responsibilities under the act, and to provide information and technical assistance on cost-effective means for achieving compliance with the act.

The Access Board currently has an extensive technical assistance program and believes that a strengthened technical assistance program is important to help public agencies and private businesses to fully understand the responsibilities under the act and achieve compliance.

The Access Board and other agencies have developed long and varied experience in cost-effective approaches for applying the principles of "readily accessible," "readily achievable," and "reasonable accommodation" which are embodied in the act.

By making this expertise available to all who must comply with the act, we can hasten implementation; prevent unnecessary litigation; and most importantly, avoid unnecessary costs to those entities covered by the act. We strongly urge this committee and the House to include a technical assistance provision in the act.

The Access Board looks forward to working with Congress, the Administration, and other Federal agencies in crafting and implementing a workable law that will ensure the full protection and guarantees of civil rights and an accessible environment for Americans With Disabilities.

We would be happy to answer any questions you have, Mr. Chairman.

Mr. LUKEN. Thank you very much, Mr. Roffe.

Next Mr. Phil Calkins, President's Committee on Employment of People with Disabilities.

Mr. Calkins.

STATEMENT OF PHILIP CALKINS

Mr. CALKINS. Thank you, Mr. Chairman. I am Philip Calkins. I am director of public affairs for the Employment of People with Disabilities. I am also a wheelchair user and a consumer and avid supporter of public transportation, including Amtrak. I thank you for this opportunity so share my experience with and thoughts about accessible public transportation with you.

Mr. LUKEN. Without objection, your written testimony will be received. You may proceed in any way you think will be helpful.

Mr. CALKINS. Thank you.

I believe that a good public transportation system is absolutely essential for the good of our society, and that inadequate public transportation systems will cause increasing problems for all of us in the coming years. I also prefer to use public transportation rather than drive to work. Fortunately, I work in Washington, DC, which has a very good and very accessible metro rail system, which I use to get to and from work every day.

Last year, I bought a house in Vienna, VA. An essential element in my decision to buy that particular house was that it is close enough to the Vienna Metro station so that I can take the train to my office at 20th and L Streets in the District of Columbia. I know three other people personally who use wheelchairs, commute from Vienna to downtown Washington, and made the choice of where to live on the basis of access to Metro. If I know three, there must be many more—just in Vienna.

I adhere that if I had known last year that I was going to be testifying today in this committee, I would have both a house in Maryland on the Amtrak line for the same reasons so that I would have been able to talk about a house that was under the jurisdiction of your committee.

I am absolutely sure that the same thing is true of the Amtrak commuter line in Maryland as the example I am giving for Vienna, VA. I also use Metro on a regular basis to do my job. I am expected to attend meetings on Capitol Hill and elsewhere in Washington on a regular basis. If it weren't for the accessible Metro system, I would have to take taxis to all of those meetings, at considerable additional expense to taxpayers. If I were an electric wheelchair user and consequently could not use regular taxis, I could not do my job without the Metro system.

You may ask, "What about paratransit? Couldn't someone who uses an electric wheelchair use paratransit to go from his or her office to meetings around the city?" The answer is no. Paratransit systems, because of their advance notice requirements, do not permit that flexibility.

Dennis Cannon, who works for the ATBCB and is here today, could not do his job efficiently without the accessible Metro system. Evan Kemp, also a user of an electric wheelchair, is soon to become chairman of the EEOC, depends on the Metro system for efficient transportation within the city.

If I may add a comment in relation to advance notice on Amtrak. Dennis, Evan Kemp, and I all use Amtrak from here to New York in work-related travel. My boss, Jay Rockman, is sitting right over there. He gets requests for people that can go to New York to make speeches, to go to meetings, and so forth all of the time.

Suppose for a minute he gets a request this afternoon for someone to be in a meeting in New York either this evening or tomorrow, which is not at all inconceivable, and he decides that I am the person who should go to that meeting.

Fortunately for me, Jay is a good guy and I don't think I would lose my job if I couldn't get on the Amtrak and go to New York. But it certainly would impair my usefulness to the President's Committee if Jay could not make the decision to send me to that meeting, which would of course require me to hustle down to Union Station, get on the train and go to the meeting.

If an advanced notice requirement of 12 hours is required, he can't do that. I, in my personal use of Amtrak, which includes three different routes, have never found that an advance notice requirement did anything. Sometimes I have told them in advance. Sometimes I have not told them. I have always gotten on the train.

What do these examples say about us as wheelchair users? I think that they demonstrate that we are just like everybody else. We have the same transportation needs, and make the same transportation choices, when they are available to us. I chose to live in Vienna because I can use the Metro to get to work from there.

Now, I wish I lived in Maryland, so I could use the Amtrak. Other people, disabled and able-bodied, make exactly the same choice. When a new metro line or a new computer line goes in, people move to that area so they can use it.

Some members of this committee may have been told that those of us who are mobility-impaired are less likely than are other people to use the Metro system or commuter rail system because we can't get to the stations. I doubt that anyone can prove that contention, because it is a difficult thing to study, and to the best of my knowledge, never has been studied in any reasonable way.

In any case, my personal experience indicates otherwise. Every morning when I go through the Metro parking lot at Vienna, all of the handicapped spaces are occupied by cars with the appropriate plates indicating that the drives are disabled. Other wheelchair commuters wheel to the station, as I do, or arrive by bus.

We're just like everybody else. If we want to use the accessible metro, we will figure out a way to do it. And, yes, we get wet when it rains, just like everybody else. That is appropriate. Metro is not obliged to treat us better than other passengers. We don't expect it. I personally don't want it. I just want equal access and equal treatment.

Mr. Chairman, I have been attending as many hearings on the ADA as possible, and I have participated in scores of meetings on this bill over the last several months. One thing that concerns me about the discussions that I have heard is that there has been considerable emphasis on the specific costs to specific providers of services and very little discussion of the potential long-range cost savings to the taxpayers of this country.

I realize that one reason for this disparity of emphasis is that it is much easier to obtain current cost data about equipment, for example, than it is to project potential cost savings on the basis of the anticipated employment of many of the 8 million Americans With Disabilities who are currently unemployed but who want to work. We at the President's Committee have found that, second only to attitudinal barriers, lack of access to public transportation is the greatest impediment to employment of Americans With Disabilities.

I hope that our concentration on the trees will not prevent us from seeing the forest. Last week, my chairman, Justin Dart, testified before another committee that his congressional task force estimates that the unnecessary unemployment of those 8 million people with disabilities costs our society more than 246 billion dollars annually.

Chairman Dart added that President Bush has used the figure of 300 billion annually. Those are very large figures, Mr. Chairman—perhaps so large that we have difficulty comparing them with the much smaller figures that we discuss when we talk about the cost of making a train or a bus accessible.

I understand that a particular concern of this committee is the cost of funding accessibility for Amtrak. I am not an expert on Amtrak, but I do find this concern a little bit confusing. My confusion has been somewhat lessened by the earlier testimony here today which confirms what we had understood to be the case, that Amtrak is already obliged to make its system accessible under section 504 of the Rehabilitation Act.

I think I will leave it up to the lawyers to determine what effect the passage of ADA in its current form might have on the obligation under section 504, but it seems clear to me that an obligation exists even without ADA.

Finally, even though I know that a discussion of costs is inevitable, I would hope that members of this committee will keep in mind that the Americans With Disabilities Act is intended as a civil rights statute. As my chairman, Justin Dart, said last week: "Is equality affordable in America? Not since the abolition of slavery has equality been negotiable for money in this country."

Thank you.

Mr. Luken. Mr. Tim Cook.

Your organization is called the National Disability Action Center.

STATEMENT OF TIM COOK

Mr. Cook. Thank you, Mr. Chairman.

Mr. Luken. Perhaps you will start out by telling us what that entity is.

Mr. Cook. It is an advocacy organization which is in existence to defend the rights of people with disabilities to be integrated and to be free from discrimination in all aspects of society.

Mr. LUKEN. Are you totally independent or affiliated with any other——

Mr. COOK. No, we are independent, Mr. Chairman.

It is a special pleasure as an advocate for people with disabilities to appear here this morning with these distinguished members of the administration. Too often over the past several years we have gone on opposite ends of a courtroom battle or an administrative battle trying to obtain access.

That is changing, and we can see that that is changing, and we are very happy to appear before this committee, along with the administration to urge that the Senate version of the Americans With Disabilities Act be also adopted by the House of Representatives.

As the director of the National Disability Action Center, I have seen firsthand the fundamental importance to people with disabilities of accessible transportation, and part of it is the result of something this Congress did in 1975, 14 years ago, in enacting the education of the Handicap Act.

As a result of that piece of legislation, we now have adults with severe disabilities who have been educated and trained, and they want jobs, they want to be able to use recreational facilities. They want to be able to receive educational programs, but they cannot do it without the ability to get there.

It is a civil rights issue for us as much as it was for those brave people in Montgomery, AL, in the 1950's who boycotted the bus system because they were segregated from that system. But we have today transit systems who are still arguing that they want to be excluded from the provisions of the Americans With Disabilities Act, and the issue I urge upon you this morning is that that is not the debate anymore.

That is not the question. The only question at this point is not whether transportation systems and all aspects of those systems should be covered, it is how they should be covered. The transit systems are continuing still to ask that they be excluded from the Americans With Disabilities Act and that for that reason the people with disabilities may continue to be excluded from those transportation systems.

The whole thrust of much of the testimony you are going to be hearing later on this morning is that cost must come first, but the whole point of the Americans With Disabilities Act is that providing access to people with disabilities is no longer to be considered an extra, a luxury item, something that may in the transit system's discretion be provided.

The whole thrust of this act is access to people with disabilities, about an essential part of the provision of transportation systems. Now, there are a number of features of the Americans With Disabilities Act that actually makes it less costly and to the disability community constitute a severe compromise.

For one thing it doesn't require the retrofitting of most of the vehicles used by this transit systems. It only requires the retrofitting of at most one vehicle per train, and that is a compromise. The rest of the cars, for as long as they are used by the transit system can remain inaccessible. Only new vehicles must be accessible. Moreover, transit systems are given an enormous length of time to comply with the statute for the structural changes, an additional 20 years.

People with disabilities have waited a very, very long time to obtain access. Under this act we will still have to wait until the year 2009 before we can fully use accessible train systems where structural changes are required, 2009. The transit systems are coming back and saying that is not even enough for them.

They want the ability to exclude us from those systems even past the year 2009. They want to be able to exclude us forever, and that is unacceptable to the disability community. It is also important to acknowledge that the costs of this bill are diminished by the fact that many new transit systems are currently being proposed and considered, and these new systems are already being built to full accessibility standards as required by other statutes such as the Architectural Barriers Act and section 504 and even State and local building codes.

These are not any additional costs attributable to the Americans With Disabilities Act. Similarly, in terms of alterations of facilities, when a transit system that receives Federal assistance alters their stations, they are already required by separate legislation to make these alterations accessible. There is no additional cost attributable to the ADA there, either.

It is also important to realize that many systems are already in 100 percent full compliance with all the requirements of the ADA. Just let me list a few: the Miami Tri Rail System, the Bay Area Rapid Transit System in northern California. The Washington, DC metro rail, of course, is fully accessible, the Atlanta, GA Subway and Elevated System, Baltimore Metro, the Sacramento, San Diego and San Jose, CA.

Light rail systems all are accessible, as are the Jacksonville, FL; Detroit, MI; Las Vegas, NE People Movers. The Buffalo, Portland, OR and Fort Worth systems are also 100 percent accessible already so there will be no additional costs there under the statute. It is also an important thing to realize that under the Urban Mass Transit Act of 1970, and this has long been the case, 80 percent of the costs of capital expenditures are already covered by the Federal Government, and 50 percent of the operating costs, such as maintenance are already covered by the Federal Government.

So you have an enormous influx of Federal financial assistance here already to assist transit systems in making the changes that are going to be required by the statute. I think it is also reasonable to assume that the millions of people with disabilities who are currently excluded from transit systems will begin using these systems, and this has been the case in study after study, that once you make the system accessible you have an enormous influx of people with disabilities into the system.

These are fair paying customers. It also makes the systems more usable for other people besides people with disabilities. It makes it easier for parents with small children to somewhere an accessible vehicle. It is easier for women here pregnant. It is easier for our elders in society to board an accessible vehicle.

It is easier for someone carrying packages, even, so it is an overall improvement to the system to render that system accessible that will have enormous benefits, not just for people with disabilities. Finally, I wanted to briefly address Mr. Callahan's question on charter services, and I am happy to inform him and the committee that there is already a provision which permits flexibility in the way charter bus systems comply with the ADA.

I believe it is section 304(b)(3) of the Senate-passed version which your talking about demand responsive systems, such as charter bus systems, they do not have to make every bus in their fleet accessible.

It is not an exclusion. They still have to comply with the act, but the act says that if you look at their system in its entirety, as long as they have sufficient vehicles to ensure the service to people with disabilities, they do not have to make their entire fleet accessible, that they can make 5 out of their 20 buses, as Mr. Callahan suggested, accessible, and that meets the demand, and that is sufficient.

In fact, they may have to purchase no accessible buses whatsoever if they have the ability, for instance, to rent an accessible bus when the demand is called for by people with disabilities. I would like to briefly address some of the points that are going to be made on the next panel, specifically two points by the representative from Southern Pennsylvania Transit Assistant Program in Philadelphia.

They have requested a complete exclusion for streetcars, which are often called light rail systems under the statute. There are various means by which light rail systems can be rendered accessible. There is enormous flexibility over all in this act in the ways that vehicles can be made accessible.

For instance, on the streetcars parallel lifts are being developed which will render those streetcars accessible. You can also construct islands in the highways to make it easy for people with disabilities to board and unboard streetcars. It may not even be necessary to make every single station stops accessible.

You could make the key station stops along the streetcar lines accessible without necessarily making 100 percent of the stops along those ways accessible. So because of this enormous flexibility under the act, we believe it is very important that this committee reject the suggestion that light rail systems be excluded from the act.

The same principle generally that applies to Amtrak and the computer rail system applies here, and that is the ADA does not dictate one single method for making systems accessible. It is left to the option of the local transit system to figure out how to do it, as long as they do do it, and these systems, these light rail systems are as critical to people with disabilities as they are to other people.

In many areas of Philadelphia, for instance, the light rail system is the only way for people to get into center city from the outlying suburbs. Ms. Lavoritano also requests that they not be required to provide mobility training because they say they don't have the capability to do that.

It is interesting that many, many transit systems in this country do provide mobility training to people with disabilities. There is an enormous impact. If I may give an example from the head of the Johnstown, PA Transit System, one of Ms. Lavoritano's colleagues, testified when Johnstown first started making their buses accessible they provided approximately 200 rides a month.

Once they initiated a program of mobility training there to train people with disabilities how to use the accessible buses and, let's face it, many people who aren't disabled are afraid to use public transit, so it is especially important that that sort of training be provided to people with disabilities.

As a result, in Johnstown of providing mobility training, they now serve 36,000 disabled people a month on their bus systems. In terms of Amtrak, I would like to make one critical point here which has been alluded to, and that is that when regulations were issued by the Department of Transportation ten yeas ago in 1979, those regulations required Amtrak to make all of its stations accessible within 10 years.

Here we are in 1989, and under those regulations they are already required to be where the ADA will require them to be 20 years from now. If I would have been Mr. Claytor I would have come to this committee and urged this committee to pass this act as soon as possible. What this act really does is give Amtrak a 20-year reprieve from the requirements of the current Department of Transportation regulation, and those regulations appear at volume 49 of the Code of Federal Regulations, part 27, subpart D, and so this act really does Amtrak a major favor by extending by 20 years the time by which it must comply with the accessibility requirements of section 504.

But what are the costs, Mr. Chairman, of not providing access?

Mr. LUKEN. I wonder if we could move along.

Mr. COOK. Yes, sir. I wanted to just very briefly outline the costs of not providing access, and I would like to briefly allude to some testimony provided by——

Mr. LUKEN. Well, I think your time has expired. We are going to have some discussion. I believe you are going into a subject that has been covered.

Mr. COOK. Thank you, Mr. Chairman.

Mr. LUKEN. We can all agree fervently on the objectives, but your testimony, Mr. Calkins, Mr. Cook, Mr. Roffe, in your testimony you seem to be lecturing us that we are talking about money and we shouldn't be talking about money. Well, let's look at this now. Does accessibility cost money, Mr. Calkins?

Mr. CALKINS. I think this is something I am really an avid believer in. I honestly believe that in a not too distant future, maybe within the decade, we will see that the Americans With Disabilities Act will pay for itself.

Mr. LUKEN. But could we talk about it in my terms. Then we will allow time to talk about it in your terms. Does it cost money or doesn't it?

Mr. CALKINS. It certainly does cost money.

Mr. LUKEN. There is no legislative ledger domain that is going to provide that money. We can't just pass a law or wave a wand to provide that money, right?

Mr. **Calkins**. The money to pay for in this case you are talking about Amtrak?

Mr. **Luken**. Amtrak, buses.

Mr. **Calkins**. Bus.

Mr. **Luken**. Any of them, right?

Mr. **Calkins**. That's right.

Mr. **Luken**. Our transportation system in this country is sustained largely by or significantly by public subsidies.

Mr. **Calkins**. Absolutely.

Mr. **Luken**. That's us.

Mr. **Calkins**. That's us. That's you.

Mr. **Luken**. And you are lecturing us for talking about money. Especially when we say we would want to provide that money. But the administration says it will veto that money when we provide it, and yet you lecture us. You don't mind if I become a little impatient.

Mr. **Calkins**. Oh, not at all.

Mr. **Luken**. And you don't help us to get the administration to provide the money. Now, if we didn't provide the money, there wouldn't be any Amtrak. Would that inconvenience or provide any hardships for the disabled?

Mr. **Calkins**. It would for me, yes.

Mr. **Luken**. What are you doing about Mr. Bush, who wants to abolish it?

Mr. **Calkins**. Well, unfortunately I am not at a level within the Federal Government that I am doing anything with exalted people at that level.

Mr. **Luken**. Well, we didn't support you.

Mr. **Calkins**. No.

Mr. **Luken**. So what are you doing with Mr. Reagan and Mr. Bush to get the money? We are willing to provide it, but they are going to veto it.

Mr. **Calkins**. One way that I think you——

Mr. **Luken**. We were told yesterday or when was it the Amtrak bill was up? Monday. We were told Mr. Bush is going to veto it. So what are we talking about? If he vetos it, we don't have to worry about any of this.

Mr. **Calkins**. One way that you will have more money to appropriate for Amtrak, or anything else that you deem appropriate to appropriate for, is if a significant proportion of those 8 million people who are unemployed and are currently a drain on the Federal Treasury become employed and pay taxes.

Mr. **Luken**. I am sorry, but that is not relevant to the question. Before we get to that question, we must first decide whether we are going to provide Amtrak with money to provide service, and we probably will, and Mr. Bush is going to disagree with that part of it, which is irreconcilable with the administration's position on this bill.

We can't agree to make Amtrak accessible if there is no Amtrak. Your position, I think, is irreconcilable, in conflict, unless you also take a position in support of Mr. Claytor when he says he needs the money and he can't take it out of the money that we give him—relatively a few dollars—to provide cars. We can't upgrade the cars if he doesn't have cars. That is the situation that he has been in.

Mr. CALKINS. If someone in the Administration who did have the authority to make such a decision were to ask me my opinion——

Mr. LUKEN. I don't agree with you. You have the ability to make your position known within the Administration.

Mr. CALKINS. We have.

Mr. LUKEN. For you to say if somebody would ask you, I just question the total consistency of that.

Mr. CALKINS. Put it this way. My chairman, who is at a level where he can make such suggestions, agrees with you, that providing Federal money for accessibility ought to be a priority, because it will pay for itself in the long run, and I certainly agree with him.

Mr. LUKEN. I agree with that.

Mr. CALKINS. So I don't think we are really in disagreement.

Mr. LUKEN. We will probably do it. But, because of the power of the veto, we may be forced to do it along the lines of setting a requirement, but then not paying for it. In the long run, that is not going to work out, because, as Mr. Claytor has said in a couple of cases here, they would have to close down some of the stations, and as an example, not provide as much service—as an example, basic services for the disabled.

If the basic service isn't there, the disabled can't partake of it. Now, I apologize for just taking a portion of your testimony and concentrating on it. On the other hand, I don't apologize in the sense that I don't think it appears relevant or that I don't think it is most important, because that is what I did. I think that is why I decided to do it, because I think it is most essential.

I agree with everything else that you say, in other words, and I will work for it, but I don't think we are going to accomplish it unless we provide the funds, adequate funds for, in this in case, the Amtrak situation. We are not as familiar with it here in the sense of working with it every day, but the same argument is going to be made on bus service. Bus service is still—I believe it is in a significant way—subsidized through the Federal coffers. We are probably going to have a vote in a minute. I just wanted to in this way, urge your support, and we will support, or I will, support your position. Okay?

Mr. CALKINS. Thank you.

Mr. LUKEN. The gentleman from Kansas.

Mr. WHITTAKER. I would like to direct my questions really to anybody from the Access Board, but at a fiscal year 1990 appropriations hearing, the board testified that the ADA would:

> Tremendously expand the scope of the board because it would, for the first time, deal with transportation and local building codes and even with the private sector.

From the fiscal year 1990 budget justification, it appears that the board currently has an annual budget of about $2 million and only 24 full-time employees. What is the estimated expansion of the board envisioned if the ADA is enacted?

Mr. ROFFE. Sir, we have told OMB we would like an additional two and a half FTE to bring it up primarily for technical assistance type functions.

Mr. **Whittaker**. Two and a half additional employees is all of would think you would require?

Mr. **Roffe**. Yes sir.

Mr. **Whittaker**. Thank you.

Mr. **Luken**. Anything that any of you would want to say about paratransit, in view of what has been said? I don't think any of you have mentioned it, and you haven't been asked about it, and I don't intend to quiz you on it, but if there is anything up to—Mr. Cannon?

Mr. **Cannon**. We agree that our interpretation of the bill is that paratransit is not something that was intended to be required of the commuter authorities or Amtrak. The difference has to do with the way in which you look at something like a service area. When you talk about bus service, and urbanized area transportation, you can define a geographical service that is covered, and the issue there is if a provider provides fixed route buses and there are some people in that service area who cannot use them, it has an obligation to provide some kind of comparable level through paratransit to those people who cannot use them.

In the case of commuter rail, in which there is no real service area in the same sense—it is a long corridor—the commuter rail and Amtrak services don't now provide any service to the general public that goes out into the community and brings them to stations. And the bill, as we understand it, is not intended to create additional extra services for disabled people, but rather to give them an equal access to the services that are provided to the public.

Now, if an Amtrak station is in the community where the community is providing some fixed route bus service to and from that station, then our analysis would be that that entity which is providing that service would be required to provide some kind of comparable paratransit to the disabled persons in the same community that could not take advantage of the fixed route, but that it would not be a requirement of the commuter rail or the intercity rail operator itself.

Mr. **Luken**. A reasoned statement. We thank you very much for it. I think that clarifies your position, and perhaps sheds some light on the whole situation.

Mr. **Cannon**. One more station bout the cost of putting lifts and buses—which is not in your jurisdiction but is somewhat analogous. There has been in the last 8 to 10 years a decrease in the Federal contribution to public transit in general, and as a transit advocate, I happen to think that is not a good idea. During that same period——

Mr. **Luken**. I somewhat tentatively offer my comments about that, you know. I was Mayor of Cincinnati and when we went public, at that time much of the transit system was financed—capital and operating costs—out of the Federal subsidy. But as you say, that is less so today.

Mr. **Cannon**. It has been decreasing.

Mr. **Luken**. But that brings up the point that the relatively few people who pay through the fare box are not going to be able to support the service on their own—that is the reason they went public in the first place—for any significant amount of services of which the disabled could partake.

Mr. CANNON. Well, but the point is that during that same period of time, with decreasing Federal commitment, there has been a tremendous increase in the number of transit agencies that have put lifts on buses, as opposed to paratransit, and the reason is simple. It is cheaper, and in reality, as the costs go down, there is a cost payback in terms of switching to that kind of services as opposed to paratransit.

Mr. LUKEN. Well, we thank you very much. That is very, very helpful. We thank all of you on this panel.

We will move on with such time as we have. We may be called away at any moment for a vote, but we will move on until that happens, with Chicago METRA.

Mr. Phil Pagano, Ms. Carol Lavoritano, Mr. Henry Miller, and Mr. Scott Fazekas. I would like to move along as quickly as we can. We will start with Mr. Pagano.

STATEMENTS OF PHILIP A. PAGANO, ASSISTANT EXECUTIVE DIRECTOR FOR CORPORATE ADMINISTRATION, CHICAGO METRA; HENRY MILLER, DIRECTOR OF GOVERNMENT AND COMMUNITY RELATIONS, NEW YORK METROPOLITAN TRANSIT AUTHORITY; SCOTT FAZEKAS, ON BEHALF OF THE AMERICAN INSTITUTE OF ARCHITECTS; AND CAROL LAVORITANO, DIRECTOR, PROGRAM AND POLICY ANALYSIS DEPARTMENT, SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

Mr. PAGANO. Thank you, Mr. Chairman.

Let me start by expressing my appreciation for inviting METRA to be here today. I am here to comment on the Americans With Disabilities Act.

Mr. LUKEN. Tell us what METRA is in a word.

Mr. PAGANO. The Commuter Rail for the Chicago metropolitan area.

Mr. LUKEN. What is within your system, what types of transit?

Mr. PAGANO. Strictly commuter rail.

Mr. LUKEN. Strictly commuter?

Mr. PAGANO. That is correct.

Mr. LUKEN. Is there another authority in the Chicago area?

Mr. PAGANO. There is three other authorities in the Chicago area.

Mr. LUKEN. It bothered me before when the Federal people were talking about transit authorities, as if to describe just one kind of a system. It varies in different metropolitan communities, and in nonmetropolitan communities, right?

Mr. PAGANO. I was here when you made that statement, and I think your point was well taken.

Mr. LUKEN. What are the other three?

Mr. PAGANO. The Chicago Transit Authority, which runs within the city of Chicago, and some outlying suburban areas; the Rapid Transit and Bus, and then there is PACE, which is the suburban bus division, and that runs strictly light suburban buses within the surrounding communities of north Illinois.

Mr. LUKEN. So the rapid transit would be light rail, right?

Mr. **Pagano**. That is right.

Mr. **Luken**. Basically. Of course, none of those definitions are concrete, are they, depending upon the community?

Mr. **Pagano**. That is correct.

Mr. **Luken**. Proceed.

Mr. **Pagano**. In my testimony today I want to stress our willingness to meet the purposes of the ADA, while noting our concern about certain implications. I will focus on METRA's plan to provide accessibility to all its trains in a cost effective manner that will meet the needs of the disabled community.

METRA oversees all commuter rail operations in the 3,700 square mile northeast Illinois region, with responsibility for day-to-day operations, fare and service levels, capital improvements and planning.

The METRA system is comprised of seven railroads, which operate on 13 separate lines radiating from the Chicago Loop and serves 100 communities at 208 rail stations. METRA currently directly owns and operates three railroads and has purchase of service agreements with four others. Railroads in the METRA system, collectively, operate more than 3,600 trains weekly over approximately 1,200 miles of track. Our fleet consists of 131 diesel locomotives, 686 bilevel commuter cars and 209 self-propelled electric cars. On an average weekday, over 140,000 people board our trains twice daily. In 1988, the METRA system carried more than 68.5 million passenger trips, accounting for about one-fifth of all commuter rail trips in the Nation. Over the last 5 years METRA has experienced annual ridership growth of anywhere from 4 to 6 percent.

Passage of the Americans With Disability Act will have a profound impact on METRA. I am pleased to say that extensive planning by METRA will permit, for the most part, timely compliance with ADA's requirements. We have spent a considerable amount of time and money over the past several years engaged in a number of activities aimed at improving accessibility for the disabled residents of, and visitors to the METRA service area. These efforts include: Ongoing implementation of accessibility improvements to existing stations and accessible design for all new construction; operation of a growing lift equipped paratransit service to provide "rail-like" service to disabled people using wheelchairs; and detailed analysis of options for permitting the use of METRA diesel powered services by persons with disabilities, including wheelchair users.

These efforts, undertaken in consultation with Chicago area representatives of people with disabilities, have put METRA in the desirable position of being prepared for the central requirements of Americans With Disability Act, and have also given us keen insight into compliance.

We believe that as Congress prepares to expand and confirm the rights of the disabled in our society, it should give serious thought to how the costs of these necessary changes are to be met.

METRA's overall capital needs over the next 10 years already exceed projected available funding by approximately $600 million. It should be brought to the committee's attention that this projected shortfall would have been even more substantial if it were not for legislative action, just taken by the State of Illinois, that provides an infusion of almost $500 million to METRA for capital improvements coming from an increase in the State gas tax.

For your consideration, here is a list of several items that will represent additional costs to improve accessibility for the disabled: One, METRA estimates that providing one accessible car on every train will add about $45 million to our rail car acquisition program. In addition to the capital investment, we expect to incur an annual increase in operating costs of approximately 250,000; two, METRA estimates an annual revenue loss could result, depending on usage, from $470,000 to $630,000 per year because of the seat loss on cars designed to be accessible. To relieve this situation, it may be necessary to add more commuter cars beyond normal requirements, further exacerbating our capital requirements. In discussing the impact of projected operating cost increases on revenue loss, the committee should be aware that under State law, it is mandated that the region's cost recovery ratio must be at lest 50 percent. Thus, METRA must be extremely sensitive to any abnormal cost conditions that must be met over time; and three, increased accessibility is likely to have an impact on the schedule and on time performance of METRA trains. Significant disruptions could affect ridership and revenue. It is difficult to quantify such potential input, but METRA believes that the one car per train requirement that we advocate in this testimony will do the most to ensure that scheduling delays are kept to a minimum, to the advantage of the able bodied and the disabled alike. METRA's ontime performance over the last 5 years averaged 98 percent, and our market research indicates that riders consider this a key element in their decision to use the system.

We doubt that anyone will take issue with the notion that accessibility ought to be achieved in the most cost effective manner possible. One of the key provisions of the ADA bill requires that within 5 years commuter rail services provide that at lest one car per train is accessible to disabled persons, including wheelchair users.

METRA supports and applauds this provision. We are in the process of implementing a plan, recently approved by the METRA Board, that will produce this result.

Mr. LUKEN. Mr. Pagano, as we indicated, we are running out of time, and your time has expired. If you want to finish in 30 seconds?

Mr. PAGANO. Thank you, Mr. Chairman.

I think the gist of the report for the record is that we would like, one, a recognition that it will have, in fact, a capital impact upon our system, and that Congress should take appropriate action to address that.

And second, the requirement that all cars are made accessible, be limited to one car being made accessible, since by the car design that we are proposing, we can always add additional wheelchair facilities to one vehicle. It makes no sense to have all the rolling stock made accessible.

Mr. LUKEN. Thank you.

Your full testimony has been made a part of the record. Thank you very much, Mr. Pagano.

[The prepared statement of Mr. Pagano follows:]

PREPARED STATEMENT OF PHILIP A. PAGANO, ASSISTANT EXECUTIVE DIRECTOR FOR CORPORATE ADMINISTRATION, METRA, THE COMMUTER RAIL DIVISION OF THE NORTHEASTERN ILLINOIS (CHICAGO) REGIONAL TRANSPORTATION AUTHORITY

I am here today to comment on the Americans with Disabilities Act as it is likely to affect my organization, METRA, and the many people we serve.

In my testimony today, I want to stress our willingness to meet the purposes of the ADA, while noting our concern about cost implications. I will focus on METRA's plan to provide accessibility to all its trains in a cost-effective manner that will meet the needs of the disabled community.

METRA oversees all commuter rail operations in the 3,700 square mile northeast Illinois region, with responsibility for day-to-day operations, fare and service levels, capital improvements and planning. A division of the Regional Transportation Authority, METRA was formed in 1985 and is the first agency in the history of the region to focus solely on commuter rail.

The METRA system is comprised of 7 railroads which operate on 13 separate lines radiating from the Chicago Loop and serves 100 communities at 208 local rail stations. METRA currently directly owns and operates three railroads and has purchase-of-service agreements with four others. Railroads in the METRA system, collectively, operate more than 3,600 trains weekly over approximately 1,200 miles of track. Our fleet consists of 131 diesel locomotives, 686 bilevel commuter cars and 209 self-propelled electric cars. On an average weekday, over 130,000 people board our trains twice daily. In 1988, the METRA system carried more than 68.5 million passenger trips, accounting for about one-fifth of all commuter rail trips in the nation.

Passage of the Americans with Disabilities Act will have a profound impact on METRA. I am pleased to say that extensive planning by METRA will permit, for the most part, timely compliance with ADA's requirements.

We have spent a considerable amount of time and money over the past several years engaged in a number of activities aimed at improving accessibility for the disabled residents of, and visitors to, the METRAservice area. These efforts include: Ongoing implementation of accessibility improvements to existing stations and accessible design for all new construction; operation of a growing lift-equipped paratransit service to provide "rail-like" service to disabled people using wheelchairs; and detailed analysis of options for permitting the use of METRA diesel-powered services by persons with disabilities, including wheelchair users.

These efforts, undertaken in consultation with Chicago area representatives of people with disabilities, have put METRA in the desirable position of being prepared for the central requirements of ADA, and have also given us keen insight into the cost of compliance.

It is the projected cost of compliance for which we are unprepared. We believe that as Congress prepares to expand and confirm the rights of the disabled in our society, it should give serious thought to how the costs of these necessary changes are to be met.

METRA's overall capital needs over the next ten years already exceed rejected available funding by approximately $600 million. It should be brought to the Committee's attention that this projected shortfall would have been even more substantial if it were not for legislative action just taken by the State of Illinois that provides an infusion of almost $560 million to METRA for capital improvements coming from an increase in the State gas tax. These spending needs cover an aspects of METRA's operations such as bridge rehabilitation, signals and communications improvements, and upgrading station facilities, and include capital commitments to improve services for the disabled. Our projected capital shortfall over the next decade reflects significant investments already made over the past few years directed specifically to meeting the needs of the disabled. The imposition of major new capital requirements to comply with this bill obviously will exacerbate METRA's projected budgetary situation.

For your consideration, here is a list of several items that win represent additional costs to improve accessibility for the disabled: (1) METRA estimates that providing one accessible car on every train will add about $45 million to our railcar acquisition program. In addition to the capital investment, we expect to incur an annual increase in operating costs of at least $235,000; (2) METRA estimates an annual revenue loss could result, depending on usage, from $470,000 to $630,000 per year because of the seat loss on cars designed to be accessible. To relieve this situation, it may be necessary to add more commuter cars beyond normal requirements, further exacerbating our capital requirements. In discussing the impact of projected operating cost increases on revenue loss, the committee should be aware that under Illinois law, it is mandated that the Region's cost recovery ratio (revenue vs. expenses) must be at least 50 percent. Thus, METRA must be extremely sensitive to any abnormal cost conditions that must be met over time; and (3) increased accessibility is likely to have an impact on the schedule and on-time performance of METRA trains. Significant disruptions could affect ridership and revenue. It is difficult to quantify such potential impact, but METRA believes that the one car per train requirement that we advocate in this testimony will do the most to ensure that scheduling delays are kept to a minimum, to the advantage of the able-bodied and the disabled alike. METRA's on-time performance over the last five years average 98 percent, and our market research indicates that riders consider this a key element in their decision to use the system.

We doubt that anyone will take issue with the notion that accessibility ought to be achieved in the most cost-effective manner possible. One of the key provisions of the ADA bill requires that within 5 years commuter rail services provide that at least one car per train is accessible to disabled persons, including wheelchair users.

METRA supports and applauds this provision. We are in the process of implementing a plan, recently approved by the METRA Board, that will produce this result. In fact, our plan will provide a degree of certainty and reliability not required in the legislation. Under this plan, all cab cars on our trains will become accessible as quickly as possible. Our rail car purchase program will be revised so that the only cars purchased in the next several years will be accessible cab cars. The effect of this plan is that METRA will be providing cost-effective, accessible service on all its trains.

To understand why this proposal is uniquely workable in the case of METRA's type of operation, I must first explain how the "push-pull" diesel service works. For most of passenger railroading's history, locomotives could only pull passenger cars, and if the train was to reverse direction, the train had to be physically turned around, often with the use of a turntable. Push-pull service, on the other hand, allows operation of a train in either direction by employing a "cab-control car" at the end of the train opposite the locomotive. Otherwise similar to the predominant passenger cars (called trailers), the cab-car has a crew compartment with the full complement of controls needed to run the train. In "push-pull" mode, the train crew occupies the locomotive. In "push" mode, the locomotive, of course, continues to supply motive power, but the crew occupies the other end of the train controlling its functions from the cab-control car. Operationally, this offers the major advantage of not having to physically turn trains at the end of a run. Instead, the crew simply locks up controls on one end of the train, walks through to the other end, and resumes operation in the opposite direction.

Push-pull operation is employed on every diesel line in the METRA system, and, therefore, every single train operated must have at least one cab control car. Trains on the METRA system are not, and cannot be, operated without a cab-control car. This was the main reason that our recently completed Accessible Railcar Design Project concluded that making cab-cars accessible was the best way to ensure full accessibility on the METRA system. There were additional reasons for choosing the cab-car including: The cab car has already been established as a specialized piece of equipment, requiring more intensive inspection and maintenance than trailer cars; the cab car's location on the train ensures that, at downtown terminals, the car will be located at the most advantageous boarding position possible, minimizing travel distances for disabled people to and from the station entrances; and use of the cab car was strongly endorsed by our project review committee, composed of wheelchair users find other disabled people, which worked closely on design details throughout the course of the project.

However, the ADA does not allow for the kind of innovative approach we have taken to providing accessibility. Under the Senate-passed bill, every new rail car would also have to be accessible. This requirement will impose substantial additional costs on METRA for very little additional benefit. Our approach of making all cab cars accessible would provide equivalent, if not better service. If demand increases, we can simply make more wheelchair locations available on each cab car.

I want to stress that our plan to make cab cars accessible has been strongly endorsed by METRA's project review committee, composed of wheelchair users and other disabled. We take this endorsement as recognition by the disabled community of the fact that full access to commuter rail services can be accomplished without a budget-busting requirement that every individual car have a rift. We hope that Congress will come to the same responsible conclusion reached by our disabled community.

As a final but very important note, Congress must recognize that this legislation, even if tailored to be highly cost-effective, will impose substantial costs over and above the massive capital needs of METRA and other transit services all over the country. The proposed requirement for an accessible paratransit service, even if METRA trains are accessible, will also add to the costs associated with compliance. The "undue financial burden" language in the legislation is welcome as a means of moderating excessive financial impacts, but does not entirely solve the problem.

Therefore, I urge Congress to give serious consideration to providing transit services the means by which those requirements are to be fulfilled. Federal funding support for public transportation has weakened considerably in recent years, and now we are being asked to do more with less. Accessibility for the disabled is a laudable public policy goal, and we believe such policymaking ought to be accompanied by the funding needed to achieve that goal.

This concludes my prepared testimony and I would be happy to answer any questions the Committee may have.

Mr. Pagano. Mr. Miller.

STATEMENT OF HENRY MILLER

Mr. Miller. Thank you, Mr. Chairman.

Mr. Luken. Your testimony will be made a part of the record. You can proceed in any way that will be helpful.

Mr. Miller. Thank you, Mr. Chairman.

I am Henry Miller. I am director of government and community relations with New York Metropolitan Transit Authority.

The MTA includes Triborough Bridge and Tunnel Authority as well as the Metropolitan Commuter Railroad and the Long Island Railroad, the two commuter railroads on which our attention is focused today.

Before I address specific aspects of the Americans With Disability Act, I would like the committee to know the MTA has been working aggressively for years to achieve an accessible transportation system which meets the principals of the proposed act.

As examples of our efforts, I would cite the following: At present, our bus fleet includes 2,800 buses equipped with wheelchair lifts. This represents 80 percent of the bus fleet. By 1990, 89 percent of our bus fleet will be lift equipped. This level will increase steadily until 100 percent is reached; the 100 percent of our subway fleet can accommodate wheelchairs, meaning that the doors are wide enough and the platform gap is small enough to permit wheelchairs to enter, and a program is underway to make key stations in the subway system accessible; and the Metropolitan Transit Authority Commuter Railroad operates 772 commuter rail cars and 93 percent of them can accommodate wheelchairs. The Long Island Railroad operates 1,100 rail cars and 84 percent of them can accommodate wheelchairs. Thirty-nine percent of the Metropolitan Transit Authority's commuter rail stations are accessible, 35 percent of the Long Island Railroad's stations are accessible.

While we support the goals of the act before us, we have substantial concerns with certain aspects of the bill in its present form. Those concerns focus on the paratransit requirements, the key station determinations, and the vehicle requirements.

I am interested to hear on the subject of paratransit, I am interested to hear the view expressed consistently today that the paratransit requirements of the bill do not apply to the commuter railroads. I would urge that this matter be made explicit in the bill.

There is an uncertainty about that, and a specific aspect of it that additionally concerns us is the requirement in the bill, in the Senate bill, that the transit authority in any given service area be responsible for paratransit. That requirement is inconsistent with the legal framework for existing paratransit operations in New York. In New York City, the city of New York is by State law, responsible for paratransit operations, not the transit authority.

With regard to key stations, both of our railroads have been retrofitting stations. We would urge the—given the age, scope and diversity of the stations in our system, we believe it is critical that the criteria used to determine key stations not follow a rigid formula, and we have a number of criteria that are included in our written testimony that we believe are important in determining what key stations are.

With regard to vehicles, there are certain provisions in the Senate bill and certain operational realities that we face which will make it difficult at bet to meet the deadlines for rail car accessibility.

First of all, the Senate bill refers to a requirement of one accessible car per train. That requirement, especially if it is interpreted to include securing devices and accessible bathrooms, is far more difficult to achieve from an operational standpoint than it sounds. Cars are switched constantly and in order to ensure that one train has one accessible car, means far more than one.

Second, the retrofitting of cars for accessible bathrooms would be a substantial loss. They include loss of seating and on route already filled to capacity, an increase in standees or where operationally feasible, the purchase of additional cars to make up that loss.

Third, on both railroads many of those cars which cannot presently be entered by wheelchairs and would thus be most difficult and expensive to retrofit, are scheduled to be retired within 10 years. In some cases, in order to meet the deadline contained in the Senate bill, we would be compelled either to undertake the expense of retrofitting the cars only to use them for an additional year or two, or forego the remaining years of the car's projected service.

Mr. LUKEN. Thank you.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF HENRY MILLER, DIRECTOR OF GOVERNMENT AND COMMUNITY RELATIONS FOR THE NEW YORK METROPOLITAN TRANSPORTATION AUTHORITY

Mr. Chairman, Members of the Committee, my name is Henry Miller, and I am Director of Government and Community Relations for the New York Metropolitan Transportation Authority. The MTA is a State Chartered Authority which oversees the operations of the largest public transportation system in the nation—a system which provides the vast majority of public transportation in the New York City metropolitan area. The MTA system includes, among other elements, the New York City Transit Authority, the Triborough Bridge and Tunnel Authority, an well as the Metro-North Commuter Railroad and the Long Island Rail Road, the two commuter railroads on which our attention is focused today.

Before I address specific aspects of the Americans with Disabilities Act, I would like the Committee to know that the MTA has been working aggressively for years to achieve an accessible transportation system which meets the principles of the proposed Act. We have committed substantial financial resources to theme efforts. We support the goals of the Act, and we believe that, with the efforts we have made to date coupled with future activities, the MTA can meet the objectives of the Act.

As examples of our efforts, I would cite the following:

One, at present, our bus fleet includes 2,898 wheel chair lift-equipped buses; this represents 80 percent of the bus fleet. By 1990, 89 percent of our bus fleet will be lift-equipped and this level will increase steadily until 100 percent is reached, assuming the availability of projected capital funds.

Two, 100 percent of our subway fleet can accommodate wheelchairs, meaning that the platform gap is small enough to permit wheelchairs to enter and a program is under way to make key stations in the subway system accessible. We do not have securing devices on subway cars.

Three, the Metro-North Commuter Railroad operates 772 commuter rail cars, and 93 percent of them can accommodate wheelchairs. The Long Island Rail Road operates 1,116 commuter rail cars, and 84 percent of them can accommodate wheel chairs. These figures do not reflect the availability of securing devices or accessible bathrooms on the cars.

Four, 46 of Metro-North's 117 commuter rail stations (39 percent) are accessible. Forty-seven of the Long Island Rail Road's 134 commuter rail stations (35 percent) are accessible.

Five, on the Long Island Rail Road, two stations serve well over 90 percent of the ridership: Jamaica Station, the key transfer station, will have new elevators for full access in 1990, and Pennsylvania Station, the main terminal, is currently undergoing a major reconstruction, including the introduction of elevators, targeted for completion in 1994. The reconstruction is being conducted in conjunction with Amtrak, the owner of the Station. At Grand Central Terminal, the main terminal for Metro-North, virtually every platform is accessible due to the foresight of its designers who included numerous ramps and elevators during its construction in 1914.

While there is still much to do, we believe that our commitment to accessible main line public transportation has shown real and substantial progress.

Our support for the goals of this Act, however, does not mean that we do not have substantial concerns with the bill in its current form. Our concerns are primarily definitional or operational in nature. They focus on three areas: The paratransit requirements; the "key station" determinations, and the vehicle requirements.

As the Committee requested; our concerns today will focus only on the impact of the Act on the commuter rail services that we provide on the Metro-North and Long Island railroads.

Our concern with the paratransit requirement contained in the Senate bill is primarily with the comparable level of service provision. While the Senate recognized that, as systems become increasingly accessible, the need for alternative service will diminish, we would like to see it made clear that paratransit should feed into key stations in main line accessible service rather than run parallel to it. We would also like to see a clearer definition of precisely who is "unable to use main line accessible service". We would hope that the Congress could provide more detailed guidance in these areas.

In addition, the requirement that the transit authority in any given service area be responsible for paratransit service is inconsistent with the legal framework for existing paratransit operations in Now York. Current State law requires the City of New York to assume this responsibility in the New York City Transit Authority service area. Consistent with this policy, we believe that it would be moot effective if the responsibility for operating paratransit service continued to rest with units of State or local government, as established by State law or executive determination.

The Metro-North Commuter Railroad and the Long Island Rail Road operate in two distinct service areas, in Metro-North's case involving multi-State operations and in both cases involving travel distances in excess of two hours. Should the MTA be required to coordinate alternative service, it would divert our attention and resources from our primary responsibility: accessible main line service. So long as service is provided, there is no compelling federal interest in determining which unit of local government provides it.

Consistent with the MTA's overall commitment, both the Metro-North Commuter Railroad and the Long Island Rail Road have been retrofitting stations on their routes as part of their capital improvement programs. As indicated above, more than one-third of those stations are accessible. As the capital program continues, the number of accessible stations will continue to increase.

In determining which stations are "key" stations, both Metro-North and the Long island Rail Road consider the following criteria to be important: The volume of passengers using a station; the role of a station as a transfer point within the system; the role of a station as an intermodal transfer point; the extent to which a station serves a major activity center; the location of a station at the end of a rail line; the proximity of a station to other accessible stations, and the extent and feasibility of structural reconstruction that would be required.

Because of the age, scope, and diversity of the stations in our system, we believe that it is critical that the criteria used to determine key stations not follow a rigid formula. Each station should be judged on site-specific characteristics including the cost and feasibility of accessibility provisions.

We would also suggest that the Committee go a stop further. We believe that when a transportation authority develops a "key station" plan for meeting the requirements of this legislation—a plan which would be developed in consultation with representatives of the disabled community—that plan should be approved by the governing entity of the authority with responsibility for the operation. The governing board should be required to hold a public hearing before any such approval.

There are certain provisions in the Senate bill and certain operational realities that we face which will make it difficult, at best, to meet the deadlines for tail car accessibility detailed in the bill. First, while the Senate bill refers to a requirement of one accessible car per trains that requirement (especially if it is interpreted to include securing devices and accessible bathrooms) is far more difficult to achieve from an operational standpoint than it sounds. Cars are switched constantly, and in order to ensure that every train has one fully accessible car, far more than a small portion of the fleet will have to be retrofitted. This could require almost all cars or multicar sets to be retrofitted.

Second, the retrofitting of cars to include accessible bathrooms would result in substantial hidden costs. These include the loss of seating and (on routes already filled to capacity) an increase in standees or, where operationally feasible, the likely purchase of additional care to make up that loss.

It should be noted that Metro-North currently operates coaches with accessible bathrooms on certain of its long-distance routes. The Long Island Rail Road is currently awaiting delivery of a prototype bilevel coach which is fully accessible, including bathrooms, for use in similar service.

Third, on both railroads, many of those cars which cannot presently be entered by wheelchairs, and would thus be most difficult and expensive to retrofit, are scheduled to be retired within ten years. In some cases, in order to meet the deadline contained in the Senate bill, we would be compelled either to undertake the expense of retrofitting the cars, if that is indeed possible, only to use them for an additional year or two or to forego the remaining years of the cars' projected service. In either case there is an added cost to the system.

For all of the above reasons, we believe that the legislation should provide flexibility and discretion in requiring existing vehicles to meet the standards of this Act and give particular consideration to the normal retirement schedule for cars.

The MTA in committed to creating a system that is safe, reliable, and available to all of the residents of our service area. While we have accomplished a great deal towards that end, there is much more to be done.

As you continue your deliberations on the legislation that is before you, we would hope that we could work with you to address the operational and definitional issues that we have raised today. We would also hope that you would consider the possibility of increased federal funding to expedite our ongoing efforts to make our main line service accessible.

We feel compelled to note that complying with this legislation, as currently passed by the Senate, is made all the more difficult by the fact that federal funding for mass transit has been reduced by 50 percent since 1981. It is our hope that you will consider the capital costs, both direct and indirect, required by this legislation and will consider providing additional federal aid to assist with those costs.

I appreciate the opportunity to testify before you and I would be happy to answer any questions that you might have.

Mr. LUKEN. I think the alternatives are if you would each take about 4 minutes, and much of the material we have gone over, we can wind this up. Of course, we may have to have an hour or two lunch hour, and I don't think any of us want to come back. I don't think I do, nor do we have the time, so Mr. Fazekas, would you try to do that?

Mr. FAZEKAS. Yes, Mr. Chairman.

STATEMENT OF SCOTT FAZEKAS

Mr. FAZEKAS. My name is Scott Fazekas. I am a member of the American Institute of Architects, whose views I represent, and I also have served as a building official for five different California jurisdictions. We appreciate the opportunity to appear. I will summarize my statement and request that the full text be printed in the record.

Mr. **Luken**. Okay. You may proceed.

Mr. **Fazekas**. The American Institute of Architects are no strangers to the challenges of disability. AIA public policy has long endorsed improved handicapped access. The AIA recognizes the human resource and the humanity of handicapped people, the ADA and congressional action to accomplish it, but we want this legislation to work, so its requirements must be clear, understandable, and achievable, or else it fails.

I feel a number of them would erect barriers to compliance by good people intending to do the right thing. This would also significantly increase the liability problems for architects. It is not sufficient to leave some of the ADA's policy specifications to the regulations and the people who will have to write them.

The AIA is concerned that title II's provisions for alterations of existing facilities in rail stations are confusing. Neither existing facilities nor new stations are defined in this legislative language, but separate requirements are apparently set forth for each. For example, the legislation should say that the alteration of exiting public transportation facilities—emphasis on "except for rails," which are addressed separately and effectively upon enactment as soon as capable. If this is intended by the committee, ADA requires removal of architectural barriers if the removal is readily achievable.

The provision fails to distinguish between the removal of a single barrier and removal of many barriers of the same type in a single facility. The legislation should provide that if a facility has many repetitive and similar barriers that singly aren't difficult or costly to remove, the removal should either be phased or take place when the facility, or portions thereof, is renovated.

The alteration section of title III suffered from the same problems as in title II. There is no way of telling when a readily achievable removal and architectural barrier becomes an alteration and when an alteration also becomes a major structural one. Our statement notes Pennsylvania law provides welcome guidance in this area.

We are concerned that the legislation makes no provision for historical properties as well. The AIA is also concerned that the new construction provisions fail to account adequately for projects under design prior to the enactment of the bill.

Architects must comply by the effective dates, but may be subjected to costly, often complicated, redesign without knowing precisely what they must do to ensure compliance. To handle the problem we propose retention of the effective dates for alterations in new construction, but application of the new projects that receive a design contract prior to the day of enactment. Are you looking for a summary? Am I at the 4 minutes?

Mr. **Luken**. You are about a minute away.

Mr. **Fazekas**. To assure smooth transition between the date of enactment and the promulgation of regulations, the law should provide architects with a safe harbor. We proposed adherence in the interim to an appropriate standards of the American National Standards Institute standard 117.1, be deemed sufficient for compliance. A safe harbor could also be the uniform Federal accessibility standard, which is based on ANSI, but also contains a scoping element.

This provides architects with a readily accepted handicap access standard that they can refer to with confidence, and reduce their concerns about liability.

The ADA's new construction provisions exempt handicapped access features that are structurally impractical to incorporate. Unreasonable hardship terminology has been effectively used in the California handicapped laws to accommodate legitimate economic concern. AIA would support this type of wording.

To summarize how the Architectural and Transportation Compliance Board can do the writing of regulations with only two and a half additional employees, and to provide the technical assistance, and to spread information about the bill, that is something that would be difficult to accomplish. The AIA is mainly interested in seeing the bill proceed and hopes that our suggestions are constructive and will help the bill to be the bill it deserves to be.

Mr. LUKEN. Thank you very much, Mr. Fazekas. We will continue to work with you and solicit your assistance perhaps to draft the amendments and so on.

Thank you very much.

[The prepared statement of Mr. Fazekas follows:]

PREPARED STATEMENT OF SCOTT FAZEKAS, AMERICAN INSTITUTE OF ARCHITECTS

Mr. Chairman, my name is Scott Fazekas, AIA, a principal in the firm of BSI Consultants, Inc., of Santa Ana, California. I am a member of the Building Performance and Regulations Committee of the American Institute of Architects, whose views I offer today. I have also served as the building official for five separate California jurisdictions. The AIA is the professional association of 56,000 members which represents the nation's architects. This year, the AIA celebrates its 132nd anniversary. We commend you for holding these hearings and appreciate the opportunity to appear.

American architects are not strangers to the challenges of disability. The architectural profession seeks to serve the diverse needs of people through the buildings and other structures they occupy and use. The design of each of these places should be sensitive to the problems of people with special needs. Too many people live isolated and unfulfilled lives because too many places fail to accommodate their disabilities. As technology has advanced, as society has paid more attention to the rights of disabled citizens, and as law has increasingly specified standards to guarantee those rights, architects have become more successful in meeting the design challenges that disabilities pose.

Ending the isolation of handicapped people, and expanding their opportunities for fulfillment have been part of AIA public policy for a long time. Such a policy makes sense not only from a humanitarian standpoint but from an economic one as well. Our nation's population is aging, and between now and the end of the century we face the likelihood of serious labor shortages. The 43 million disabled Americans can swell the ranks of workers and enlarge the pool of consumers—both essential to economic prosperity—but only if we expand their access to workplaces and public accommodations.

The Americans with Disabilities Act (ADA) recognizes the human resource and the humanity of handicapped citizens. It seeks the same opportunity for handicapped people to secure a job, enter a workplace, use transportation, or visit a park that nondisabled people enjoy. The AIA supports the intent of the legislation and we support Congressional action to accomplish it. Because we do, we want this legislation to work. Its requirements must be clear, understandable, and achievable, or else it fails. Civil rights law trapped for years in costly litigation denies justice and opportunity for the very people it is designed to uplift.

Since the AIA bill would reach into so many aspects of national life, its effects are profound and complex. Unfortunately, the lack of clarity and the uncertainty of many important provisions would compound its complexity, would unfairly erect barriers to compliance by people who undertake to comply in good faith, and could significantly increase liability for a profession already beset by liability burdens. Given the increasing tendency of the Supreme Court to discount report language and legislative history, it is not sufficient to leave so many of the legislation's policy specifics to the regulatory process. By merely directing the legislation in a couple of crucial areas, which I mention below, it will contribute to more clear and successful legislation and regulations.

Because we expect that the Senate-passed bill, rather than the House bill as introduced, will form the basis for House deliberations, our remarks pertain to the provisions of S. 933 as approved by the Senate.

The AIA is concerned principally with certain provisions of Title II, which applies to public services, and of Title III which covers public accommodations and privately provided services. While we appreciate that this subcommittee's jurisdiction connects most directly with Title II, the ADA's impact on structures and facilities covered by both titles, such as office buildings and recreational facilities, has relevance for many of the subcommittee's interests. For example, the subcommittee has a primary jurisdiction over railroads but would have an interest in office buildings covered by the ADA. Within these two titles, we focus on those provisions that apply to architects and their practices. Let me review the AIA's specific concerns with this measure and suggest revisions to improve the bill's chances of accomplishing its purpose.

The AIA is concerned that the sections of Title II covering alterations for existing facilities and for rail stations are confusing, leaving in doubt what is required. It appears that separate requirements are set forth for existing facilities and for stations. Neither is defined in the legislative language, and so the distinction is unclear. To compound the confusion, the Senate report in Title III defines facilities to encompass stations.

It appears that alterations and major structural alterations, as in Titie III, are not required upon enactment, but if undertaken, then the altered area must be made readily accessible and usable. In the case of major structural alterations, the path of travel to the altered area must be made accessible, too. The AIA supports the distinction between the two alteration forms as necessary to encourage renovations by preventing small projects from burgeoning into costly, complex ones solely due to the need to provide an accessible route to the altered area. The legislation, however, provides no way of determining when an alteration becomes a major structural alteration, leaving the decision to the Attorney General. We also believe that the ADA's use of the term "structural" is inconsistent with the legislation's intent as described in the report. Major structural alteration implies major building support functions such as posts, columns, and load-bearing walls, yet the report makes it clear that alteration which are much more minor in nature are also within the scope of the legislation's intent. Dropped ceilings, doorways, and floors are not deemed major structural elements by the architectural and engineering community. The inconsistency can be eliminated by referring only to major alterations or by changing the word "structural" to "architectural".

Later on, the legislation demands that all intercity rail stations and key stations for other rail types be made readily accessible and usable by disabled people, as soon as practicable. The Secretary of Transportation may delay the requirement for up to three years in some cases, and for up to 20 years in others, with extraordinary cost of compliance a factor in the length of delay for key stations. Is the legislation providing that alterations for facilities other than stations and key stations are voluntary, but that rail stations must be made readily accessible and usable following enactment? It is unclear. If that is the requirement, then the legislation ought to say so, with proper definitions of the terms "facilities" and "key stations", and logical structuring of the sections.

Title III also suffers from problems with clarity.

The legislation requires that public accommodations remove architectural barriers, effective upon enactment, if the removal is "readily achievable". "Readily achievable" is described as "easily accomplishable and able to be achieved without much difficulty or expense". Additional criteria for determining whether the removal is readily achievable includes the size and type of the operation and the number of its employees and facilities. The provision fails to distinguish clearly between the cost and difficulty of removing a single barrier, and many barriers of the same type in a single facility. For example, the Senate report concludes that the installation of grab bars fits the readily achievable standard. The absence of a grab bar in a bathroom is evidently a barrier. The installation of a grab bar in a single bathroom is not much of a problem, but the installation of many grab bars in many bathrooms in a large office or hotel is a different matter entirely. The legislation should provide that if a facility has many architectural barriers that singly aren't difficult or costly to remove, the removal of all these barriers should either be phased in or occur when the facility is renovated.

Title III then contemplates "alteration" of a facility, which is more expensive and complex than the readily achievable removal of an architectural barrier. The legislation indicates that an alteration occurs at the choice of the facility owner. Title III does a better job than Title II in handling the distinction between handicapped access improvements required upon enactment in existing facilities, and those that take place only when owners choose to initiate them. The legislation still suffers from the recurring problem of no clear distinction between a readily achievable removal of an architectural barrier and an alteration of a facility. Also, as in Title II, the legislation gives no clue as to what differentiates a major structural alteration from an alteration. State laws already in existence provide better guidance. Pennsylvania law, adopted in December 1988, provides that alterations worth less than 30 percent of the value of a building must make only the altered area readily accessible and usable. Alterations valued at 30 to 50 percent of the building's value must also include an accessible route to the altered area. Alterations worth more than 50 percent of the value of the building must make the entire facility readily accessible and usable. The alterations section of Title III also establishes a "maximum extent feasible" test. This phrase is too vague, although the Senate report attempts a definition. Also, the legislation should take into account the potential for conflict between its provisions and federal requirements for historic preservation.

Distinctions between one term and another are very important. For example, if the threshold for a major structural alteration is set too low, then many owners may simply delay or even refuse renovations in situations where building values are low.

The legislation imposes requirements for new construction, which apply to facilities open for first occupancy more than 30 months after the date of enactment. It makes a distinction between public accommodations, which are defined in a list of facilities and establishments, and "potential places of employment" which appear to be everything not considered public accommodations. The AIA generally agrees with the premise that accessibility features can be more easily and less expensively incorporated into the original design.

"Potential places of employment", however, is a new term. It is unclear in the legislation whether all spaces within potential places of employment must be made readily accessible and usable, such as a storeroom rarely visited by anybody. The legislation's requirements should cover only those spaces within an establishment or facility that would be generally used by the public, permitting the accessibility of other spaces to be handled in the operations policies of the employer.

Although the legislation attempts to accommodate projects already in the design process by delaying their effective date of compliance (a year after enactment for alterations, 30 months for new construction), there will be serious transition problems for some projects that are or will be under contract for design prior to enactment of the bill. These projects must comply by the effective dates. They will therefore be subjected to costly, often complicated redesign, yet architects will not know with any certainty what they must do to comply. In its section estimating the bill's cost for state and local government, the Senate report acknowledges the significant added costs of redesign. One way to handle this problem is to retain the effective dates in the legislation for alteration and new construction, but have the law apply only to those projects that receive a contract for design after the date of enactment. Projects currently under design would not be covered. New or altered buildings thus escaping early compliance would eventually come under the alteration requirements. Our suggestion is also similar to, but we believe more effective than, the approach instituted in the Fair Housing Act Amendments regulations which exempt from compliance those projects whose final building permits are issued on or after January 14, 1990.

To provide a "safe harbor" for architects, particularly necessary during the transition from enactment to final regulations, the legislation should provide in the statute language that compliance with the requirements of the American National Standards Institute ANSI standard 117.1 1986 or an equivalent standard would be sufficient, though not necessary, for compliance with the legislation. ANSI 117.1 is a national model handicapped access standard adopted throughout the country, and well understood by architects and others. Given the uncertainty of the ADA's requirements, and of the nature of the regulations, architects need a readily accepted standard to which they can refer with confidence. Since ANSI no longer prescribes the scope of the standard, such as how many accessible bathrooms should be placed in a new office project as opposed to what a handicapped accessible bathroom looks like, the legislation as an alternative could instead refer to the Uniform Federal Accessibility Standard (UFAS), which contains a scoping element. In the new fair housing law enacted last year, ANSI is deemed a sufficient standard to follow in complying with accessibility requirements for housing.

Because the report makes it clear that the Architectural and Transportation Barriers Compliance Board shall extend and make necessary revisions to the federal Minimum Guidelines and Requirements for Accessible Design (MGRAD), a question is raised about the relationship of this provision to current ANSI standards. Is the revised MGRAD supposed to supplant ANSI as the standard for the details of handicapped accessibility design? MGRAD now relies on the ANSI standard. The legislation should specify this continued reliance, except, to the extent that a scoping element is required.

The ADA's new construction provisions also exempt from compliance those new projects where it is "structurally impractical" to do so. The Senate report makes it clear that structural impracticability does not pertain to conditions involving the steep grade of a site but only to those conditions that would prevent accessibility or destroy the physical integrity of a structure. It is meant to be a very limited exemption involving such buildings as those built on stilts in marshland or in a floodplain. The issue of economic feasibility should not be overlooked, especially since such feasibility is inherent in the idea of structural impracticability. The sections of the ADA dealing with readily achievable removal of architectural barriers and with alterations already acknowledge the cost of compliance and seek to ensure that the legislation's costs are not unreasonable. The new construction requirements should do the same. The AIA supports the legislation's intent to require the incorporation of accessibility features which are not prevented by structural impracticability or economic infeasibility. The ADA should also incorporate the term "equivalent facilitation" to allow alternative access means where conventional accessibility is impracticable.

The Senate bill also provides that courts should consider a good faith effort to comply when hearing complaints brought against a covered entity or individual. We support a stronger provision. First, the ADA should give administering authority for ADA to local building officials, and the certification of such officials that an architect has complied should constitute a strong defense against complaints of discrimination.

Finally, the Senate bill establishes a program of technical assistance for affected segments of the public to inform them about the act and its details. This is a worthwhile provision aimed at encouraging compliance through better understanding and information, rather than through the heavy hand of the courts.

The American with Disabilities Act is far-reaching legislation aimed at opening doors for a segment of our society shut out of the mainstream for too long. The legislation's significance demands that its crafting advance rather than impede achievement of its objectives. We hope that our suggestions will make this the bill it deserves to be.

Mr. LUKEN. Ms. Lavoritano.

STATEMENT OF CAROL LAVORITANO

Ms. LAVORITANO. Thank you, Mr. Chairman. If I might, I would like to briefly summarize my statement and have the whole incorporated.

Mr. LUKEN. Please do. Your testimony is received.

Ms. LAVORITANO. Thank you.

METRA is the fourth largest—we operate commuter rail, light and rapid rail, bus and track and also trolley, metropolitan Philadelphia. Last year we provided approximately 1.2 million passenger trips for disabled persons by accessible bus, rail and paratransit. We have had an elderly and handicapped advisory committee since 1974. We have a variety of different types of accessible services, and we recently entered into an agreement to guarantee the purchase of only accessible buses, and to expand the number of key rail stations.

As a result of our own experience, I would like to provide the following specific comments on the Senate bill. First, section 20e(b)(3) should specifically state that structural modifications to existing rail vehicles are not required. While we agree that only accessible buses and rail cars should be obtained in the future, we have a number of concerns about making structural modifications to existing vehicles if they would have to specifically comply with requirements similar to the uniform Federal accessibility standards regarding doorway width and aisle width. That might compromise the structural integrity of a number of our vehicles.

We have an additional concern relating to rail accessibility for streetcar operations in mixed traffic, and this goes to a comment professionally made by Mr. Cook. Philadelphia is an old city, and we have an extensive network of surface streetcar operations. These are trollies, old fashioned trollies that operate in the middle of the street. In mixed traffic, trucks, automobiles and trollies, in many cases we have a narrow cartway and as it poses a serious safety consideration, perhaps new technology will be developed, but we have yet to come up with anything that would permit safe boarding and alighting of wheelchairs via a lift.

In most cases in mixed traffic operations the cartway is too narrow to effectively put up an aisle under some sort of loading platform in the middle of the street without compromising the rest of traffic.

Another major concern that we have relates to section 203(c), which creates a requirement for full bus and key rail station accessibility, plus extensive paratransit service. This will be very expensive to provide and no funding is available for additional services.

The Senate Labor and Human Resources Committee report interprets this provision of the act to require supplemental paratransit services to meet extensive service criteria. The Senate committee report effectively provides the public transportation operators are responsible for overcoming many mobility barriers faced by the disabled, including lack of adequate municipal facilities, such a suburb cuts and sidewalks and ineffective or unfunded human service agency transportation programs.

Eligibility for supplemental paratransit services is not well defined. The phrase "unable to use mainline transportation" can be broadly or narrowly interpreted. Our experience has been that people often prefer to use paratransit because it is difficult but not impossible for them to use accessible fixed route service.

The Senate committee report also calls for developing programs to provide mobility training for people with diverse disabilities, such as visual and hearing impairments, as well as mental retardation. In response to a comment made earlier by Mr. Cook, there are degrees of mobility training. As a transit operator, we have often provided training on how to use a wheelchair lift on a bus, but we cannot provide the type of training required for blind or mentally retarded people to become completely familiar with the route to take through the transportation system, and the concept of mobility training is much more complicated than what Mr. Cook alluded to.

Another concern that we——

Mr. Luken. Could you summarize?

Ms. Lavoritano. Summarize, okay.

Basically our principal concern with this act relates for funding for additional services that we would be required to provide. I think the transit community is in favor of improved access for the disabled, but the funding concerns must be met.

Thank you, Mr. Chairman.

Mr. LUKEN. Well, thank you. You all helped us to define these issues, and we find there is a certain amount of consensus, and other things that we have to work on. We thank you very much.

We have this major issue that I have to vote on right now, so I am going to retire post haste, and the subcommittee is adjourned, subject to the call of the Chair.

Thanks a lot.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

[The following material was submitted for the record:]

PREPARED STATEMENT OF CAROL H. LAVORITANO, DIRECTOR, PROGRAM AND POLICY ANALYSIS DEPARTMENT, SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

Good morning, Mr. Chairman and members of the Subcommittee on Transportation and Hazardous Materials, I am Carol H. Lavoritano, Director, Program and Policy Analysis Department of the Southeastern Pennsylvania Transportation Authority, or SEPTA. I am pleased to have the opportunity to present testimony before you today on the Americans with Disabilities Act of 1989. While we support the intention to provide improved services to the disabled, we do have a number of cost and operational concerns with the Senate bill.

SEPTA operates the fourth largest public transportation system in the United States. SEPTA provides over 1.1 million passenger trips each weekday by commuter, light and rapid rail, bus and trackless trolley in metropolitan Philadelphia. In addition, we contract for the provision of paratransit service in Philadelphia, primarily for disabled people.

Last year SEPTA provided approximately 1.2 million passenger trips for disabled persons by accessible bus, accessible rail and paratransit. The Authority set up an elderly and handicap advisory committee in 1974, and began working with the disabled community to improve services for them. We have been meeting many of the transportation needs of the disabled in Southeastern Pennsylvania with accessible bus and rail service since 1980. The Authority began contracting paratransit service in 1981. In 1988, accessibility was extended to all of SEPTA's Suburban Transit Division bus routes through the implementation of our Suburban On-Call service, which allows a disabled person to call one day in advance to request an accessible bus to be assigned to any route. By November of this year, 48 percent of our bus fleet will be lift equipped.

This past summer, the Eastern Paralyzed Veterans Association, the City of Philadelphia and SEPTA entered into an agreement to guarantee the purchase of only accessible buses in the future and to expand the number of key rail stations to 45, or approximately 16 percent of the system.

As a result of our own experience and the broad impact of this legislation on SEPTA, I would like to provide the following specific comments on the Senate bill:

(1) Section 203(b)(3) should specifically state that structural modifications to existing rail vehicles are not required. We agree that only accessible buses and rail cars should be obtained in the future when purchasing or leasing new vehicles. Furthermore, we concur with the idea of making rail vehicles accessible "to the maximum extent possible" for disabled persons, including wheelchair users, within three years. SEPTA has already removed seats in all its commuter rail trains to make space for wheelchairs, and our rapid rail cars are wheelchair accessible. SEPTA has on order replacement cars for its Norristown High Speed Line, which include wheelchair securements.

While our commuter rail fleet is generally accessible, these cars do not precisely meet Uniform Federal Accessibility Standards regarding doorway width and turning radius. It would be very expensive to undertake the major structural modifications necessary to change these dimensions because of limited space in the car entry area; such modifications could affect the structural integrity of the cars. We also agree with the Senate Labor and Human Resources Committee report language which indicates that accessibility modifications must only be made to remanufactured vehicles when the remanufacturing effort involves stripping the vehicle to frame prior to rebuilding.

An additional concern relating to rail accessibility relates to streetcar operations in mixed traffic. Philadelphia has an extensive surface streetcar network, which features trolley operations in the middle of several major city streets. Lift deployment and wheelchair boarding in the middle of a busy street present a serious safety hazard, therefore, streetcar operations in mixed traffic should be specifically exempted from accessibility requirements.

Since many areas, particularly older cities, have unique or unusual aspects of transit operations, the final legislation should contain waiver provisions for safety considerations.

(2) The SEPTA negotiations on a key station plan would serve as a successful model for Section 203(i)(1) of the Senate legislation. We agree with the Senate Committee that it is best to leave the selection of which stations are key to each locality. While our own negotiations with the disabled community generally involved such criteria as high ridership, major transfer points, and balanced regional coverage, they also considered physical constraints, cost and funding availability. We believe that the relative importance of such criteria should be locally determined, and that specific key station criteria are unnecessary and would be difficult to administer.

(3) Section 203(c) of the Senate bill creates a requirement for full bus and key rail station accessibility RIM extensive paratransit service. This will be very expensive to provide, and no funding is available for additional services.

The Senate Labor and Human Resources Committee Report interprets this provision of the act to require supplemental paratransit service to meet extensive service criteria.

The Senate Committee report effectively provides that public transportation operators are responsible for overcoming all mobility barriers faced by the disabled. Public transportation operators would be required to compensate for lack of adequate municipal facilities such as curb cuts and sidewalks; and ineffective or underfunded human service agency transportation programs.

Eligibility for supplemental paratransit service is not well defined in the Senate bill. The phrase "unable to use mainline transportation" can be broadly or narrowly interpreted. Our experience has been that people often prefer to use paratransit because it is difficult, but not impossible, for them to use accessible fixed-route service.

Congress should avoid mandating a broad eligibility criteria for supplemental paratransit because it will perpetuate costly dual services for the disabled. We believe the majority of the disabled would opt for the convenience of door-to-door services and the expenditure to retrofit our nation's public transit systems will only serve a small segment of the disabled population.

(4) The Senate Committee report calls for developing programs to provide mobility training for people with diverse disabilities, such as visual and hearing impairments and mental retardation. Transportation of large numbers of people is the business of public transit operators. The industry does not have the expertise to understand the needs and provide mobility training for people with such a variety of special needs.

(5) Short response time requirements for paratransit service can create expensive vehicle requirements and scheduling inefficiencies. The Senate report language raises questions as to what is intended as a comparable response time. It in totally unrealistic to require that paratransit response times be equivalent to fixed route headways, and the committee report language should be revised to clearly reflect this. SEPTA operates many bus routes with headways between five and fifteen minutes. Such a response time requirement is clearly impossible to meet; similar response times are not even available with taxi service. If paratransit service is intended to be truly supplemental, we recommend a response time no shorter than twenty-four hours, to permit efficient scheduling and routing of vehicles, in many cases utilizing existing computerized systems which have been developed at considerable expense.

(6) While supplemental paratransit services are only required to the extent that they do not "impose an undue financial burden," the term "undue financial burden" is not clearly defined. We are greatly concerned about the increased cost of compliance with this bill at a time when the federal government is continuing to reduce assistance to public transit. For example, in the last ten years: Operating assistance has been reduced by 50 percent; capital assistance is down by 64 percent in terms of real buying power; and the transit trust fund is frozen.

In this context, public transit authorities must resist any mandates which are unfunded, especially in the face of demands for expanded service of all types.

For many transit authorities, any additional expense for which new funding is not provided constitutes an undue financial burden, insofar as fares must be raised or other services cut in order to provide new services. We would point out that fare increases and service reductions cause serious hardship to other low and fixed income riders, many of whom have no alternative means of transportation. Therefore, we strongly urge the Congress to fund the increased cost of compliance with the Americans with Disabilities Act.

(7) Finally, we endorse the employment provisions of the Senate bill, with one minor exception. SEPTA has employed the disabled for many years, some of whom are employees who were injured on the job. The Authority has already made "reasonable accommodations" at a number of work locations for its employees.

However, we take exception to the requirement to hire qualified readers for the blind and interpreters for deaf employees. Such a requirement makes it necessary to hire two individuals in order to obtain the production of one person. In a public service expense environment which is constrained by diminishing subsidy and pressure to improve productivity, such a rule would be exceedingly burdensome.

In conclusion, I believe that this Act can provide for major improvements to the lives of many disabled Americans. However, the language of the proposed legislation must be revised and clarified to prevent lengthy and expensive court battles following the issuance of regulations pursuant to the act. Changes must be made to provide for realistic implementation requirements and schedules, and funding must be included for public service providers who will be expanding and improving their services to the disabled.

Thank you for the opportunity to testify before you today.

PREPARED STATEMENT OF THOMAS GAGLIANO, EXECUTIVE DIRECTOR, NEW JERSEY TRANSIT

Thank you for the opportunity to submit for the record NJ Transit's views on H.R. 2733, the Americans with Disabilities Act. I am sorry that I was not able to appear at the Commerce Committee hearing on September 28, 1989 to personally deliver this testimony, but I respectfully submit this information for the hearing record.

NJ Transit provides bus service on approximately 177 commuter and local bus routes and 11 rail lines. The Newark City Subway is a 4.5 mile system that operates within the city of Newark.

NJ Transit directly provides service to 215,000 bus and subway riders a day throughout the state. Private bus companies under service contracts or subsidy agreements serve thousands of additional riders daily. NJ Transit commuter rail service carries 85,000 people each day throughout the state and into midtown Manhattan and Rockland County in New York. Service to Atlantic City, resumed in mid-September of this year, is expected to carry between 1200 and 1500 people daily.

NJ Transit Bus operates a 1,901 bus fleet. The average age of the NJ Transit bus fleet is approximately 4.5 years, compared to the national average of 7.8 years.

NJ Transit Rail operates on 394.1 rail route miles. All commuter rail lines are owned by NJ Transit, except for the Northeast Corridor (NEC) owned by Amtrak and a section of the Raritan Valley line. The NJ Transit rail fleet consist of 81 locomotives and approximately 600 rail cars.

NJ Transit works closely with all 21 New Jersey counties in the development of special transportation services for the elderly and the handicapped. NJ Transit through the Federal Section 16(b)2 program and Section 18 program provides local governments with capital and operating subsidies for locally provided accessible transportation services. Further, through New Jersey's Casino Revenue Fund, NJ Transit distributed $11.2 million in fiscal year 1989 to counties for transportation services. As a condition for receiving funding, each county must submit an annual plan that describes the nature of the services to be provided. These plans are reviewed and approved by the NJ Transit Special Services Citizen Advisory Committee.

With regard to its impacts on commuter railroads, NJ Transit fully supports 2733. We have developed aggressive policies aimed at providing accessibility throughout the rail system. H.R. 2733 would reinforce and strengthen the policies we currently have in place.

Of the three terminal points on NJ Transit's rail system, Newark Penn Station is already accessible. Both New York Penn Station and Hoboken Terminal will be made accessible within the next few months. In Hoboken, accessibility will be accomplished through the use of a portable wheelchair lift which can be moved to any platform where it is needed.

Of the 158 rail stations on NJ Transit's system, 17 (more than 10 percent) are already accessible. It is our policy that any station that undergoes major rehabilitation or new construction be made accessible. In addition, we are in the process of installing minihigh level platforms at key stations throughout New Jersey's rail network. Nine of these platforms will be installed during fiscal 1990, ten in fiscal 1991, and ten in fiscal 1992. In all, approximately $1 million will be spent in the next three years to make New Jersey's rail lines accessible. The money is provided through the New Jersey's casino Revenue Fund, a source of funding dedicated to help the elderly and handicapped citizens of our state.

Our long-term goal is to make the entire commuter rail system accessible. We are proud of our successes so far. The Northeast Corridor Line will be completely accessible by the end of fiscal 1990. The Raritan Valley Line will have at least three accessible key stations, and the North Jersey Coast Line will have at least five. In addition, the new Atlantic City Rail Line is entirely accessible.

On the Hoboken Division, only one station, Summit, is accessible to date. However, we are about to undertake a study of the lines which terminate in Hoboken to determine which stations should be identified as key stations and receive minihigh level platforms. At the completion of the study within the next twelve months, our aggressive accessibility efforts will be expanded to include the Hoboken lines.

Of course, accessibility of stations is only part of the picture. Accessibility is included in any new rail car purchase NJ Transit undertakes. Regarding existing equipment, we have found that cab cars are accessible to wheelchair users, and it is therefore no hardship to ensure that one car on each commuter train is accessible.

In summary, I wholeheartedly support Congress' effort to provide all of the nation's citizens with the civil right of mobility. I believe H.R. 2733 accomplishes this goal in a fair and reasonable manner with respect to railroads.

In addition to our commuter railroad, NJ Transit operates a light rail, commuter bus, and transit bus system. We have made a substantial effort to provide accessibility in as many of our service areas as possible. However, there are some technological limitations with regard to the light rail and commuter bus accessibility which we have been unable to overcome. The following outlines those limitations.

NJ Transit currently provides accessible bus service at a minimum of every 30 minutes on local bus lines. Commuter bus accessibility is provided on a 24 hour reservation basis. The reservation system is necessary because the ability to lift-equip certain commuter buses is constrained by technology and because there are very few accessible platforms within the Port Authority Bus Terminal. Special arrangements must be made to ensure that a bus carrying a person with a wheelchair is directed to an accessible platform within the terminal.

While we generally support the intent of H.R. 2733 to ensure that buses are fully accessible, we believe it would be appropriate to provide an exemption where technology precludes accessibility, or where technological deficiencies would cause significant operating problems. For example, a 96-inch width restriction in the Lincoln Tunnel precludes NJ Transit, from using the standard 102-inch commuter bus. Manufacturers have informed us that it is infeasible to construct a wheelchair lift for a 96-inch commuter bus.Further, we believe an exemption is warranted where terminals preclude full access, such as the Port Authority Bus Terminal (PABT). Since H.R. 2733 would not require the PABT to increase its accessibility until it undergoes construction for other reasons, it would be unreasonable to require that all buses entering the terminal be accessible. Suggested language to provide these two exemptions is provided as attachment 1.

NJ Transit's 4.5 mile light rail system, the Newark City Subway, is not currently accessible, although there is accessible bus service running parallel to it. H.R. 2733 groups light rail systems with commuter, rapid, and intercity rail and requires that at least one car per train be accessible. However, many light rail systems, including the Newark City Subway, operate one car trains at a time. The one car per train requirement would require all cars to be accessible in this type of operation. Further, while the bill does not for the most part require retrofitting of existing equipment to achieve accessibility, the one car per train requirement in the case of the Newark City Subway could only be achieved through an expensive retrofit or through the premature purchase of now equipment. Although the Presidential Conference Cars in use on this system are forty years old, a rehabilitation project begun in 1987 has extended their expected useful life for at least 10 years. NJ Transit proposes that it would be within the spirit of the bill, to provide an exemption to the one car per train requirement in cases where the requirement would result in retrofitting existing equipment. Attachment 2 provides language for this proposed amendment.

The Newark City Subway also provides a unique situation with regard to the requirement for accessibility of key stations on light rail systems. The Subway was built in the 1930's, at a time when elevator access was not a common element in station designs. Nine of the eleven stations on the system would require the addition of elevators for accessibility. The design of many of the stations is such that it would be structurally impracticable to add elevators. The subway was rehabilitated in 1983 at a cost of $19.2 million and the additional cost of redesigning and reconstructing the 50-year-old stations to provide accessibility would be prohibitive. Section 402(B)(6) of the bill provides exemptions to accessibility requirements for newly constructed businesses where it is "structurally impracticable" to do so. A similar exemption should be provided for key light rail station accessibility.

NJ Transit administers funding for and oversees an extensive paratransit system throughout the state. A total of 859 paratransit vehicles have been distributed in the last six years to counties and local agencies which provide transportation to elderly and disabled persons in their communities. In administering the paratransit program, NJ Transit considers the mobility needs of the community as well as the cost of the service.

H.R. 2733 would require a level of paratransit service "comparable" to the level of service provided on a fixed route basis. While we agree with the need for the Federal government to guarantee disabled citizens the civil right of access to public transportation, the issue of mobility as provided through a paratransit system must, remain a local issue. Some communities may elect to provide paratransit services where no fixed route service exists. Others who have fixed-route service may determine that local conditions do not require comparable paratransit services, and the resources may be more efficiently used elsewhere. New Jersey's paratransit system has been developed with the input of the local disabled community. A Federal requirement for a comparable paratransit system in conjunction with a fixed-route transit system would inappropriately interfere with this local decisionmaking process.

Further, the cost of providing a level of paratransit service comparable to NJ Transit's fixed-route bus and commuter rail systems would be prohibitive. At a time when Federal and state funding is limited, compliance with this requirement could lead to cutbacks in other services that NJ Transit provides. While the Senate bill provides for exemptions in cases of "undue hardship," without definition of this phrase it is difficult to determine how it would be interpreted. I strongly urge that the requirement for a comparable level of paratransit service be deleted from the bill so that decisions on how to allocate the limited resources available for the mobility of all citizens remain at the local level.

NJ Transit supports the basic intent of H.R. 2733. As I have noted, we have a long history of working with the disabled community in New Jersey to ensure that our service is accessible to the greatest extent feasible given financial and technological limitations. Our record demonstrates that we understand the importance or providing disabled citizens with the essential civil right of mobility. I would respectfully request that H.R. 2733 be amended to recognize these difficulties. I believe such amendments can be structured so as not to interfere with the civil rights of disabled citizens.

ATTACHMENT 1

Language included in S.933 (Section 203(e)) provides for temporary relief where lifts are unavailable. NJ Transit urges that this section be included in the H.R. 2733, and that a new paragraph be added to this section as follows (proposed new language is italic).

Section 203

(e) Temporary Relief Where Lifts are Unavailable . . .

. . . (3) that the public entity seeking temporary relief had made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) *that if a qualified manufacturer had been found, the bus manufacturer was unable to certify that installation of the lift would not impact the structural integrity, operating performance, and warranty of the bus; and*

(*5*) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

NJ Transit further urges that a new Section 203(f) be added to the bill as it was passed by the Senate which reads:

(f) Temporary relief where terminals are not accessible.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates that the terminal to be served by the buses is not readily accessible. Such temporary relief will end if the terminal is made accessible under the terms of this Act.

ATTACHMENT 2

Section 303(g)(2) should be changed to read as follows:

(2) Intercity, Rapid, Light, and Commuter Rail Systems.—

(*a*) *Except as provided in paragraph (b) of this section*, with respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 540 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(*b*) *The Secretary has the authority to grant an exemption to the provision in paragraph (a) above if the provision would result in retrofitting all existing vehicles because a transit authority operates only one car train.*

AMERICAN ASSOCIATION OF AMERICAN RAILROADS,
Washington, DC, November 10, 1989.

Hon. Thomas A. Luken,
Chairman, Subcommittee on Transportation and Hazardous Materials, Committee on Energy and Commerce, House of Representatives, Washington, DC.

Re: Hearings on H.R. 2273, "Americans with Disabilities Act of 1989"

DEAR MR. CHAIRMAN: On September 28, 1989 you chaired a hearing on H.R. 2273 which has the laudable and universally supported objective of eliminating discrimination against individuals with mental or physical disabilities. Unfortunately this proposed legislation is so broad and ambiguous that employees, prospective employees, and employers will have no clear guidance as to their rights and obligations. We request that this letter be included in the record of your hearings.

The railroads have concerns with provisions in these bills which are undoubtedly shared by other employers, but also anticipate problems which will be unique to the railroad industry.

Of general concern is Section 205 which provides for enforcement through the remedies set forth in Title VII of the Civil Rights Act of 1964 and the remedies and procedures available under Section 1981 of the Revised Statutes (42 U.S.C. sec. 1981). This latter section provides for suits by individuals without prior administrative requirements and permits jury trials with a variety of potential damages, including punitive damages. Litigation can be instituted on the bare allegation that an individual is ". . . about to be subject to discrimination."

The availability of Section 1981 procedures and remedies would afford a redundant avenue of litigation even though the Title VII procedures and remedies have proven workable and equitable and include the opportunity for court action when individuals are not satisfied with administrative results. On the other hand, Section 1981 would afford a hunting license to plaintiffs and their attorneys without any incremental effect in preventing discrimination and often with the effect of penalizing an employer when no discrimination has occurred. In passing S. 933 the Senate rejected the proposed private cause of action under section 1981 of the Revised Statutes. We recommend that the House also reject this proposal.

The vague standards in the legislation can only lead to expensive and burdensome litigation. Title II would define a "qualified individual with a disability" as one who can perform the "essential functions of ah employment position." This not only will require defining the "essential functions" of every position a person with a disability holds or desires, but undoubtedly will lead to litigation. Section 202 provides that discrimination includes "denial . . . because of the need for reasonable accommodation" and limits "reasonable accommodation" to arrangements or actions which would not cause "undue hardship on the operation of its (the employer's) business." The term "undue hardship" lacks definition and could be interpreted as imposing no real limitation on the nature of required accommodations. The Act thus creates rights and obligations with little or no guidance as to which attempts to comply will satisfy the Act. The Equal Employment Opportunity commission is to issue regulations, but they are almost certain to be ambiguous because of the terms of the statute. We urge that Congress and the EEOC adopt the language and intent of the relevant provisions of the Rehabilitation Act of 1973 (29 U.S.C. 794) to avoid unnecessary litigation over developed concepts.

The proposed legislation presents a unique set of problems for the railroad industry. Railroads are required to provide their employees with a safe place to work. This has been construed to mean that it is a violation of that duty to allow a person to perform a job beyond his physical capabilities. To comply with that duty, railroads have medical standards which, if not followed, can be the basis of liability under the Federal Employers Liability Act (45 U.S.C. sec. 51 et seq.). There is a natural conflict between the duty to provide a safe place to work and the proposed legislation requiring the employment of people with disabilities.

For example, railroads may be held liable for allowing employees with heart conditions to perform strenuous work under the FELA if those employees suffer heart attacks. Additionally, railroads may be liable for injuries caused by fellow employees with disabilities who must be employed under the proposed legislation.

Section 101(b) of H.R. 2273, in describing defenses available to employers, provides for qualification standards and specifies that such standards may include ". . . requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the program." Thus the bill would "appear to define alcoholism and drug addiction as disabilities and preclude denial of employment of alcoholics or drug addicts unless current use could be proven and it could be demonstrated that such use poses a threat to property or the safety of others. Existing regulations promulgated by the Federal Railroad Administration, as well as pending legislation, prohibit unauthorized use of controlled substances whether on duty or off duty without requiring a specific finding of impairment or a showing that there is an immediate threat to property or the safety of others. The language of the bill assumes that there can be instances where the current use of drugs might be tolerated. Thus, the language of Section 101(b)(2)(a) is at cross-purposes with the objective of totally eliminating drug use by employees in safety sensitive positions in the railroad industry as a threat to the safety of employees and the public. We urge that the House adopt the language of Section 104 of S. 933 as passed by the Senate.

Sincerely,

William H. Dempsey, *President.*

The President's Committee on
Employment of People With Disabilities,
Washington, DC, October 20, 1989.

Hon. Thomas Luken,
Chairman, Subcommittee on Transportation and Hazardous Materials,
Washington, DC.

Dear Mr. Chairman: Thank you for the opportunity to respond to several concerns expressed by members of Congress during Committee hearings on the Americans with Disabilities Act.

The President's Committee has conducted consensus meetings with leaders in business, government, rehabilitation, and disability rights in 45 communities over the last seven years. These meetings have enabled communities to identify the major barriers to employment of people with disabilities. Consistently, inaccessible transportation services have been identified as a major barrier, second only to discriminatory attitudes. Therefore, the President's Committee feels strongly that fully accessible public transportation is essential to full employment of people with disabilities.

Prior to addressing specific concerns raised during the hearings, I would like to share with you a recent article, copy attached, published in "Report on Disability Programs," entitled "Transit Agencies Finding Costs of Lifts Cheaper Than Providing Paratransit." We believe that the economics of mainline lift equipped buses versus paratransit is not limited to Tulsa, Atlanta and Seattle.

I would now like to address, from our perspective, the accessibility requirements under the Americans with Disabilities Act for intercity and commuter rail service. We believe there are several misunderstandings that need clarification.

The ADA, as we understand it, does not impose any additional accessibility requirements on Amtrak. In fact it appears the bill represents a reduction in obligation by deferring current requirements for twenty years. As we understand current statutory and regulatory mandates, Amtrak was required to be completely accessible as of July 1989. That being the case, Amtrak could be required to make stations accessible immediately. The ADA, on the other hand, would permit Amtrak to phase in compliance gradually without the threat of immediate action.

It seems that some witnesses assume that an accessible restroom would be a necessary component of every accessible rail vehicle; that wheelchair securement devices would be required; or, in some cases, that vehicle lifts would be mandated. As I understand it, the bill does not specify any of those items but, like the Architectural Barriers Act on which it was partly modeled, requires only that new vehicles meet standards for accessibility.

Accessibility involves more than access for wheelchair users. Therefore, we believe, all new vehicles should meet minimum requirements for lighting, slip resistant surfaces, clearances, handrails, et cetera and the regulations should deal with the requirements for other accessible elements such as restrooms. Congress can ensure that regulations appropriately address these issues through report language or legislative history.

Amtrak representatives and the American Institute of Architects have expressed concern about the cost of modification that would be necessary to the stations Amtrak uses. In all likelihood the Uniform Federal Accessibility Standards [UFAS] would be the minimum design standards secured for the Act. Therefore, there would be no obligations in terms of new or altered construction by the ADA. Furthermore, under the ADA, Amtrak would have more of an opportunity to develop additional cost-sharing arrangements with entities that currently own stations used by Amtrak. Certainly, both the Architectural Carriers Act and UFAS would have a substantial history to guide compliance without causing hardship.

The commuter rail operators allude to two common myths among transportation agencies: (1) That serving persons with disabilities will delay on-time performance. Our response to that is, to our knowledge, even in bus systems where complex lifts must be deployed and ridership is high, there is no evidence to substantiate this allegation. (2) That serving persons with disabilities will result in lost seating. Our response to that is, it is our understanding, that in level-boarding rapid and commuter rail systems it is precisely because every car is accessible that seating is not lost. Wheelchair users can fit into available space, provided for standees, on several cars instead of the additional maneuvering clearance which would be required if several wheelchairs were required to be accommodated on the same car.

Mr. Chairman, the ADA is, above all else, civil rights legislation. It is good solid legislation that addresses years of discrimination against people with disabilities. We believe that a look at the facts will alleviate many of the concerns of the transit industry.

We feel the above information is vital for the ADA. We believe passage of the ADA will provide the essential foundation for full employment and full participation in society by our Nation's citizens with disabilities.

Sincerely,

JUSTIN DART, *Chairman.*

Attachment

TRANSIT AGENCIES FINDING COSTS OF LIFTS CHEAPER THAN PROVIDING PARATRANSIT

Economics of a local transit system will have profound effects on that system's ability to serve people with disabilities, the vice chairman of the Metropolitan Tulsa Transit Authority [MTTA] told conferees at the American Public Transit Association's annual meeting last week.

"The first major step in addressing the economic problems is for the local transit board to develop a total annual operating budget for the entire program," explained Brook D. Tarbel. "One portion of this budget will deal with the cost of serving people with disabilities. How much money is allocated to this item of the budget will dictate operation of 'The Decision Making Process in the Choice of Services for Persons with Disabilities'."

Tarbel described the effects of economics on MTTA's system. While the total amount of money in the budget decreased over the last four years, the city of Tulsa had to pay a higher percentage of the budget, with fewer dollars coming from the state and federal governments, he said. During that time, the city signed a contract for paratransit service, refusing to buy lift-equipped buses. Between February 1987 and June 1989, the total number of paratransit rides increased from 3,731 trips per month to 18,897 trips per month. In the last fiscal year, the total; cost of the paratransit service was $988,460, more than 17 percent of MTTA's total operating budget.

The cost of the paratransit service, combined with a change in the composition of the transit authority's board, has since led to a change in the stance of the MTTA on lift-equipped buses, Tarbel explained. It has placed an order for 16 lift-equipped buses due for delivery in February 1990. Since the federal government pays 95 percent of the fixed-lift cost, the total expense to the transit system for the lifts will be $600 per bus.

"This figure indicates that to make Tulsa's entire fleet of 84 buses totally accessible in the future would cost the city $50,400," said Tarbel. "This figure can hardly be considered a significant cost when compared to the paratransit expense." Atlanta and Seattle also have found that the cost of buying lift-equipped buses is actually less than the cost of paratransit, he added.

Legislative Update

Budget Reconciliation. The Senate Finance Committee October 3 approved a proposal to raise the amount of money that certain Social Security recipients may earn without suffering a reduction in their benefits. The panel also voted to make the Social Security Administration an independent agency, moving it out of the Department of Health and Human Services. The provisions were part of the budget reconciliation will being considered by the committee. The bill also contains other measures related to disability, but details were not available at press time. See the next issues of RDP for more information.

Labor-HHS-Education Appropriations. As RDP went to press, Senate and House conferees were meeting to hammer out differences in their different versions of appropriations for the departments of labor, education and health and human services. The Senate late in September approved a bill that provides $2.083 billion of education of the handicapped programs, while the House in early August approved about $20 million less for those programs. Once conferees reach an agreement, the compromise must be approved by the full House and Senate.

AMERICANS WITH DISABILITIES ACT

(101-32)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 2273

TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

SEPTEMBER 20, 26, 1989

Printed for the use of the Committee on
Public Works and Transportation

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SUBCOMMITTEE ON SURFACE TRANSPORTATION

HEARINGS ON

AMERICANS WITH DISABILITIES ACT

SEPTEMBER 20 AND 26, 1989

SUMMARY OF SUBJECT MATTER

The hearings will provide testimony from the Department of Transportation, the disability community, public transit authorities, and the intercity bus industry on the transportation provisions within the proposed Americans with Disabilities Act (H.R. 2273 and S. 933) which would ensure accessibility for the disabled to public and private transportation services.

(1) Existing Laws and Regulations

Current DOT regulations (primarily interpretations of Section 504 of the Rehabilitation Act of 1973 and Section 317 of the Surface Transportation Act of 1982) require that transit systems provide the disabled with access to their systems. Transit systems can currently provide access through the use of lift-equipped buses along a fixed-route, paratransit services (generally, small vans which provide door-to-door service), or a combination of the two. Minimum service criteria are included in the regulations.

Prior to a recent Third Circuit Appeals Court decision, the DOT regulations provided that a transit system which expended 3% of its average annual operating budget on serving the disabled would be considered in compliance with the regulations, regardless of the level of service which it actually provided. The Appeals Court held that there was no basis in current law for an exemption from minimum service criteria simply because a system meets an arbitrary 3% "cost-cap" standard.

(2) H.R. 2273 and S. 933

H.R. 2273, which now has 219 cosponsors, was referred to the House Committees on the Judiciary; Education and Labor; Energy and Commerce; as well as Public Works and Transportation. Hearings have been held in the House; but, so far, no Committee has reported the bill.

The companion bill, S. 933, was referred exclusively to the Senate Committee on Labor and Human Resources, which reported the bill unanimously on August 2, 1989. Prior to reporting the bill, the Committee, in consultation with the White House and representatives of the disability community, approved amendments to the bill which made it acceptable to the White House. At that time, President Bush endorsed the legislation and said that he was "committed to producing a bill which can be signed this year."

On September 7, 1989, the Senate passed S. 933, as amended, by the overwhelming margin of 76 to 8 (see attachment, Senate Rollcall Vote No. 173 Leg.).

The following lists the highlights of the original legislation, as well as the amended, Senate-passed version:

Public Transportation Provided by Public Entities

H.R. 2273	S.933, as passed by Senate
Prohibits discrimination against the disabled in the provision of services by state and local government entities.	Essentially the same.
Prohibits the purchase or lease of any new fixed-route bus or rail vehicle if such vehicle is not accessible to persons with disabilities (including wheelchair users).	Essentially the same.
No provision.	DOT may waive requirement to purchase accessible, new buses if: (1) Initial solicitation specified lifts; (2) No lifts were available from any manufacturer; (3) Public entity made good faith efforts to locate a manufacturer; and (4) Any delay while waiting for lifts would significantly impair transportation services.
Requires "demonstrated good faith efforts" for accessibility in purchase or lease of used vehicles.	Essentially the same.
Requires, to the maximum extent feasible, accessible remanufactured vehicles when remanufacturing will add at least 5 years to the life of the vehicle.	Essentially the same.

H.R. 2273	S. 933, as passed by Senate
Requires systems which offer fixed-route service to offer comparable paratransit service in accordance with DOT regulations.	Same, unless public transit entity demonstrates that provision of paratransit or special transportation service would impose undue financial burden. Then, paratransit service would be required only up to the point that it becomes an undue financial burden.
Demand responsive systems must purchase accessible vehicles unless they demonstrate that their system, in its entirety, provides an equivalent level of service to both the disabled and the general public.	Essentially the same.
Newly built public transportation facilities must be accessible.	Essentially the same.
Alterations to existing facilities must incorporate accessibility to the "maximum extent feasible".	Essentially the same.
Rail facilities, when viewed in their entirety, must be accessible.	Essentially the same.
Requires rail systems to make one car per train accessible as soon as practicable, but at least within 5 years.	Essentially the same.
Key rapid rail, commuter rail and light rail transit stations must be accessible within 3 years, except that DOT can extend the deadline by up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities.	Essentially the same.

H.R. 2273	S. 933, as passed by Senate
DOT has 8 months to issue regulations on public transit accessibility.	DOT has one year to issue regulations.
Effective date for bill is upon enactment.	Effective date is 18 months after enactment, except in case of fixed-route requirements, which become effective upon enactment.

Public and Private Transportation Provided by Private Entities

Requires purchase or lease of accessible, new vehicles (except automobiles) which carry 12 or more passengers, including over-the road coaches.	Requires purchase or lease of accessible, new vehicles (except automobiles) which carry 16 or more passengers in private transportation, or any size vehicle (except automobiles) in public transportation; except for vehicles which are operated as part of a demand responsive system which provides when viewed in its entirety, an equivalent level of service to the disabled as it provides to the general public.
	Requires purchase of accessible, new over-the-road buses in 7 years for small providers and 6 years for other providers. Mandates an OTA study of the access needs of the disabled to over-the-road buses, as well as the most cost-effective way to achieve this accessibility, to be completed in 3 years.

9/14/89

abled Americans. Mark Wellman is not alone. There are millions of disabled Americans who want and deserve full participation in American life and yearn for the opportunities to be productive.

With the passage of this legislation, we can pave the way for these citizens to overcome the barriers they now face and begin the journey to economic productivity and self-independence.

I urge my colleagues to support this necessary and overdue guarantee of simple fairness and justice.

• Mr. HATCH. Mr. President, before the Senate votes on final passage, I want to thank the following staff for their hard work on S. 933. For Senator HARKIN: Bobby Silverstein, Katie Bay, Terry Muilenberg; for Senator KENNEDY: Carolyn Osolinik and Michael Iskowitz; for Senator DURENBERGER: Carolyn Boos; for Senator MCCAIN: Mark Buse; and Steve Bettis, Chris Lord, Millard Wyatt, Evan Liddiard, Kris Iverson and Mark Disler of my staff.

Their dedication to this bill was important to its success, and of course, I thank all of the Senators for their diligent efforts.

• Mr. MURKOWSKI. Mr. President, I am happy to support and to cosponsor the American's With Disabilities Act of 1989 (ADA). As the ranking minority member of the Committee on Veterans' Affairs, I applaud the administration and Senators DOLE, KENNEDY, HARKIN, and HATCH for the hard work in reaching an agreement on this important legislation.

I have received many letters of support from various veterans' service organizations for S. 933 and I believe that it is vital to ensure equal rights to disabled veterans who served their country in such an extraordinary manner. I am delighted to see that small businesses are in some ways protected in this bill while still eliminating discriminatory actions against individuals with disabilities.

ADA is a timely and compassionate bill that allows those 43 million disabled Americans to work, live, enjoy life, and contribute to their communities. These are truly the greatest rights any American should have. I wholeheartedly support S. 933.•

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington (Mr. ADAMS), the Senator from Montana (Mr. BAUCUS), the Senator from Texas (Mr. BENTSEN), the Senator from Louisiana (Mr. BREAUX), the Senator from Ohio (Mr. GLENN), the Senator from Hawaii (Mr. INOUYE), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Ms. MIKULSKI), the Senator from Arkansas (Mr. PRYOR), the Senator from North Carolina (Mr. SANFORD), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that, if present and voting, the Senator from Maryland (Ms. MIKULSKI) would vote "yea."

Mr. SIMPSON. I announce that the Senator from Montana (Mr. BURNS), the Senator from Mississippi (Mr. LOTT), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Delaware (Mr. ROTH), and the Senator from New Hampshire (Mr. RUDMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 76, nays 8, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—76

Biden
Bingaman
Boren
Boschwitz
Bradley
Bryan
Bumpers
Burdick
Byrd
Chafee
Coats
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford

Fowler
Gore
Gorton
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Heflin
Heinz
Hollings
Jeffords
Johnston
Kassebaum
Kasten
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lugar
Mack

Matsunaga
McCain
McConnell
Mitchell
Moynihan
Nickles
Nunn
Packwood
Pell
Pressler
Reid
Riegle
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Rockefeller
Sarbanes
Shelby
Simon
Simpson
Specter
Stevens
Thurmond
Warner
Wilson
Wirth

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Bond
Garn

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Symms
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Baucus
Bentsen
Breaux
Burns
Glenn

Inouye
Lott
Metzenbaum
Mikulski
Murkowski
Pryor

Roth
Rudman
Sanford
Sasser

So the bill (S. 933), as amended, was passed, as follows:

(NOTE.—The text of S. 933 as passed by the Senate will appear in a subsequent edition of the RECORD.)

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein and that the distinguished Senator from Hawaii, Senator MATSUNAGA, be recognized for 5 minutes, that upon the completion of his remarks the Senate return to legislative business to complete the wrapup and concluding statements of the bill just passed and that Senator MATSUNAGA's remarks appear in the RECORD at an appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

AN OCTOGENARIAN FUTURIST

Mr. MATSUNAGA. Mr. President, I rise today to salute an octogenarian futurist whose intellect focuses on the next two centuries while his career as a Hawaiian journalist and broadcaster spans more than six decades. Kiyoshi Okubo of Hilo foresees the fading of ethnic and national distinctions by the 21st century; his vantage point is that of a scholar of ethnic cultures and languages who today continues to publish a Japanese newspaper on the Aloha State's "Big Island" of Hawaii at an age when his contemporaries are content to rock on lanais.

Last May, Okubo, who is 83, was the lone American to be honored by Emperor Akihito among those selected for recognition with the Order of the Rising Sun. He was accorded this honor for his many years of advancing cultural and scientific exchange between Japan and Hawaii, including a joint United States-Japan study to develop a tsunami (tidal wave) barrier for Hilo Bay and contributions from each of Japan's 47 prefectures for Hilo's Queen Liliuokalani Park. He is said to be nearly as conversant in Hawaiian as he is in English and he still broadcasts weekly on Sunday morning radio, publishes a twice-monthly newspaper, and operates a cultural museum on Japanese immigration to Hawaii.

For all his activity, however, Okubo is best known as a "dreamer," one who envisions an era of "The Pacific Man," the evolutionary product of trans-Pacific cultural exchange. As one who shares his dream, Mr. President, I was most interested in a recent newspaper article on Kiyoshi Okubo which appeared in the Honolulu Sunday Star-Bulletin & Advertiser written by Hugh

101st CONGRESS
1st Session

H. R. 2273

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1989

Mr. Coelho (for himself, Mr. Fish, Mr. Hawkins, Mr. Conte, Mr. Owens of New York, Mr. Ackerman, Mr. Atkins, Mr. Beilenson, Mr. Bennett, Mr. Borski, Mr. Bosco, Mrs. Boxer, Mr. Campbell of California, Mr. Cardin, Mr. Clay, Mr. Crockett, Mr. de Lugo, Mr. Donnelly, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edwards of California, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Frost, Mr. Fuster, Mr. Gejdenson, Mr. Gordon, Mr. Hayes of Illinois, Mr. Hoyer, Mr. Hutto, Mr. Jacobs, Mr. Jontz, Mr. Kastenmeier, Mr. Kleczka, Mr. Levin of Michigan, Mr. Lewis of Georgia, Mr. Manton, Mr. Matsui, Mr. McCloskey, Mr. McDermott, Mr. McHugh, Mr. Mfume, Mr. Miller of California, Mr. Mineta, Mrs. Morella, Mr. Oberstar, Mr. Pallone, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Connecticut, Ms. Schneider, Mr. Shays, Mr. Smith of Vermont, Mr. Solarz, Mr. Studds, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Waxman, Mr. Weiss, Mr. Wise, Mr. Wolpe, Mr. Florio, Mr. Williams, Mr. Roybal, Mr. Morrison of Connecticut, Mr. Brown of California, Mr. Dellums, Mr. Sabo, Mr. Espy, Mr. Dixon, Mr. Miller of Washington, Mr. Young of Alaska, Mr. Foglietta, Mr. Rangel, Mr. Garcia, Mrs. Saiki, Mr. Martinez, Mr. Mavroules, Mr. Conyers, Mr. Markey, Mr. Visclosky, Mr. Kildee, and Mrs. Collins) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Energy and Commerce, Public Works and Transportation, and the Judiciary

August 29, 1989

Additional sponsors: Mr. Towns, Mrs. Kennelly, Mr. Gray, Mr. Wheat, Mr. Gephardt, Mr. Levine of California, Mr. Ford of Tennessee, Mr. Rahall, Mr. Akaka, Mr. Moakley, Mr. Lantos, Mr. Robinson, Mr. Sawyer, Mr. McNulty, Mr. Brennan, Mr. Downey, Mr. Guarini, Mr. Yates, Mr. Gilman, Mr. Lehman of Florida, Mr. Frenzel, Mrs. Unsoeld, Mr. Bryant, Mr. Boehlert, Mr. Owens of Utah, Mr. Dicks, Mr. Machtley, Mrs. Schroeder, Mr. Bonior, Mr. Carper, Mr. Kennedy, Mr. Lehman of California, Mr. Durbin, Mr. Coyne, Mr. Walgren, Mr. Horton, Mr. Kolter, Mr. Berman, Mr. Bilbray, Mr. Boucher, Mr.

Gonzalez, Mr. Engel, Mr. AuCoin, Mr. Fauntroy, Mr. Mrazek, Mr. Ford of Michigan, Mr. Stokes, Mrs. Boggs, Mr. Lipinski, Mr. Bustamante, Mr. Hall of Ohio, Mr. Dorgan of North Dakota, Mr. Volkmer, Mr. Walsh, Ms. Kaptur, Mr. Poshard, Mr. Neal of Massachusetts, Mr. Roe, Mr. Derrick, Mr. Jones of Georgia, Mr. Savage, Mr. Bates, Mr. Hertel, Mr. Torricelli, Mr. Jones of North Carolina, Mr. Panetta, Mr. Ravenel, Mr. Traficant, Ms. Oakar, Mr. DeFazio, Mr. Watkins, Mr. Fascell, Mr. Payne of New Jersey, Mr. Ridge, Mr. Sikorski, Mr. Stark, Mr. Torres, Mr. Hughes, Mrs. Byron, Mr. Smith of Florida, Mr. Hochbrueckner, Mr. Wilson, Mr. Leland, Ms. Slaughter of New York, Mr. Costello, Mr. Evans, Mr. Darden, Mr. Skaggs, Mr. Yatron, Mr. Sangmeister, Mr. Jenkins, Mr. Johnson of South Dakota, Mr. Green, Mr. Dyson, Mr. Clement, Mr. Slattery, Mr. Kostmayer, Mr. Nowak, Mr. Scheuer, Mr. Carr, Mr. Hamilton, Mr. McMillen of Maryland, Mr. Swift, Mr. Flake, Mr. Hubbard, Mr. Coleman of Texas, Mr. Chapman, Mr. Eckart, Mr. Regula, Ms. Long, Mr. Early, Mr. Rose, Mr. Tallon, Mr. Bevill, Mrs. Lowey of New York, Mr. Gibbons, Mr. Wyden, Mr. Neal of North Carolina, Mr. Sharp, Mr. Campbell of Colorado, Mr. Hoagland, Mr. Andrews, Mr. Annunzio, Mr. Aspin, Mr. Murphy, Mr. Glickman, Mr. Perkins, Mr. Skelton, Mr. Weber, Mrs. Johnson of Connecticut, Mr. Rowland of Georgia, Mr. Price, Mr. Gunderson, Mr. Staggers, and Mr. Porter

October 3, 1989

Additional sponsors: Mr. Leach of Iowa, Mr. Leath of Texas, Mr. Anderson, Mr. Nagle, Mr. Mollohan, Mr. Pickle, Mr. Davis, Mr. Nelson of Florida, Mr. Spratt, Mr. Bruce, and Mr. Hyde

---

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

Sec. 201. Definitions.
Sec. 202. Discrimination.
Sec. 203. Posting notices.
Sec. 204. Regulations.
Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

Sec. 301. Definition of qualified individual with a disability.
Sec. 302. Discrimination.
Sec. 303. Actions applicable to public transportation considered discriminatory.
Sec. 304. Regulations.
Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 401. Definitions.
Sec. 402. Prohibition of discrimination by public accommodations.
Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 404. Regulations.
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TITLE V—TELECOMMUNICATIONS RELAY SERVICES

Sec. 501. Definitions.
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TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Construction.
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Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 605. Attorney's fees.
Sec. 606. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation,

and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United

State billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" shall include—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) Reasonable accommodation.—The term "reasonable accommodation" shall include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar accommodations.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Canal Zone, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to the standards and procedures established in titles II through V, it shall be discriminatory to subject an individual or class of individuals, directly or through contractual; licensing, or other arrangements, on the basis of disability, to any of the following:

(A) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(B) Affording an opportunity to participate in or benefit from a service, program, activity, bene-

fit, job, or other opportunity that is not equal to that afforded others.

(C) Providing a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(D) Providing a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the individual or class of individuals with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(E) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or individual that discriminates.

(F) Denying the opportunity to participate as a member of boards or commissions.

(G) Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(2) EQUAL OPPORTUNITY.—For purposes of this Act, aids, benefits, and services to be equally effective, must afford an individual with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in

the most integrated setting appropriate to the individual's needs.

(3) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(4) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(A) that have the effect of discrimination on the basis of disability;

(B) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to an individual with a disability; or

(C) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(5) RELATIONSHIPS OR ASSOCIATIONS.—It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other

opportunities to an individual or entity because of the relationship to, or association of, that individual or entity with another individual with a disability.

(b) DEFENSES.—

(1) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(2) QUALIFICATION STANDARDS.—The term "qualification standards" may include—

(A) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(B) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE II—EMPLOYMENT

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not

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include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 202. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization or joint labor-management committee of qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 203. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 204. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 205. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-8, and 2000e-9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning employment.

TITLE III—PUBLIC SERVICES

SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a

State or board, commission or other instrumentality of a State and political subdivision.

SEC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision.

SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transporta-

tion, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered

discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, and Commuter Rail Systems, and Key Stations.—

(1) Existing facilities.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Intercity, rapid, light, and commuter rail systems.—With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) Key stations.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29

U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 304. REGULATIONS.

(a) Attorney General.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as in existence on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) Secretary of Transportation.—

(1) In general.—Not later than 240 days after the date of enactment of this Act, the Secretary of

Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 304, concerning public services.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 401. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State or between any for-

eign country or any territory or possession and any State or the District of Columbia or between points in the same State but through another State or the District of Columbia or foreign country.

(2) PUBLIC ACCOMMODATION.—

(A) IN GENERAL.—The term "public accommodation" means privately operated establishments—

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) INCLUSIONS.—Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations

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unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403—

(A) a failure to provide a level of transportation services to individuals with disabilities, in-

cluding individuals who use wheelchairs, equivalent to that provided for the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) General Rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) Construction.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class

of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 404. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 403.

(b) OTHER PROVISIONS.—Not later than 240 days after the date of enactment of this Act, the Attorney General shall

issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 402.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

SEC. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

SEC. 501. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means services that enable simultaneous communication to take place between individuals who use TDDs or other nonvoice terminal devices and individuals who do not use such devices.

(3) TDD.—The term "TDD" means a Telecommunication Device for the Deaf, a machine that employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of this Act for any common carrier, as defined in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)), that offers telephone services to the general public, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide indi-

viduals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services, except that it shall not be considered discrimination for such a common carrier to fail to provide such services in any State to which subsection (b) applies if such services are provided under subsection (b).

(b) STATE DISCRIMINATION.—It shall be considered discrimination by a State, that designates an entity to provide interstate or intrastate telecommunication relay services to individuals throughout the entire State in a manner consistent with regulations issued by the Commission, for purposes of this Act, for such State, through the designated entity, to fail to provide, not later than 1 year after the date of enactment of this Act, interstate or intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to their customers who are able to use voice telephone services.

(c) CONSTRUCTION.—Nothing in this title shall be construed to discourage or impair the development of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

SEC. 503. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations to carry out this title, and such regulations shall establish minimum standards and guidelines for telecommunications relay services.

SEC. 504. ENFORCEMENT.

(a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a) and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available with respect to any aggrieved individual, except that—

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning the provision of an appropriate interstate or intrastate telecommunication relay service; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) and subsection (d) of section 813 shall not apply.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—The Commission shall enforce the provisions of this title.

(2) APPLICABLE ENFORCEMENT PROVISIONS.—The remedies, procedures, and rights set forth in sections 206, 207, 208, and 209 of the Communications Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

in title IV of the Communications Act of 1934 (47 U.S.C. 401 et seq.) shall apply with respect to the enforcement of this title, except that nothing in this subsection shall be construed to limit or restrict in any manner the remedies, procedures, or rights set forth in subsection (a).

(3) CEASE AND DESIST ORDERS.—Whenever, after full opportunity for hearing, on a complaint or under an order for investigation and hearing made by the Commission on the initiative of the Commission, the Commission shall be of the opinion that any carrier, or any State as described in section 502(b), is or will be in violation of this title or of any regulation issued under this title, the Commission shall—

(A) order that the carrier or State cease and desist from such violation to the extent that the Commission finds that such violation exists or will exist; and

(B) take other actions as it finds appropriate and necessary.

(4) PENALTIES.—

(A) IN GENERAL.—Any carrier or State to which section 502(b) applies that knowingly fails or neglects to comply with this title or of any regulation or order made by the Commission in car-

rying out this title shall forfeit to the United States the sum of $10,000 for each such offense.

(B) SEPARATE OFFENSES.—Each distinct violation of the provisions of this title shall be a separate offense under subparagraph (A). In case of a continuing violation, each day shall be considered a separate offense.

(C) RECOVERING FORFEITURES.—Such forfeitures shall be payable and recoverable in the same manner as prescribed in section 504 of the Communications Act of 1934 (47 U.S.C. 504).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities than are afforded by this Act.

(c) RELATIONSHIP AMONG TITLES.—The requirements contained in titles I through V shall be construed in a manner that is consistent with the other provisions of this Act, and any apparent conflict between provisions of this Act shall be resolved by reference to the title that specifically covers the type of action in question.

SEC. 602. PROHIBITION AGAINST RETALIATION.

No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 603. STATE IMMUNITY.

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of sections 304 and 404.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 605. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 606. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

AMERICANS WITH DISABILITIES ACT

WEDNESDAY, SEPTEMBER 20, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:38 a.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta, Chairman of the Subcommittee, presiding.

Mr. MINETA. The Surface Transportation Subcommittee will please come to order. I apologize for this delay. We just swore in two new members of the House of Representatives, a gentlemen, Mr. Geren from Texas, and Mr. Gary Condit from California. I, unfortunately, was delayed.

Today, as all of you know, we do begin our hearings on H.R. 2273, the Americans With Disabilities Act. Before proceeding, I would like to recognize the presence of Mr. Anderson, the Chairman of the full Committee on Public Works and Transportation. We are pleased to have you here, Mr. Chairman. At this time, I would like to yield to you.

The CHAIRMAN. Thank you, Mr. Chairman. I am very pleased to participate in this hearing today. The Subcommittee on Surface Transportation has always prided itself on its ability to keep America on the move by providing funding for transportation programs which enhance the lives of all Americans.

Therefore, I am especially pleased to continue this great tradition by fully supporting this effort to extend mobility rights to the forty-three million disabled Americans across the country. After all, mobility for all Americans is really what this hearing is about. The Americans With Disabilities Act has simple internal logic which is hard to fault.

Those members of the disability community who can use fixed-route lift-equipped buses will be able to do so. Those who cannot otherwise use the fixed-route system will use alternative paratransit systems. This simple logic has been lacking in our earlier attempts to address this issue. That is why we have such a long and tangled legal history of court decisions dealing with accessibility regulations in this country today.

That is also a reason for us to insure that we craft a bill which not only looks good on paper but is also one which can be implemented in the real world. I believe that we can achieve this goal by pursuing a bill along the lines of the one passed by the Senate, which also has the full support of President George Bush.

This Committee has always prided itself on its bipartisan spirit. So I am hopeful that we can pass a bill this year, as President Bush has requested. Once and for all, let's settle the accessibility issue and generate new opportunities for tens of millions of Americans in the process.

Unfortunately, Mr. Chairman, since the Airline Security Bill is on the House floor this morning, I will not be able to stay for the entire hearing. But I do want to let you know that your efforts have my full support. I want to thank you very much for giving me this opportunity.

Mr. **Mineta**. Thank you very much, Mr. Chairman. Knowing that the Aviation Security Act is on the floor, many of our members are already there.

The Americans With Disabilities Act gives us a unique opportunity to complete the work that we first started when we passed the Civil Rights Act some twenty-five years ago. The ADA legislation is a tangible, significant effort to knock down the barriers confronted by Americans with disabilities as they continue their efforts to be self-reliant, productive members of society

The Americans With Disabilities Act will provide basic civil rights protections to our 43 million disabled friends, neighbors and colleagues. This legislation would prohibit discrimination against disabled individuals in terms of employment opportunities, public services, public accommodations, transportation and telecommunications.

Many disabled individuals have cited a lack of transportation as the chief barrier to full participation in their communities. Accessible transportation is the vital link to employment for the disabled community in the same way that transportation links the able-bodied to their jobs and careers.

Tremendous technological advances have been made in recent years which offer increasingly easy access to the work place and other community activities for persons with disabilities. Our nation has achieved great expertise in the construction of accessible housing and transportation systems. Full access for Americans for disabilities is now well within our grasp. So we owe it to ourselves and our society to achieve this goal.

During today's hearing, we will be examining the transportation requirements that are included in the Americans With Disabilities Act bill. Specifically, the ADA requires that all new fixed-route public-transit buses be able to accommodate wheel chairs and their users. It mandates that our rail transit systems and stations be made fully accessible.

In addition, the bill makes accessible demand-responsive service, inter-city bus transportation, and other privately-provided transportation as well as transportation services that are provided by hotels, airport rental car companies and other enterprises not in the principal business of providing public transportation.

While we have the responsibility of assuring that these provisions of the bill are comprehensive, carefully stated and will achieve the intended results, the ADA Bill is, first and foremost, a civil-rights bill. Our nation has worked to respond to the needs of other minorities who have been denied equal opportunity because of ignorance and prejudice. We must now address the needs of disabled Americans who are currently denied the opportunity to be full participants in our communities.

President Bush, members of both parties, the House leadership, the unanimous vote out of the Committee on the Senate side, as well as a strong 76 to 8 vote in the Senate and a number of private non-profit organizations, fully support this legislation.

I am hopeful that, following our hearings, we can take swift and positive action on this civil-rights legislation.

At this time, I would like to call on our very fine colleague and a member of this Committee, a hard-working gentleman from Pennsylvania, the ranking Republican on the Surface Transportation Subcommittee, Mr. Bud Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman. First of all, I would like to ask unanimous consent that the statement of the ranking member of the full Committee, the Honorable John Paul Hammerschmidt, be made a part of the record.

Mr. MINETA. No objection. So ordered.

[Mr. Hammerschmidt's prepared statement follows:]

STATEMENT OF THE HONORABLE JOHN PAUL HAMMERSCHMIDT

Thank you, Mr. Chairman.

First of all, I would like to commend you, Mr. Chairman, and Congressman Shuster for scheduling these two days of hearings on the Americans with Disabilities Act.

This proposed legislation is designed to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life. These are certainly goals which I personally support.

Throughout my career I have had the pleasure of working very closely with fine organizations such as the Paralyzed Veterans of America on many issues. My work with these groups has given me a first hand understanding and appreciation of the many barriers facing the disability community.

No where are these goals more important than in transportation, for it is often the key which enables the disabled to become part of the mainstream and take advantage of education, employment and recreational activities. Mobility for the disabled American is our upmost consideration. Testimony for our broad collection of knowledgeable witnesses will help us to determine how best to achieve that mobility.

The proposed legislation offers solutions to the transportation problems of the disabled which are complex and wide ranging in their potential impact. We must be sure that we understand exactly what the legislation would require of the transportation providers. We must understand the variety of ways in which our disabled friends are presently aided in the many communities across our Nation and what effect these requirements would have on current services. We must remember the needs of not only wheel-chair bound individuals, but the mentally impaired, the growing population of elderly Americans, and others who benefit from special transportation services. Concerns have been raised as to whether or not the requirements of the proposed bill, as applied to all situations, will result in greater mobility. Until we know the facts, we can not be assured that our common goal of improved service to the disabled will in fact be achieved.

I look forward to hearing from all our distinguished witnesses and working with the subcommittee on this important legislation.

Mr. MINETA. Now, Mr. Shuster, ranking member of the subcommittee.

Mr. SHUSTER. Mr. Chairman, as some of my colleagues know, I bring a very personal interest to this legislation, having a mother who is a double amputee in a wheel chair. I have banged up my knuckles more times than I can remember trying to juggle a wheel chair through a door that was too narrow or trying to get a wheel chair up a flight of stairs or into rest areas. While all of that, indeed, was a labor of love, it certainly brought home to me in a very, very personal way, the need for us to address the issue of providing access to disabled people in our country.

Mr. Chairman, I certainly anticipate supporting this legislation. I anticipate our passing it through the House and making it law this year, but having said that, I am concerned with some of the transportation provisions in it because I think there are some reasonable concerns that we are going to have to focus on.

For example, having lifts on every bus does not do a thing for those thousands of disabled people who need door-to-door transportation. I think we have got to be very careful that we don't limit our focus in this area. Having lifts on buses does not do a thing for those disabled who live in snowy areas of the country where lifts do not work in snowy conditions.

I think we have got to be very careful that we craft this legislation so that it not only expresses a very strongly-felt civil rights view but that it also takes into account the diversity of interests, not only regionally, but among people with different disabilities and, indeed, people in different age groups of the disabled.

I am also concerned, Mr. Chairman, that if we increase costs to the point that we bring about a reduction of service, then we are not serving the disabled. We are not serving the general public, either. If we increase cost, particular in the private sector, so that we drive small transportation companies out of business, we are not serving the disabled nor the general public.

So I believe that we should be focusing on the cost implications here and focusing on the diversity questions to make sure that what we do is not only good but right and reasonable and cost-effective for all Americans.

With those comments, Mr. Chairman, I look forward to our crafting legislation that can become law, that can improve the lives of the millions of disabled in this country. I congratulate you for holding these hearings and look forward to the weeks ahead.

Thank you.

[Mr. Shuster's prepared statement follows:]

STATEMENT BY THE HONORABLE BUD SHUSTER

AMERICANS WITH DISABILITIES ACT
HEARINGS BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
WEDNESDAY, SEPTEMBER 20, 1989 – 10:00 AM
2167 RAYBURN HOUSE OFFICE BUILDING

THANK YOU MR. CHAIRMAN.

I WOULD FIRST LIKE TO THANK CHAIRMAN MINETA FOR SCHEDULING THESE HEARINGS ON THE AMERICANS WITH DISABILITIES ACT. I WOULD ALSO LIKE TO THANK OUR WITNESSES, THE DEPARTMENT OF TRANSPORTATION, THE DISABLED COMMUNITY AND THE TRANSIT INDUSTRY FOR JOINING US.

THE LEGISLATION WE ARE EXAMINING TODAY HAS AS ITS GOAL, THE INTEGRATION OF THE DISABLED COMMUNITY INTO OUR SOCIETY THROUGH INCREASED MOBILITY AND ACCESS TO OUR NATION'S TRANSPORTATION SYSTEMS.

WHILE I SUPPORT THE WORTHY GOALS OF THIS LEGISLATION, WE SHOULD, I FEEL, TEMPER OUR PURSUIT BY THE QUITE REASONABLE CONCERN THE SOLUTIONS PROPOSED WILL HAVE UPON THE ACCESS ALL AMERICANS, BOTH DISABLED AND NON-DISABLED, WILL HAVE TO TRANSPORTATION. IF IN OUR EFFORTS TO 'MAINSTREAM' DISABLED AMERICA, WE IMPOSE SUCH AN ECONOMIC BURDEN UPON THE TRANSIT AUTHORITIES OF OUR COMMUNITIES – BOTH LARGE AND SMALL, THAT SERVICE IS CUT BACK OR EVEN DROPPED, THEN WE HAVE SHIRKED OUR RESPONSIBILITY TO THE DISABLED COMMUNITY THIS BILL IS DESIGNED TO HELP AND PROTECT.

I AM CERTAIN HOWEVER, THAT A SOLUTION CAN BE FOUND THAT WILL SERVE TO INCREASE THE MOBILITY OF OUR DISABLED CITIZENS WHILE PRESERVING AND IMPROVING EXISTING TRANSPORTATION SERVICES. WHETHER THIS SHOULD BE ACCOMPLISHED THROUGH A FLEXIBLE, COMMUNITY APPROACH OR WHETHER GEOGRAPHIC AND CLIMATIC CONDITIONS SHOULD PLAY A GREATER ROLE OR WHETHER FULL ACCESSABLITY IS WARRENTED, WILL I HOPE, BE BROUGHT OUT IN THE TESTIMONY WE HEAR TODAY AND NEXT TUESDAY.

FOR THESE REASONS, I LOOK FORWARD TO HEARING FROM OUR WITNESSES TODAY AS THEY SHARE WITH THE COMMITTEE THEIR EXPERIENCE AND KNOWLEDGE ON THIS ISSUE. WE MAY THEN MOVE FORWARD TOWARD OUR GOAL OF A TRANSPORTATION SYSTEM WHICH ALLOWS THE DISABLED OF OUR SOCIETY ACCESS TO ALL FORMS OF TRANSPORTATION AND THEREFORE TO ALL WALKS OF LIFE ACROSS THE UNITED STATES.

Mr. MINETA. Thank you very much, Bud. Are there other members who wish to make opening statements?

Mr. Petri?

Mr. PETRI. Thank you very much for the courtesy of allowing me to do this, Mr. Chairman. I would like to put my full statement in the record and abbreviate it, if possible.

Mr. MINETA. Without objection.

Mr. PETRI. Mr. Chairman, as Yogi Berra would say, I have a sense of deja vu all over again as this subject comes before this Subcommittee. Some advocacy groups are insisting that all public transit equipment should be equipped to meet the needs of all disabled persons. Politically, this is difficult to oppose, but it is not the best way to go.

Back in 1980 and 1981, in the 96th and 97th Congresses, the same subject was addressed as part of the implementation process for Section 504 of the Rehabilitation Act. The principal issue then as now was requiring that buses be equipped with lifts, regardless of local needs and conditions, or alternative means of transportation tailored by localities for themselves.

Proponents of mandatory lifts tend to cast those who favor more flexible approaches as being anti-disabled. Such was not the case eight years ago and it needs to be made clear again that being against mandatory bus lifts does not mean being against having transportation available to the disabled.

In fact, the reverse is true. If we provide a common-sense framework in the legislation, then local communities can adapt their transportation systems to what works for them. In my state of Wisconsin, which has a long tradition of innovative action in solving social needs, a number of realistic solutions have been tried and proven. These examples are compelling evidence of how local decisions and solutions can best meet that need.

In this hearing today, Mr. Henry Mayer will give testimony to this Subcommittee that will provide compelling evidence that local flexibility is the answer. Mr. Mayer served as Mayor of Milwaukee during a study and test period that Milwaukee underwent to determine how best to serve the transportation needs of the local disabled community.

Mr. Chairman, I also have a letter from Mayor Paul Soglin of Madison, Wisconsin to Senator Kohl describing why Madison has opted for paratransit service rather than lift equipment mainline bus service.

I would ask that his letter be inserted in the record at the conclusion of my statement.

Mr. MINETA. Without objection. So ordered.

Mr. PETRI. Thank you, Mr. Chairman.

[Mr. Petri's prepared statement follows:]

STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM WISCONSIN

Mr. Chairman, this bill has been referred to this subcommittee to address the transportation requirements which the bill would mandate; specifically the civil right of disabled persons to enjoy full availability of and accessibility to public transit facilities.

Now, that is an admirable and moral goal, and it is achievable—but Mr. Chairman, as Yogi Berra would say, I have a sense of deja vu all over again.

Some advocacy groups are insisting that all public transit equipment should be equipped to meet the needs of all disabled persons.

Politically, this is difficult to oppose, but it is not the best way to go.

Back in 1980 and 1981, in the 96th and 97th Congresses, this same subject was addressed as part of the implementation process for Section 504 of the Rehabilitation Act.

The principal issue then, as now, was requiring that buses be equipped with lifts, regardless of local needs and conditions, or alternative means of transportation tailored by localities for themselves.

Proponents of mandatory lifts tend to cast those who favor more flexible approach as being anti-disabled.

Such was not the case 8 years ago, and it needs to be made clear again that being against mandatory bus lifts does not mean being against having transportation available to the disabled.

In fact, the reverse is true. If we provide a common sense framework in the legislation, then local communities can adapt their transportation system to what works best for them.

In Wisconsin, which has a long tradition of innovative action in solving social needs, a number of realistic solutions have been tried and proven.

These examples are compelling evidence of how local decisions and solutions can best meet the need.

Later in this hearing, Mr. Henry Mayer will give testimony to this subcommittee that will provide compelling evidence that local flexibility is the answer. Mr. Mayer served as a Milwaukee City Official during the study and test period that Milwaukee underwent to determine how best to serve the transportation needs of the local disabled communities.

My own home town of Fond du Lac, Wisconsin, is very proud of the system that they developed to meet the transportaiton needs of the disabled community. Back in 1979 when Federal dollars were made available, coalitions that included representatives of the disabled and the transit authority, were formed to study the needs of the disabled community to seek the best, most cost-effective system to meet these needs. Bus-lifts were considered and studied, and passed over in favor of a paratransit system.

It seems once again that as with most problems that the federal government tries to legislate a federal cure for, the best solution can be found in each community. We should only establish a *result oriented standard*, leaving local flexibility to determine how *best* to achieve that standard. Milwaukee, Madison, Fond du Lac, and many other progressive communities have proven that local flexibility is the answer. The communities that have been successful in developing dependable, timely, cost effective transportation to the disabled should not be penalized through federal mandates that tell them, despite their findings to the contrary, bus lifts are the answer. The disabled community is not limited to those in wheel chairs. There are many other elderly and disabled citizens that enjoy the convenience and ease that door-to-door service provides them.

It is important to look at ways for communities to not only provide service to the disabled, but to provide *proven superior* service through *proven* methods such as paratransit.

Mr. Chairman, I also have a letter from Mayor Paul Soglin of Madison, Wisconsin, to Senator Kohl, describing why Madison has opted for paratransit service rather than lift-equipped mainline bus service.

Basically, para-transit offers *better service* to the elderly and disabled, at less expense. Without objection, I would like to insert Mayor Soglin's observations in the record following my statement.

Mr. Chairman, when we went through this same debate almost 10 years ago, we saw a number of 'horror stories'.

For example, in Appleton, Wisconsin, $140,000 was spent on wheelchair lifts for buses to serve only *nine* people in Appleton.

In short, Mr. Chairman, federal *requirements* do not guarantee the success of community programs.

It is the efforts of local citizens that will determine their outcome. We should prescribe a *performance-based standard of expectation* in the legislation.

I urge each of you to examine the experiences of Milwaukee, Fond du lac, and Madison closely. I think you will find them to be models of successful local initiatives.

We should frame our requirements in such a way to encourage such flexible, efficient, and cost-effective local responses.

[The letter referred to by Mr. Petri follows:]

RECEIVED

AUG - 3 1989

Transportation [illegible]

Office of the Mayor

City of
Madison

Paul R. Soglin, Mayor

City-County Building
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53710
608 266 4611
608 266 4443 (TDD/Device for Deaf)

July 31, 1989

The Honorable Herb Kohl
U. S. Senator
704 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Kohl:

I understand that S. 933, the Americans with Disabilities Act, will soon be voted on in the Senate Committee on Labor and Human Resources.

As you consider the provisions of this bill, I ask that you seek to retain the option for cities to choose the best means of providing transportation service to the elderly and disabled. My immediate concern is that cities, such as Madison, continue to have the option of choosing whether or not to purchase buses with wheelchair lifts or to use available funds to improve demand responsive paratransit.

The City of Madison has just faced a decision about whether to buy lift-equipped buses. Initially, I favored purchase of lift-equipped buses. As I learned more about the variety of transportation needs among disabled individuals and as I learned about the limitations of a fixed route, lift-equipped service, I changed my mind. I decided Madison should continue to focus its resources on paratransit service. The Madison Common Council strongly supported this position in a voice vote to purchase six paratransit type buses rather than to purchase mainline buses with lifts.

Several factors were key in the City's decision. First, Madison's severe winter weather would result in unreliable lift-equipped mainline service even for that portion of the disabled community that preferred to use it. Subzero temperatures, snow and icy streets, curbs and sidewalks would be substantial barriers to reliable service.

Second, a significant portion of disabled individuals cannot use lift-equipped mainline service either because they do not use wheelchairs, because they are not sufficiently mobile, or because transit routes are not conveniently located.

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Finally, given a fixed number of dollars, Madison's paratransit system delivers many times more rides than a lift-equipped mainline service. I have looked at the number of rides actually taken on lift-equipped mainline bus service in cities with climate's similar to Madison's. The number of rides is quite small in comparison to the number provided by Madison's paratransit system.

Over the past fifteen years, the City of Madison has developed an outstanding paratransit system. In 1989, paratransit service expenditures equal 9.55% of the total transit system's budget. The annual dollar amount equals $1,540,980 far exceeding the approximately $1,000,000 the City annually receives from the federal government for operating costs. The City's paratransit service will provide approximately 180,000 rides this year.

Without the exclusive paratransit option, I think it is unlikely that the City would have the quality and quantity of elderly and disabled transit service we have today. I believe it is an option that is most appropriate for cities in a cold climate such as Wisconsin's.

Thank you for your consideration.

Sincerely,

Paul R. Soglin
Paul R. Soglin
Mayor

PRS/cb

Mr. Mineta. The gentleman from Tennessee, Mr. Clement.

Mr. Clement. Mr. Chairman, I would just request unanimous consent that my opening statement be admitted into the record.

Mr. Mineta. Without objection; so ordered.

[Mr. Clement's prepared statement follows:]

STATEMENT OF HON. BOB CLEMENT, A REPRESENTATIVE IN CONGRESS FROM TENNESSEE

Mr. Chairman, thank you for convening today's hearing on the Americans With Disabilities Act. I am proud to join you and 21 of our Public Works Committee colleagues as a cosponsor of this important measure.

I am proud to join you in supporting legislation which will end discrimination against disabled individuals. Twenty-five years after the passage of the 1964 Civil Rights Act, it is time to make all citizens of the United States full and participating members of our society.

Despite some reluctance, I believe that the business community will share our view that disabled Americans are as talented and skilled as the non-disabled and that they are excellent and hard-working employees. Businesses will also share our view that the disabled are consumers with desires, wants, and appetites as voracious as the non-disabled. All they need is access, all they deserve is equality.

While our goals are lofty, crafting the most appropriate legislative solution is problematic. As in all areas guaranteeing the civil rights of one group of citizens, we are often asked to strike a legislative balance. And such a balance is a particularly delicate issue in the areas of public and private transportation.

As a former public service commissioner, I understand the cost-sensitive basis on which transit service decisions are made. And while my service was prior to Congress' deregulation of much of the transportation industry, the cost-sensitive nature of these decisions has not changed, only the flexibility with which industry can implement them without State or Federal intrusion.

Like you, Mr Chairman, and the other members of the subcommittee, I look forward to hearing the testimony of our witnesses and getting a clear understanding of the problems which confront the disabled community and an understanding of the issues which confront providers of transit.

Thank you, Mr. Chairman.

Mr. Mineta. Mr. Parker, Mr. Payne, any other members seek recognition?

[No response.]

[Mr. Payne's prepared statement follows:]

STATEMENT OF HON. LEWIS F. PAYNE, JR., A REPRESENTATIVE IN CONGRESS FROM VIRGINIA

Mr. Chairman, I applaud your leadership in calling for hearings on Americans with Disabilities legislation.

In addition to serving on this Committee, I also have the pleasure of sitting on the Committee on Veterans Affairs. In that capacity, I am acutely aware of the difficulties disabled individuals must cope with in order to function in our society. I appreciate this Committee's interest in this matter, and I welcome this opportunity to explore possible avenues of improving transportation for this nation's disabled.

I also thank all of the witnesses who are joining us today, and I look forward to hearing your views on the legislation before this Committee.

[Mr. Costello's prepared statement follows:]

STATEMENT OF HON. JERRY COSTELLO, A REPRESENTATIVE IN CONGRESS FROM ILLINOIS

Mr. Chairman, as a cosponsor of the Americans with Disabilities Act, I look forward to today's hearing and how it will affect the transportation of disabled individuals across the nation.

This bill is an attempt to include the members of the disabled community into everyday life by making a variety of public facilities convenient to the disabled. In particular, it is my interest to see what direct impact this will have on transit authorities and transportation companies in Illinois and throughout the country.

For years, a lack of good transportation has been a constant complaint from representatives of the disabled community. The Americans with Disabilities Act takes large steps toward making very transportation vehicle in the country accessible to the disabled, so that they can share the convenience of public transportation that is shared by many other non-disabled individuals.

Through greater access to transportation, the disabled can have the same access to their workplace that is now enjoyed by others. That will enable many disabled workers to put their skills to work for America's businesses and other employers.

Mr. MINETA. At this time, I would like to call together our first panel: Mr. Roland Mross, Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation, accompanied by John Cline, the Associate Administrator for Budget and Policy of UMTA as well as Don Trilling, the Deputy Director of the Office of Transportation Regulatory Affairs of the Department of Transportation.

If you would please come forward to the table.

TESTIMONY OF ROLAND MROSS, DEPUTY ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN CLINE, ASSOCIATE ADMINISTRATOR FOR BUDGET AND POLICY, URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, AND BY DON TRILLING, DEPUTY DIRECTOR, OFFICE OF TRANSPORTATION REGULATORY AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. MINETA. Mr. Mross, your full statement will be made a part of the record. So you may go ahead and proceed in your own fashion, sir.

Mr. MROSS. Thank you, Mr. Chairman, members of the Committee. My name is Roland J. Mross. I am the Deputy Administrator of the Urban Mass Transportation of the U.S. Department of Transportation. I am pleased to have this opportunity to appear before you today to present the views of the Department of Transportation on the Americans with Disabilities Act which the Senate passed on September 7, 1989. As I am sure you know, the Administration strongly supports enactment of Federal legislation extending civil rights to Americans with disabilities.

Appearing with me today to discuss this bill are John Cline, the Associate Administrator for Budget and Policy in the Urban Mass Transportation and Mr. Donald Trilling, Director, Office of Transportation Regulatory Affairs, Office of the Assistant Secretary for Policy and International Affairs.

Despite the best efforts of all levels of government and the private sector, and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this nation still lead lives in a state of isolation and dependence.

Sixteen years have gone by since the Rehabilitation Act was passed. In that time the doors of educational opportunity have been opened to persons with disabilities. Nevertheless, persons with disabilities are still, too often, shut out of the economic and social mainstream of American life. The Americans With Disabilities Act would directly address this problem.

In brief, the purpose of the Act is to provide a clear national mandate to end discrimination against individuals with disabilities, and to bring persons with disabilities into the economic and social mainstream of American life, to provide enforceable standards addressing discrimination against individuals with disabilities and to insure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

Let me, now, briefly summarize for you some of the key provisions in the Americans With Disabilities Act as passed by the Senate and which affect transportation. Under that bill, public entities must purchase or lease accessible vehicles—bus, [NAIL] and other fixed-route vehicles—in any solicitation made thirty days after the enactment of the Act.

The Department of Transportation may temporarily relieve a public entity from purchasing a lift-equipped bus if a lift is unavailable and the public entity has made a good-faith effort to locate a lift-equipped bus.

A public entity providing fixed-route transit service must provide a comparable level of paratransit service to handicapped individuals who cannot use the fixed-route service. The Department would issue service criteria in this regard. If providing such service presents an undue financial burden, the Department may allow the public entity to limit its service pursuant to a flexible numerical formula.

A public entity only providing demand-responsive service must buy or lease accessible vehicles unless it can demonstrate that its system provides a level of service to disabled people equivalent to that provided the general public. New facilities built by a public entity must be accessible. Existing facilities with major alterations will, to the maximum extent feasible, be made accessible in the altered areas.

Regarding rail systems, at least one car per train must be accessible as soon as practical, but in no less than five years. Existing key rail stations must be made accessible within three years, except that the Department may extend that time to twenty years for extraordinarily expensive structural changes necessary to achieve accessibility.

The proposal that public transit agencies purchase only lift-equipped buses is necessary to accomplish the goal of the legislation to provide civil rights to individuals with disabilities; that is, to mainstream them into daily American life. For disabled people who lead, or who want to lead, independent lives and to be integrated into their communities, the availability of lift-equipped buses provides the broadest and most immediate benefits.

Such accessibility can be accomplished relatively easily since more than 35 percent of public transit buses already are lift-equipped. We estimate that it would take ten to twelve years for all public transportation buses to be lift-equipped. Disabled persons want to use lift-equipped vehicles once they become widely available. This demand should lower costs and advance the technology and the reliability of the lifts. Regarding current costs, adding lifts to buses costs approximately $10,000 to $15,000 per bus and adds annual maintenance costs, per bus, of approximately $2,000.

The ADA legislation would also require that paratransit buses be made available to those individuals who cannot use accessible, fixed-route transit. The Senate-passed legislation recognizes, however, that in some cases the provision of unlimited paratransit service may be an undue financial burden on the transit provider. The Senate-passed bill thus would allow the use of a flexible numerical formula that incorporates appropriate local characteristics such as population, interim degree of accessible bus service, and residential patterns to determine when provision of paratransit reaches a level of undue financial burden and limits the provider's required paratransit to that level.

If the bill is enacted, the Department would look forward to working with the disabled community, and providers of transit services, through the regulatory process to establish a workable formula in this regard. It is important to note, moreover, that if another entity in the area provides paratransit services that meet the requirements of the ADA, the local transit authority would not be required to duplicate that service.

In those urban areas where rail transit is available, it is just as important to provide access for the disabled to that system as it is to provide access to the fixed-route bus system. The ADA requires that, within five years, all rail systems have one car per train that is accessible to the disabled. New construction of transit facilities would be made accessible. The bill also provides for retrofitting of existing key stations in light-rapid and commuter rail systems.

The transit agencies and members of the disabled community would work together to plan the strategy for key station accessibility. The pattern of New York and Philadelphia, which already have worked out agreements to retrofit key stations, would serve as an excellent model in this regard for other cities. The ADA, as passed by the Senate, would require no incremental effort by the cities of New York and Philadelphia.

Entities that operate only demand-responsive systems for the general public are, for the most part, small rural communities. Therefore, it is appropriate that in those areas a new vehicle need not be lift-equipped if the entity can demonstrate that its system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

The ADA also extends to transportation provided by private entities. Hotel and airport shuttle services and around-the-mall parking lot vans, when they offer demand-responsive services, would be required to provide adequate levels of service to individuals with disabilities and need not equip all vehicles with lifts.

Private intercity bus companies, clearly, provide an important transportation service. They are a transportation safety net providing service to regions not otherwise serviced by other modes of transportation and to people who do not generally have other transportation options available to them. Therefore, the Senate-passed legislation would require these operations to be made accessible within seven years for small operators and six years for all others.

The Department must issue regulations within a year of enactment to implement these requirements. This legislation also calls for a three-year study of how best to achieve this accessibility for intercity carriers. The rule promulgated by the Secretary will, thus, be available to serve as a baseline against which other approaches can be compared.

This study required by the bill should indicate cost-effective methods for making over-the-road buses accessible within the statutory time period.

Finally, the Department supports provisions adopted in the Senate-passed bill that appropriately distinguish the obligations of employers with respect to active alcoholics and drug abusers, on the one hand, and those who are no longer using illegal drugs or abusing alcohol, on the other hand. Moreover, these provisions would allow an employer to prohibit the use of illegal drugs by an employee and prohibit the use of alcohol at the work place.

Mr. Chairman, twenty-five years ago Congress and the President were finalizing enactment of the Civil Rights Act of 1964, one of the most comprehensive civil rights legislation ever passed. We now have the chance to extend the nation's civil-rights guarantees to the disabled community. The Department and the Administration are pleased to support this landmark legislation.

Mr. Chairman, that concludes my remarks and we would be pleased to respond to any questions that you might have.

Mr. MINETA. Thank you very much, Mr. Mross. Either Mr. Cline or Mr. Trilling, do you have statements to submit for the record or any comments?

If not, thank you very much, Mr. Mross, for your very fine statement. Let me ask, first of all, what is the Department's current policy as it relates to accessibility?

Mr. CLINE. Currently, the Department is abiding by the regulations that were issued under Section 504 of the Rehabilitation Act. As you may be aware, there was a court decision of the Third Circuit which may have an impact upon that. But we are still operating under the original 504 Regulations.

Mr. MINETA. Plus any requirements from the Surface Transportation Assistance Act of 1982. Are there any provisions in that Act that deal, also, with accessibility or had it generally been Section 504 of the Rehabilitation Act?

Mr. CLINE. Those requirements are reflected in the regulations, also.

Mr. MINETA. The recent court decision in the Third Circuit did affect the Department's accessibility regulations, did they not?

Mr. CLINE. Yes.

Mr. MINETA. Could you, briefly, describe what that impact is from that Third Circuit's decision?

Mr. CLINE. My recollection of the initial decision was that the 3 percent cost cap that was used for paratransit was overruled by the court, as was the local option, which refers to the choice of either lifts on buses or paratransit.

Upon the *en bank* review by the full court, however, the local option was restored but regarding the 3 percent cap, the court maintained the position that that was to be changed.

Mr. MINETA. Do I assume that, regardless of whether the Third Circuit Court had ruled this way or not, as it relates to the 3 percent accessibility or as to whether or not agencies were meeting their obligation to provide accessibility, that because of the Third Circuit Court decision, the Department would have revisited this whole issue regardless of this ADA bill or not?

Mr. Cline. Assuming that we receive the order from the court as we anticipate we will, we would have begun to engage in a regulatory process based upon that order.

Mr. Mineta. In Mr. Mross' statement, the figure of 35 percent of the national fleet is, currently, lift-equipped. That is mentioned, but what percentage of buses bought last year, if we have that figure, Mr. Mross, were lift-equipped? First of all, how many buses were purchased last year and, of those that were purchased last year, how many were lift-equipped?

Mr. Cline. There has been a trend over the last few years that approximately 3,000 to 3,700 buses are purchased each year using UMTA Federal assistance. Of those buses that were purchased last year, we do not have a figure as to how many were lift-equipped, but I would venture to say that it was substantially higher than previous years.

Mr. Mineta. Higher than that 35 percent that you say are equipped right now?

Mr. Cline. Yes. It is hard to commit a specific number, but because so many major transit systems have elected to purchase with lift-equipped buses there has been a higher percentage. Exactly what that percentage would be, I really can't say.

Mr. Mineta. The cost of this lift-equipment is, as I understand it, roughly $10,000 to $15,000 per lift. What is the average cost of a transit bus?

Mr. Mross. $155,000.

Mr. Mineta. As I understand it, we are now in the fourth or fifth generation of lift technology in this country. From your experience within UMTA, what would you say is the reliability of these lift mechanisms?

Mr. Cline. We do not have specific statistics that indicate the failure rates of lifts. From my personal experience with several transit systems that are lift-equipped, though, there was a higher than acceptable rate of failures on the lifts. Many of those were due to poor maintenance at times or just pure mechanical failures—pinched hydraulic hoses, computer command function failures, and the like.

But I would say that it was higher than acceptable.

Mr. Mineta. Would you say that, with each generation of improvement of lift technology, at least to some degree, that there have been improvements in the reliability of the lifts, even though it may be a little higher than what you would like to see?

Mr. Cline. Yes. I think that there have been some improvements. They have not been as quick as, I think, the industry would like to have seen, but compared to some of the original lifts that were coming out ten or fifteen years ago, there has been a marked improvement.

Mr. Mross. If I might, Mr. Chairman, our expectation also is that with the wider utilization of lift equipment, the technology ought to improve and reliability ought to improve, as well as the cost go down.

Mr. Mineta. We have had estimates, I guess, from articles and other testimony indicating that the cost of annual lift maintenance is roughly $2,000. In fact, I think that is what is included in your testimony. At the same time, we have had other estimates given to us that range anywhere from a third to three times the figures that you have indicated.

I am wondering what do you think accounts for this very wide range of costs attributable to the maintenance of that lift equipment?

Mr. CLINE. Each transit system, I think, has taken a different approach towards maintenance on lifts in recent years; some transit systems have claimed very high maintenance costs. Specifically, what that is due to, I am not sure. I have suspicions that, possibly, the proper level of maintenance was not completed on those lifts. The lifts must be cycled on a regular basis even if there is no malfunction in the lift. Ongoing preventive maintenance can be conducted on them.

I would venture to say that different transit systems have taken a different approach to it and that has resulted in varying degrees of expenses. We, too, have heard of the various expenses.

Mr. MINETA. Would you have any idea how many of those, let's say, roughly about 430-some transit systems across the country that we have—what percentage of them are currently providing some kind of paratransit services--maybe not percentages of the numbers, but maybe if you have some absolute numbers of all the transit agencies? Do you have any idea what that might be?

Mr. MROSS. Three quarters, we believe—75 percent or more.

Mr. MINETA. How will the Department implement this provision that is in the ADA that refers to the flexible formula provisions surrounding undue financial burden as indicated, or as contained, in the Senate-passed bill? Any idea as to how UMTA would look at that in the implementation of some kind of a flexible formula?

Mr. CLINE. We do not have any idea at this time. We anticipate engaging in the regulatory process, assuming the passage of the bill. Sitting here today, I really could not give any indication how that will proceed.

Mr. MINETA. To what extent has the Department been monitoring the new, much-less-expensive, wheel chair lift designed for use in over-the-road buses which are being used in Denver?

Mr. CLINE. I assume you are referring to the Hubmatic lift that the Denver——

Mr. MINETA. Yes, that's correct, John.

Mr. CLINE. We at the Department have not yet monitored that lift mainly because it is a relatively new lift. There are very few of them in use throughout the country. The Hubmatic, as I mentioned, is a German-manufactured lift that currently is installed and maintained, I believe, by Stewart-Stevenson who has, from what I understand, the sole rights for implementation.

The lift, itself, is a very interesting design and substantially different from other intercity coach lifts. We are, obviously, going to take a look at it in the near future. But I would mention that the usage that it is incurring in Denver is not indicative of what a normal, intercity-type coach would incur. So there will need to be, obviously, further analysis on that lift besides the Denver experience.

Mr. MINETA. Is there any explanation as to why it only costs one-third to one-fifth of the cost of other over-the-road bus lifts?

Mr. **Cline**. I had the lift demonstrated for me when I was in Denver. As I mentioned, it was a very interesting design. It appears to have less moving and working parts on it than the other lifts do. That might contribute to its lower cost; the fact that it is a little more simplified.

Mr. **Mineta**. How adequate is the current policy of accessibility practiced by inter-city bus providers in meeting the needs of the community with disabled citizens.

Mr. **Trilling**. It certainly does not provide a level of accessibility compared to what is called for in the ADA. I think the inter-city bus industry has tried to do what it can, but it is, really, just starting to come to grips with the problem and is in its early phases of making accessibility arrangements.

Mr. **Mineta**. The inter-city bus industry has suggested that the ADA be amended so that they would be treated in the same way that airlines are relative to the accessibility issue. Would you summarize for us the form that the regulations arising from the Air Carrier Access Act will take?

Mr. **Trilling**. The air carrier access industry is quite different. There has always been some degree of accessibility in the airline industry, a good degree of accessibility for many. The problem there has been some unfair discrimination and a lot of inconsistency in how those with disabilities are treated when they get on the carriers.

The difference that they cite between what goes on in the airline industry and what would go on in the bus industry is not well-defined. All the regulations that we will be putting in about the airline industry, as far as accessibility goes, are very particular to the kind of aircraft. For large aircraft, we would require more accessible features and for small aircraft, we would require less.

So I am not exactly sure what it is that the bus industry is referring to when they say equal treatment. The situation is quite different as far as the physical constraints of the two different kinds of vehicles.

Mr. **Mineta**. Thank you very much. Mr. Shuster?

Mr. **Shuster**. Thank you, Mr. Chairman. Mr. Chairman, I have a whole series of questions. I will probably run out of time, so if you would, simply, let me know when my time expires then I will, on a second round, continue with my questions.

Thank you, gentlemen, for being here today. The Senate Bill requires transit authorities, when they are purchasing new buses for their fleets, to buy lift-equipped buses. I wonder if you could tell us the following factual information concerning bus fleets and costs for public transit. How many transit buses are there in operation?

Mr. **Mross**. Around 50,000, nationwide.

Mr. **Shuster**. Of these, how many are lift-equipped?

Mr. **Mross**. We estimate about 35 percent.

Mr. **Shuster**. A new transit bus, you say, is $155,000?

Mr. **Mross**. That's correct.

Mr. **Shuster**. The lift costs——

Mr. **Mross**. $12,000 to $15,000.

Mr. **Shuster**. The average annual maintenance; is that $2,000?

Mr. **Mross**. The average annual maintenance cost of a bus or——

Mr. **Shuster**. Of a bus, first.

Mr. **Mross**. Of a bus is $32,000.

Mr. **Shuster**. A year?

Mr. **Mross**. Yes.

Mr. **Shuster**. The average maintenance cost, per bus, is $32,000 a year. And the increase in that cost with the addition of a lift is what; $2,000?

Mr. **Mross**. $2,000; that's correct.

Mr. **Shuster**. What is the average life of a transit bus?

Mr. **Mross**. Twelve years or more.

Mr. **Shuster**. Can you estimate the aggregate annual cost to public transit entities to implement the lift requirement?

Mr. **Mross**. It is difficult. Our best guess is that it is around $30 million. If the Federal government participates, we would expect, out of the Urban Mass Transportation Administration, that would be $24 million of Federal funds, $6 million of local funds.

Mr. **Shuster**. You are saying $30 a year to implement the lift requirement is the total cost, of which $24 million would be Federal?

Mr. **Mross**. That's correct.

Mr. **Mineta**. What are the ridership levels, disability ridership levels? For example, I have heard a story that in Seattle, where they have lift-equipped buses, they average only one person using the lift every other day, per bus. Is that accurate?

Mr. **Mross**. Again, that figure, nationally, we are estimating to be around 1,500 to 3,000, daily.

Mr. **Shuster**. 1,500 to 3,000 users daily?

Mr. **Mross**. Yes, on a national basis.

Mr. **Shuster**. Isn't there great variability between cities?

Mr. **Mross**. Yes.

Mr. **Shuster**. I see people behind you nodding their heads yes when I quoted the Seattle statistic. Can somebody tell me is that an accurate statistic from Seattle?

Mr. **Cline**. The Seattle statistic, from 1981 or 1983, is about 0.5 usage per lift.

Mr. **Shuster**. So that is one every other day?

Mr. **Cline**. Right.

Mr. **Shuster**. Does that suggest that there is great variability, that there may be, in some cities, much greater use of lifts and in other cities much less use?

Mr. **Cline**. Currently, Seattle, based on our information, has the highest usage per lift.

Mr. **Shuster**. Seattle has the highest usage per lift, and it is only .5 per day?

Mr. **Cline**. That's correct.

Mr. **Shuster**. That is an incredible statistic, is it not? You are saying that Seattle, which has the highest lift use per bus in the nation, has only one person using the lift every other day?

Mr. **Cline**. That's correct.

Mr. **Shuster**. Let me move on. The Senate bill also requires private bus companies to purchase new over-the-road coaches within six years for large companies, seven years for small companies. Tell us the following factual information regarding the bus fleets and costs for the private inter-city bus industry? How many over-the-road coaches are in operation?

Mr. **Trilling**. There are about 20,000, sir.

Mr. **Shuster**. Of these, how many are currently lift-equipped?

Mr. **Trilling**. Only just a handful.

Mr. **Shuster**. Practically zero. What does an over-the-road coach cost, the same $155,000?

Mr. **Trilling**. No, it is more expensive; about $225,000.

Mr. **Shuster**. Would the lift be the same for it, $12,000 to $15,000?

Mr. **Trilling**. This lift would add anywhere from $15,000 to $35,000 depending on which lift they bought.

Mr. **Shuster**. $15,000 to $35,000?

Mr. **Trilling**. Right.

Mr. **Shuster**. Why would they spend more than $15,000, if you can get one on a——

Mr. **Trilling**. The lift you are referring to, which is the one that is being tested in Denver, has not had heavy over-the-road experience. We don't actually know how well it will fare in an over-the-road environment.

Mr. **Cline**. I might also add that there is a substantial difference in the price. Up until recently, before the Hubmatic lift came on the scene, most of the inter—city coach lifts that were available were in the $30,000 to $35,000 range. The Hubmatic lift is substantially cheaper.

Mr. **Shuster**. But that is the one in Denver?

Mr. **Cline**. That is the one in Denver and that is the one that is anywhere from $12,000 to $15,000.

Mr. **Shuster**. It is not proven out yet, either?

Mr. **Cline**. No, it hasn't.

Mr. **Shuster**. So it is speculative on that. The average annual maintenance cost of an over-the-road coach?

Mr. **Trilling**. For the coach, itself, we do not have any statistics. The government does not collect that kind of data.

Mr. **Shuster**. Surely Greyhound or somebody can provide us with those statistics later on today.

Mr. **Trilling**. Surely.

Mr. **Shuster**. How much does that cost increase with the addition of a lift?

Mr. **Trilling**. It ranges from $1,000 to $3,000 a year per bus.

Mr. **Shuster**. So is $2,000 a good figure?

Mr. **Trilling**. Yes, as a mean.

Mr. **Shuster**. What is an average life of an over-the-road motor coach?

Mr. **Trilling**. They very often last ten years, but sometimes Greyhound will sell them off at an earlier point.

Mr. **Shuster**. Of course, it is related to mileage.

Mr. **Trilling**. Yes; but ten years is a reasonable number to use.

Mr. **Shuster**. Can you estimate what the aggregate annual cost would be to the private inter-city bus industry if the lift requirement was implemented?

Mr. **Trilling**. It could be in the range of 50 million to 130 million, and that does not get into the area of displaced seats or displaced cargo space and the lost revenue attributable to that.

Mr. **Shuster**. Do I understand correctly, that a lift on an intercity bus would require displacing two seats?

Mr. **Trilling**. It could.

Mr. **Shuster**. Two to three seats?

Mr. **Trilling**. It depends on the technology.

Mr. **Shuster**. What is it today?

Mr. **Trilling**. I would say two seats or three seats is a good number to use.

Mr. **Shuster**. Would this act also require the restroom be accessible? There is somebody behind you shaking their head no.

Mr. **Trilling**. It is not implemented yet. The accessible lavatories will become part of something that is decided later on when they determine whether the technology is available to do so.

Mr. **Shuster**. So the lavatory, the restroom, is a question mark? It is not excluded, nor is it included, at this point?

Mr. **Trilling**. Right; that is one of the reasons it is so difficult to estimate the cost.

Mr. **Shuster**. So that is another potential cost. In addition to the lift requirement, the Senate bill requires transit authorities to provide comparable paratransit. Could you tell us the following factual information regarding paratransit service and cost: what percentage of transit authorities provide some level of paratransit service?

Mr. **Mross**. We are estimating, again, about 75 percent of them do, either directly or under contract.

Mr. **Shuster**. Let me back up a minute. When I was talking about over-the-road inter-city motor coaches, the figures you gave me were of 20,000 in operation. Does that include both scheduled and charter bus?

Mr. **Trilling**. Yes, it does.

Mr. **Shuster**. Back on the paratransit. Do most of the operators also provide some level of fixed-route mainline service which is accessible?

Mr. **Mross**. Most do, yes.

Mr. **Shuster**. What is the average cost per ride to provide paratransit service?

Mr. **Mross**. The average cost per ride is a little over $6.00, but we might caution that there is a wide variation.

Mr. **Shuster**. Let's look at the paratransit requirements. Paratransit must provide a comparable level of service to the fixed-route system. What is comparable in terms of the service-area response time? How do you define comparable?

Mr. **Mross**. It would be comparable to the mainline service.

Mr. **Shuster**. So if a bus comes every twenty minutes along a route, then I should expect a van to pick me up every twenty minutes?

Mr. **Mross**. Yes.

Mr. **Shuster**. Is that reasonable?

Mr. **Mross**. To make a distinction between, as it is now, of a wait of sometimes twenty-four hours.

Mr. **Shuster**. You say twenty-four hours?

Mr. **Mross**. It might be.

Mr. **Shuster**. Pre-notification?

Mr. **Mross**. Right.

Mr. **Shuster**. Under the law, you are saying that paratransit must be comparable. So, if there is bus service every twenty minutes along a route, that means that the law requires that there be paratransit service every twenty minutes on that route as well? That is mind-boggling, if that is true.

Mr. CLINE. If I could add, sir, our view of the term "comparable" does not mean identical to the mainline service. So we would anticipate in the regulatory process that the department would determine some level, some time frame, under which that service would have to operate.

Mr. SHUSTER. So you are saying that is undefined at this point?

Mr. CLINE. Currently, that is undefined.

Mr. SHUSTER. You are the ones that are going to be involved in defining it. What do you think would be—what is comparable service, then?

Mr. CLINE. Obviously, it would be something less than twenty-four hours, but we have not fully——

Mr. SHUSTER. If I just heard Mr. Mross, he said it is, essentially, providing the same service, the twenty-minute example which we just gave.

Mr. CLINE. We would be looking at a comparable service, not——

Mr. SHUSTER. Why couldn't I, as a disabled person, go into court and sue to get comparable service? It is not comparable if somebody can walk and get on a bus in twenty minutes, and I have to sit for two hours. That is not comparable service.

Mr. CLINE. I would say that, specifically, even in a large city—for example, like Washington—it would be very difficult to provide the level of mainline service——

Mr. SHUSTER. We are not talking about what is difficult. We are talking about what the law requires.

Mr. CLINE. In terms of not producing an undue financial burden on the transit provider. That will be the key element in the regulatory process.

Mr. SHUSTER. Would you define, then, the undue financial burden?

Mr. CLINE. As I had mentioned earlier, we have not yet been able to define that and that would be defined in the regulatory process.

Mr. SHUSTER. The service must also be available to individuals who cannot otherwise use fixed-route public transportation. Who would this cover; for example, people in wheel chairs who can't get to the bus stop because of terrain or snow and ice? Who would make the decision as to who is eligible for paratransit under the bill?

Mr. CLINE. There, again, that would have to be taken into consideration during the rule-making process.

Mr. SHUSTER. The bill requires that paratransit be available for individuals associated with the disabled individual. The Senate report makes clear that this includes any number of associates for any purpose; for example, several friends going to a movie. How would the transit agency realistically provide for this sort of contingency? If my mother were to want to go to a movie and take the whole family along——

Mr. MROSS. Again, that would have to be taken into consideration during the rule-making process. The consideration of what is an undue financial burden would enter in there, also.

Mr. CLINE. I might add, too, that as the bill is currently worded, it would allow for those associates to accompany that person.

Mr. **Shuster**. Right; you have just made my point. It would require that the service be available to the whole family. Do you think that is reasonable? As somebody just said, that is the law.

I will wait for my next time around, Mr. Chairman. Thank you very much.

Mr. **Mineta**. Thank you very much.

Let me, at this time, because of a prior commitment to the gentleman from North Carolina who is going to have to leave, let me recognize Mr. Valentine.

Mr. **Valentine**. Thank you very much, Mr. Chairman. I will take just a couple of minutes. I want to compliment you for arranging this hearing and to say to my colleagues and others who are here, and for the record, that I believe that it is high time that the United States Congress address this problem and the realities. It is time for us to take some kind of action.

My concern is, of course—and it has been underscored by some of the previous questions—I have an empty feeling in the bottom of my stomach, oftentimes, when we talk about these tremendous problems, many of which have been addressed by the previous questioner. We say, "Well, that will be left to the rule-making process." That scares the heck out of a lot of us.

Let me ask you, first of all, if you could give me some information as to what the legislation would require of the Federal government in dollars and cents, or are we going to, mainly, say to the states and local governments and municipalities, "You do these things," and we just wash our hands of the problems that are inherent with respect to cost?

What is there in here that increases the financial responsibility of the Federal government?

Mr. **Mross**. As far as the bus——

Mr. **Valentine**. Yes; as far as all these things. We are saying to all the cities in the country, "You have got to do certain things to your buses?" Or are we saying to them, also, "And you find some ways to pay for it yourselves. Don't call us; we'll call you."

Mr. **Mross**. I mentioned before that our estimate of what the total annual cost would be—it's somewhere in the neighborhood of $30 million. We, of course, could cost-share in that figure. We have evidence, that public transit agencies across the country have been moving in this direction and that, as I also mentioned earlier, 35 percent of public transit buses now are lift-equipped and, in another few years, another 15 percent—about half of the fleet—would be even without this legislation.

So there has been, and there is, movement in that direction—if I can use the word marginal cost.

Mr. **Valentine**. We are not talking about the overall cost. When you say "marginal cost," are you talking about the Federal government's participation in it? Does this bill authorize the expenditure of Federal funds to help these cities do these things?

Mr. **Mross**. No.

Mr. **Valentine**. So what we are, in effect, doing is saying, and Congress is saying, "You, in Atlanta and Chicago and Denver and other places, you do these things and we are going to see that you do them. But we are not going to help with the cost of it?"

Mr. MROSS. But our agency has funding available, and we have been assisting in the provision of lift-equipped vehicles.

Mr. VALENTINE. One other area, Mr. Chairman, and I will get out of the way for the time being.

You have given us an estimate as to the cost of what it would take to put lift equipment on a bus. But then that is the only figure that is in your statement, that I could see, about dealing with that expense. But, as has been pointed out, there are other expenses involved. For example; the loss of space on board the bus. Do you have any figure to give this Subcommittee as to what that translates into as an item of cost?

Doesn't it go without saying that additional personnel will be required to operate this? It is going to have somebody there to help handicapped persons on and off the bus. Isn't that a realistic consideration?

Mr. TRILLING. As far as the added personnel, we have no idea what that would possibly cost, nor the extent to which it would be necessary. As far as the displaced seats, and the displaced cargo space on the over-the-road, we have some very rough estimates which are not sufficiently sound to place in the record. But they are there, and they are real.

One thing about the inter-city bus is that the capacity utilization is usually low except at times such as Friday night and Sunday night when they are very, very full. If the seats have been taken out, then there is the need to add additional sections for those runs at those times. Greyhound has tried to give us some estimates on that.

I would also like to add that, at least in one lift-equipped configuration, a seat is actually added. So in some lifts, seats are taken away and in some lifts—at least in one configuration—one seat is added.

Mr. SHUSTER. Would my good friend yield?

Mr. VALENTINE. I yield.

Mr. SHUSTER. As to these costs; I have just put a pencil to this. You say it costs $30 a year. If you are talking 50,000 buses at $2,000 a year maintenance, that is $100 million a year just for maintenance on the whole fleet, or $50 million a year for the 50 percent of the fleet it goes up to. If you take the $12,000 to $15,000 a year and multiply that by just half the fleet, $25,000, that is $375 million for the capital costs.

I don't understand where you are coming up with the $30 million when the maintenance cost, alone, would be well over $50 million a year, plus the $375 million.

Mr. TRILLING. The capital cost has to depreciate over the life of the bus.

Mr. SHUSTER. Sure, it does.

Mr. CLINE. The $30 million figure refers to the capital purchase of the lift, only.

Mr. SHUSTER. Fine; so it has nothing to do with the maintenance, which is another $50 million to $100 million a year.

Mr. VALENTINE. Let me reclaim my time. I am about to finish. I don't want to be misunderstood because I think, as I said, it is time that the Federal government do something about this question. But, you know, one has to wonder, when you talk about these costs

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and you talk about the use of buses in a population center such as Seattle, if I understood the testimony, you have one handicapped person using one bus maybe every other day—one has to wonder if we wouldn't be better off spending this money for some specialized type of service, buses that were equipped for any type of handicap, that were on call to go and find the handicapped person and take them wherever they wanted to go on call.

The cost of this thing—and we are just talking about municipal bus systems. We haven't even gotten out to taxi companies and all these other specialized services.

But I am sure you will provide us with answers so that we can meet all these needs and still live within our budget.

Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much, Mr. Valentine.

In my opening statement I had indicated that we have House leadership on both sides of the aisle supporting this bill. I notice that we just had come walking in, a little while ago, the gentleman from Maryland, Mr. Hoyer, who chairs the Democratic caucus and is a strong supporter of the bill.

Mr. Hoyer, do you wish to make a comment on the ADA?

TESTIMONY OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM MARYLAND

Mr. **Hoyer**. I thank you, Mr. Chairman, very much, for this opportunity just to say a few words. I want to congratulate you, Mr. Chairman, the ranking member, on having these hearings. Clearly, one of the most controversial aspects of the pending legislation is the issue of public transit and the cost attendant thereto. It is very important that we look at that carefully so that all of our members, when this bill comes to the floor—we hope in the very near future—have an understanding of what the costs are, what the needs are, what the challenges are.

I think, Mr. Chairman, this bill is one of the most important bills in the Congress and one of the most important to be considered in the first session of the 101st Congress. I am very pleased that President Bush and the Administration have given their very strong support to the passage of this legislation. That strong support and the hard work of the Administration was reflected, as you know, Mr. Chairman, in the overwhelming vote in the United States Senate with only eight votes against the legislation.

It is our intent, Mr. Chairman, and the House leadership, to see this legislation hopefully reported to the floor and passed by the end of next month so that we can see the President's signature on this very important key civil-rights legislation before the end of this year.

I want to, again, say to you how much I appreciate the personal involvement that you have had and the work that you have given to this bill pointing out that it is a bipartisan bill supported strongly on both sides of the aisle. With that bipartisan support and the strong testimony—I apologize that I was not here to hear all of the testimony, of the Department but, I understand, it was very strong in its advocacy of this legislation.

This is, I think, going to be one of the principal bipartisan accomplishments of the first session of the 101st Congress. I am pleased to be here with you, Mr. Chairman, to briefly participate in these hearings.

Thank you, sir.

Mr. **Mineta**. Thank you very much, Mr. Hoyer. Thank you for your leadership on this issue.

At this time, I would like to recognize our fine colleague from New York, Mr. Boehlert.

Mr. **Boehlert**. Thank you very much, Mr. Chairman. I, too, would add my words of praise to the Vice-Chairman of the Committee for bringing this issue forward. While we are giving out plaudits, I would like to give some credit to the Administration for the enlightened position and leadership it is providing.

I think, as is very evident by the line of questioning today, it is not going to be easy. Like most of us up here, before I do anything, I would like to know the consequences of my action. Do you have any projections on what impact the implementation of this portion of the Americans With Disabilities Act might have on fares and service?

Mr. **Cline**. That would be difficult to answer at this point because we do not, really, have any solid estimates on what will happen to the demand for the fixed-route lift-equipped buses and paratransit in relation to that. So "no estimates" is the answer.

Mr. **Boehlert**. It seems to me that would be relatively easy to get. I would encourage you to try to obtain it.

Mr. **Cline**. We have, sir. We have tried to, as best we can, estimate what the shift might be from those individuals who are currently using paratransit services because of the unavailability of lift-equipped fixed-route buses. However, there is such a variation, nationwide, and there are some systems that are substantially lift-equipped but still are not nearly 100 percent lift-equipped. That impacts the travel for disabled individuals in not knowing that they can complete their trip with a fixed-route lift-equipped bus.

So it is still a nebulous issue.

Mr. **Boehlert**. But you are thinking about trying to get that information?

Mr. **Cline**. Most definitely.

Mr. **Boehlert**. I would encourage you to do so.

I notice on page 3 of your testimony, Mr. Mross, you indicate that temporary relief might be provided a public entity from purchasing a lift-equipped bus if the lift is unavailable and the public entity has made a good-faith effort to locate a lift-equipped bus. Is that possible? How many manufacturers are there of lifts, for example?

Mr. **Mross**. Three or four.

Mr. **Boehlert**. Do you anticipate a lot more getting into the business if this becomes law?

Mr. **Mross**. More manufacturers?

Mr. **Boehlert**. Yes.

Mr. **Mross**. It is not likely.

Mr. **Boehlert**. As a practical matter, if it signed, sealed and delivered at the Oval Office next week—and although we all would like to see it move foreward rapidly, you and I both know it is not going to happen—and then the order goes forward to all the public transit systems, as a practical matter, are they all going to have to stand in line to get the lifts that we require? How long a period will it take?

Mr. **Cline**. Currently, there are approximately anywhere from 3,000 to 3,800 buses manufactured each year. It is our belief that the current number of manufacturers of lifts could meet that level of demand. So we would not anticipate that there would be any shortfall of lift production.

Mr. **Boehlert**. How long does the bill require for compliance; how long a period before compliance is required?

Mr. **Cline**. Within 30 days of the enactment of this bill, all solicitations for the purchase of new vehicles must include a lift. So any new vehicles solicited within 30 days after enactment of the bill are covered by it.

Mr. **Boehlert**. How about the retrofitting provision?

Mr. **Cline**. The retrofitting is only to the extent that the bus goes through a major rehabilitation. That would require a lift to be placed on that vehicle.

Mr. **Boehlert**. Forgive me for being somewhat parochial, but are you familiar with the Orion 2?

Mr. **Cline**. Yes, I am.

Mr. **Boehlert**. That wouldn't fall under this, would it, because that is not a lift? It is a magnificent vehicle. If my colleagues have not seen it, I would be glad to extend an invitation to visit my district where it is manufactured. But the whole rear end of the Orion 2 goes down to ground level, so it is easily accessible. It is a magnificent vehicle. I know they just sold 80 of them in Sweden. I would like to see them sell some more in the United States.

Would that meet the requirements of this legislation?

Mr. **Cline**. Yes. It is our belief that it would because that vehicle, from what I remember of it, it has a flip-down ramp, and it is a low-floor bus to begin with.

Mr. **Boehlert**. Right.

Mr. **Cline**. The current legislation requires an accessible vehicle. So the use of that ramp on that particular bus would meet that requirement.

Mr. **Boehlert**. Thank you for that enlightened answer.

Thank you, Mr. Chairman.

Mr. **Mineta**. Mr. Rahall? Wait a minute; before I call on you, I just remembered we have a call of the House for a vote. So let me, at this point, recess before I get into your time.

We will recess for responding to this vote on the Rule as it relates to the Aviation Security Act.

[Recess from 11:50 a.m. to 12:14 p.m.]

Mr. **Mineta**. Would the Subcommittee on Surface Transportation please come back to order. Just before we had the vote, I was about to call on our colleague from West Virginia, Mr. Rahall. Mr. Rahall?

Mr. **Rahall**. Thank you, Mr. Chairman. Mr. Chairman, I, like many of my colleagues from rural parts of America, are deeply concerned that our areas of the country have adequate access to the major markets. We have seen cutbacks in recent years in airline service, in trucking service. Our roads are, often, very difficult to build because of our terrain. We have seen cutback even in bus service.

What limited bus service we still maintain, we have been told, is threatened by this legislation. I don't buy that but, nevertheless, it is a concern that I don't think can go without being expressed in these hearings as it was expressed in the debate in the other body.

As I understand it, the other body has added language that would provide a three-year study on provision of access for handicapped to over-the-road vehicles; is that correct?

Mr. TRILLING. That is correct, sir.

Mr. RAHALL. In addition, there would be a six or seven year period in which certain bus companies have an opportunity to comply.

Mr. TRILLING. Right; six years for the large ones and seven years for the small one companies.

Mr. RAHALL. So there is no opting out in the Senate provision of any of the requirements of the bill, but just this additional language of a study in which we can find out more answers like access to restrooms or just what the legislation does or does not do; is that correct?

Mr. TRILLING. Yes. There is one clause in there that indicates that if the President finds, from the results of the study, that intercity bus would be curtailed in rural areas, the deadline could be postponed year by year, postponed a year at a time.

Mr. RAHALL. This is in rural parts?

Mr. TRILLING. This is in rural parts; right. That is in the Senate bill as it stands.

Mr. RAHALL. Is there any way that study could be speeded up, say, to an eighteen-month period, or is the three-year period supported by you? Is that what is necessary?

Mr. TRILLING. I don't know if I could comment on that. The study is to be done by the Office of Technology Assessment with inputs and review by the Architectural Barriers Board. But it would be a very, very difficult study to do. I don't know whether it could be accelerated or not. There is very little data out there on many of these issues: what the patronage would be, things of that nature.

Mr. RAHALL. The Senate report, as I understand it, but not the bill, says that inter-city buses must be fitted with bathrooms as the technology exists to assist them in this effort. Since the technology appears to be available today, won't that requirement become an immediate requirement for compliance along with other costs that will be incurred by the private bus companies?

Mr. TRILLING. The inference, as we read it, is that technology means a way to put those accessible lavatories in without a major loss of seats because they do take a lot more room. So the reference to the technology applies to being able to do so without a high economic cost because of the loss of seats. That is the way we interpret it.

Mr. RAHALL. Let me ask you another question about complaints that you have received from disabled individuals. In your proposed rule making on airline access, the DOT did state that you had received many complaints from disabled persons in their problems with the airlines.

Are there any available figures in comparison as to the number of specific complaints you have received from disabled persons not being able to ride on inter-city buses and, if so, over what period of time have those complaints been made?

Mr. TRILLING. I do not have any offhand. We could try to get you that for the record, Mr. Congressman.

[Mr. Trilling's answer follows:]

The Departmental Office of Civil Rights which investigates accessibility complaints concerning mass transit systems estimates that it has received three such complaints during the past three years. The Interstate Commerce Commission estimates that it receives approximately twenty complaints a year from people who do not think that Greyhound's Helping Hand Service is an appropriate substitute for lift-equipped inter-city buses.

Mr. RAHALL. Again, referring to the airline rulemaking proceeding, DOT does not require on-board wheel chairs on each plane, but allows the airlines to require the forty-eight hour advance notice by disabled persons for such equipment. If that is a provision in that particular situation, in the airline situation, has thought been given to requiring such advance notice or advance booking, so to speak, for intercity buses to also be able to be accessible to the disabled?

Mr. TRILLING. It is a possible form of a solution. The requirements are a little bit different because the wheel chair that applies to the Air Carrier Access Act would be the on-board wheel chair which the disabled individual would transfer into. If you are talking about a twenty-four hour advance notice that a disabled individual would have the needs for an accessible bus, that is a possibility and I would assume that would come out in the study as to whether that was a feasible solution or not.

Mr. RAHALL. Thank you. I have no further questions. Thank you, Mr. Chairman.

Mr. MINETA. Mr. Hastert?

Mr. HASTERT. Thank you, Mr. Chairman. Let me first say that I really appreciate you and the ranking member, or Vice Chairman, bringing this issue before this Committee. There are a lot of needs to be addressed and, certainly, the needs of all people in this country to be able to move from one point to another point, and have fair and equal access to areas so that they can transfer freely back and forth.

I have some concerns in this legislation. Some questions have arisen during the testimony that I would like to set straight. We were just talking about buses. Do you have any idea what is a seat replacement on a bus; to have two wheel chair positions, how many seats do you have to replace on a bus?

Mr. CLINE. Are you referring to inter-city buses?

Mr. HASTERT. I'm talking about both, but inter-city first.

Mr. TRILLING. If the standard bus had 47 seats, with the TMC/MCI, the seating capacity with one wheel chair would go down to 44. With two wheel chairs, it would go down to 41.

Mr. HASTERT. Then with a different configuration of a restroom; what would that extra area be?

Mr. TRILLING. The restrooms are tentative, but with an accessible restroom, the 47 seats would go down to 43. So, according to these estimates, you would lose four seats. However, with a one wheel chair provision, you would only lose two seats. You would go from 44 to 42, with the accessible lav.

Mr. HASTERT. So you would have two wheel chair positions and an accessible lavatory——

Mr. TRILLING. No; that is one wheel chair with an accessible lavatory. But the same holds for two wheel chairs. It goes from 41 to 39.

Mr. HASTERT. So, basically, what we have done is cut capacity by roughly 20 percent.

Mr. TRILLING. Two parts on a 40 base. That's not 20 percent.

Mr. HASTERT. No, it's not.

Mr. TRILLING. You are referring to the accessible lav?

Mr. HASTERT. Right.

Mr. TRILLING. That is about 2.5 percent.

Mr. HASTERT. I don't think it is 2.5 percent, either.

Mr. CLINE. It would eliminate four seats; that is just shy of 10 percent.

Mr. TRILLING. Not with the two wheel chair; it would only eliminate two. If you had a wheel chair provision and a lav——

Mr. HASTERT. If you go from 47 seats to 39 seats with a lav and two wheel chair positions, you have cut, basically, 8 positions out of 50, so you are around 16 percent or 17 percent reduction.

Mr. TRILLING. That's correct.

Mr. HASTERT. The cost of that bus would increase by how much? One of those buses is $225,000?

Mr. TRILLING. Yes, sir.

Mr. HASTERT. What would the additional cost to outfitting a bus like that be?

Mr. TRILLING. I don't think it is too high. It is probably on the order of $1,000.

Mr. HASTERT. So it is, really, in the same ball park;
$1,000 to $2,000, you say?

Mr. TRILLING. The $1,000 is the estimate I have.

Mr. CLINE. That is excluding the lift cost.

Mr. HASTERT. Not counting the lift cost.

Mr. TRILLING. This is only the accessible lav.

Mr. HASTERT. Then in a mass transit situation, I heard you use a phrase before, "key station." Could you define what a key station is?

Mr. CLINE. Do you want to know the current——

Mr. HASTERT. You said key station. I am a layman. I don't know what it means. Tell me what it means.

Mr. CLINE. The bill's report language states that the determination of what is key is best left to the local community and suggests that the recent agreements that I mentioned previously that had been worked out in New York and Philadelphia would serve as good models in making that determination.

Mr. HASTERT. What is that?

Mr. TRILLING. In New York City, 38 stations out of 465 were considered key while 11 out of 53 in Philadelphia, on a high-speed line, and 31 out of 172 commuter rail stations were considered key. The characteristics that were taken into consideration would be high ridership, transfer and feeder stations and stations near cultural, educational, recreational or entertainment centers.

Mr. HASTERT. Let's be parochial, as my colleague who sat next to me was parochial, in a sense. I serve an area that is really a suburban area of the Chicago metropolitan area. We have worked real hard, both in the years when I was in the legislature and after, to be able to extend out our ridership on the commuter rail.

We have moved the commuter rail, and are still working to move it out even to farther perimeters, maybe 50 miles out of the city of Chicago. In those situations, you may have a station ten minutes apart, or you may have a station five miles apart. Does that mean that every station is a key station, or that the stations ten miles apart would be key stations?

Are we going to treat some people one way and some people another way in this issue? In that situation, maybe every station, in your interpretation, could be a key station. That is why I thought it was important to understand what you are talking about there.

Mr. CLINE. The Senate report language stresses the fact that the negotiated decisions that were reached in Philadelphia and New York would be looked upon as a type of model for determining what level would occur; for example, in Chicago, the situations that you are raising, we would say, again, to look to the New York and Philadelphia agreements that were reached as models.

Mr. HASTERT. I would say that, probably, we Midwesterners would not look kindly on your saying that we are the same as New York and Philadelphia because, quite frankly, we are not. We have different needs and different requirements.

Mr. CLINE. Sir, I would not suggest that you are. Being from Chicago, I can respect that, also. It is just that we would stress that the local process of determining whether a station, for example in Naperville, or a station in Park Ridge, should be accessible should be an issue that is debated and decided upon at the local levels much in the same way that they did that in New York and Philadelphia.

Mr. HASTERT. But not the same criteria as New York and Philadelphia?

Mr. CLINE. No, not at all. It is more a process rather than a specific criteria that would be listed.

Mr. HASTERT. Again, being parochial, but that is my frame of reference I guess; mass transit; let's say the CTA in the city of Chicago has some duplicative transportation options for people. In other words, you can take surface transportation, which is a bus and which would require a lift, or you take the subway. Those routes, many, many times are exactly parallel to each other.

I see a great deal of urban transportation is platform-level transportation. You can come here in the city of Washington and take an elevator down to the station level, the platform level, and you can roll a wheel chair right on board without any lifts or hassle or anything else. It is quite different.

If parallel routes and parallel transportation opportunities were available, would the alternate route also be required to have the same type of access?

Mr. CLINE. It is our belief that the rail would have to be accessible per the current language of the Senate bill.

Mr. HASTERT. What about the parallel bus route on the surface?

Mr. CLINE. Yes; the bus routes would also have to be accessible.

Mr. **Hastert**. So those persons have not only a choice of destination, where they want to go, but a choice of mode of transportation?

Mr. **Cline**. That's correct.

Mr. **Hastert**. That is your interpretation of the Senate bill. The Senate bill explains that? It lays that out?

Mr. **Cline**. It is more a specific reference to the vehicle requirements. The language in the bill is specific to the vehicle requirements rather than the service requirement.

Mr. **Hastert**. In the language in the Senate bill dealing with train transportation, commuter trains. We call those METRA in Illinois, meaning not subway but other types of train transportation. It said one car on every train, I understand, would have to be outfitted with a lift facility. Is there a provision in the language, or would there be an opportunity in Rules and Regs to say that that car had to be the engine car, or the motor car? On commuter trains, they use an engine to go one way and, of course, a motor car to go the opposite way with controls.

One of the problems on those types of configurations is that the motor car is always on the train, if that was the designated car for the lift. However, when you start to switch trains and switch cars, if there was just one designated car per train, that might not be in the configuration, if you have a seven-car train as opposed to a three-car train.

It seems to me that a practical solution to this would be to say that the motor car would be the car with the lift and solve a lot of problems.

Mr. **Cline**. My understanding of the bill is that it does not specify which particular car would have to be accessible but rather that one car per train, only, be accessible.

Mr. **Hastert**. Then, is there any provision in that bill that says new cars coming on-line have to have lift accessibility?

Mr. **Cline**. Yes; the rail provision is the same as the bus provision, that within 30 days of the enactment of this Act, all solicitations for the procurement of new vehicles would require lift accessibility or accessibility provisions.

Mr. **Hastert**. The situation with comparable service, if there were parallel routes—and I am talking about bus transportation and specialized transportation to pick up people on demand, a phone call—say, if you took an hour to walk to a place or to be wheeled to a place, or to wheel to a place and then a twenty-minute wait for a bus—compared to that comparable time, if you made a phone call and that service could be provided to you within an hour at your doorstep, how would that be interpreted?

Mr. **Cline**. I want to stress a point that we made earlier, too, that the Senate report specifically refers to certain service criteria that can be used in determining the level of comparable service and time. Response time is one of those criteria so, as mentioned earlier in the twenty-minute example, a twenty-minute headway on a fixed-route bus line would not, necessarily, equate into a twenty-minute response time for paratransit.

Mr. **Hastert**. That's assuming that sometimes there is a time lap from your residents to get to the point of pickup.

Mr. **Cline**. Right.

Mr. Hastert. What provision, in your study and in any subsequent studies you have had—I understand that private shuttle-type operations are also subject to this whether they are publicly funded or privately funded, such as hotel shuttles, rental car shuttles, amusement park shuttles, grocery store shuttles at some shopping centers.

Mr. Trilling. That is correct as long as they are not what we would call demand responsive, and that they are over 15 seats.

Mr. Hastert. So all those, then, have to have a lift or some type of wheel chair accessibility; is that right?

Mr. Trilling. If they fall under that criteria; yes, sir.

Mr. Cline. Not the airport shuttle.

Mr. Hastert. How about senior citizen type of transportation? I am thinking, now, that I have a rather mixed district. I have a big rural area as well as a suburban area. In many of our senior citizen centers, those people have saved up to buy themselves a van so, out of those senior citizen centers, they can go shopping once a week or get taken to the hospital or the doctor. If they don't have wheel chair facilities, are they in violation of the law?

Mr. Trilling. I do not believe, so, sir.

Mr. Hastert. Why not?

Mr. Cline. Currently, the bill does not require that all vehicles be equipped with lifts. As Don had mentioned, first of all, there is a requirement that vehicles above 15 passengers would fall into that category.

Mr. Hastert. Which many of these are.

Mr. Cline. Right. But, for example, the mall shuttles and parking lot vans and hotel and airport shuttles do not have to have all of their vehicles lift-equipped as long as they can provide a service that, when viewed in its entirety over all of the service that is provided, is comparable.

So, for example, an airport shuttle could use a contracted lift-equipped vehicle to serve the needs of the disabled.

Mr. Hastert. Going back to the senior citizen situation, if they have a vehicle that is 15 passengers or above, do they have to fall under the law?

Mr. Cline. Yes, I believe so.

Mr. Hastert. So these people who can scrape up the $30,000 but would have to go an additional cost and may cancel their service, is there any other determination if that service if they can't afford to run it? It is cheaper for them to terminate and say, "Well, we are not going to do this anymore." We see that happening in good Federal law all the time. All of a sudden, it is too expensive for small businesses to provide the service or comply.

Section 89 happens to be one of those things that we are dealing with right now. The people simply throw up their hands and say, "Well, we can't afford to do this anymore so, therefore, we are not going to do it. We will withdraw it from everybody."

Is that a consideration in the law?

Mr. Cline. To the best of my knowledge, it is not a specific consideration in the law. Whether that scenario would take place is hard to judge. Obviously, those are individual local decisions that have to be made on the importance of that service.

So, in terms of any conclusions——

Mr. **Hastert**. So it is a very good possibility that would happen?

Mr. **Cline**. I'm sure it is.

Mr. **Hastert**. Thank you. Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you, Dennis.

The gentleman from Tennessee, Mr. Clement.

Mr. **Clement**. Thank you. Mr. Mross, have there been any studies on the needs of the disabled for inter-city bus transportation and how will the current inter-city network of private lines serve that population?

Mr. **Trilling**. There have not been any definitive studies that I know of. Are you talking about how they do it now, or how they will under the bill?

Mr. **Clement**. Both.

Mr. **Trilling**. How they will under the bill is sufficiently uncertain that that is why the whole idea of the study was established in the bill, because it is not clear what the patronage would be or where the concentrations would be—things of that nature.

So I know of no study yet that has been done that answers those questions.

Mr. **Clement**. In your own assessment, how well is the rural disabled population served by the network of private bus lines?

Mr. **Trilling**. I don't know if I can assess that. The bus companies have tried to accommodate those with disabilities, and the bus companies in many rural areas are the only source of transportation. But I would not want to assess how well they do. It is something the Department has not done officially.

Mr. **Clement**. Have there been any complaints about the inter-city bus services' failure to provide service to the disabled?

Mr. **Trilling**. As I responded to Mr. Rahall, we will have to look into the records and find out to what degree there have been complaints. I am sure there have been some.

Mr. **Clement**. But you are not really aware of many complaints?

Mr. **Trilling**. No. I am sure it is a point of dissatisfaction and I am also sure that the inter-city bus industry is trying to do what they can to take care of it. They have had some imaginative ideas. But I could not go on record with an assessment or an evaluation.

Mr. **Clement**. Would you support the full and equal service standard of Section 403(a) without the "every vehicle" requirement of Section 403(b)?

Mr. **Trilling**. I would have to look at what they are, Congressman. In S. 933, Title IV is a telecommunications title which is not related to transportation. That is one of the reasons I am having trouble developing an answer.

Mr. **Clement**. It is in the House bill.

Mr. **Trilling**. I'm sorry. I do not have the House bill in front of me.

Mr. **Cline**. We don't have a copy of the House bill.

Mr. **Clement**. For the record, if you would answer that question.

Mr. **Trilling**. Yes, sir.

[Mr. Trilling's answer follows:]

We support the provisions as modified in the Senate version, and as they appear in Section 304 of S. 933.

Mr. Clement. The Senate bill has a provision, Section 305, requiring the Office of Technology Assessment to undertake a study on the access needs of disabled individuals to over-the-road buses. Would the Administration support a similar provision in the House bill in lieu of the wheel chair requirement of Section 403(b) and then await the study's recommendations before deciding whether to mandate wheel chair lifts on inter-city over-the-road buses?

Mr. Cline. In short, sir, the Administration is supporting the bill as passed by the Senate.

Mr. Clement. So that is not on the agenda at all, then.

That will be all at this time.

Mr. Mineta. Mr. Payne.

Mr. Payne. Thank you very much, Mr. Chairman. I thank all of you gentlemen for being here and for the good work that I think you, the Administration and the Department have done, in crafting and implementing a law to protect and guarantee civil rights for Americans with disabilities. Certainly, it is legislation that I, very strongly, support.

I have not been here for all of the questioning, but the questions that we are hearing have to do with affordability and, particularly, situations that are relevant to a particular community, particular city or particular entity.

To that end, there is language that seems to be fairly broad in terms of suggesting that there are certain things that, if they represent an undue financial burden, the Department may allow the public entity, for instance, to limit its service to "a flexible numerical formula," and that sort of thing.

In terms of the implementation of that, how do you see that kind of thing being accomplished? To what extent do you think communities will have the autonomy to come to you to present that information or how specifically will those guidelines be so that this will be mandated to that community?

Mr. Cline. The Senate report language specifically refers to certain service criteria that can be used in determining what is a comparable level of service for paratransit. Within those criteria are things like eligibility, response time, restrictions or priorities based on trip purpose. Those sorts of things lend themselves, obviously, to local decision making, too.

Generally, the broad framework for the implementation would come from DOT, but the specific standards and implementation, obviously, would have to occur at the local level.

Mr. Payne. Let me ask you about a real situation in a community such as Alexandria, Virginia, for instance, that has a public transportation system. It also has a paratransit system that is in operation now that is very responsive and, from indications that I get, seems to get good marks, generally.

If there is a paratransit system that will do the same thing as the public transportation system, would there be consideration given to not providing for the lifts, say, for the public transportation or the fixed-route buses if that service could be equally well provided by the paratransit system? Is that a consideration?

Mr. Cline. No, it is not. The Senate bill, in its current form, mandates that lifts be put on all fixed-route buses and that, in addition, a comparable paratransit service be provided. So there is no allowance for either/or or combinations.

Mr. **Payne**. In the bill as it is currently written and passed by the Senate?

Mr. **Cline**. The Senate bill that we support.

Mr. **Payne**. So the undue financial burdens, and so forth, would be exclusively in the paratransit area, perhaps in those areas that don't have a paratransit system that would have difficulty implementing such a system?

Mr. **Cline**. No. The undue financial burden would apply to all those who, even currently have a paratransit system in place. It is a measurement of determining to what extent service would be provided.

Mr. **Payne**. The criteria, then, is comparable service?

Mr. **Cline**. Correct.

Mr. **Payne**. As described in the Senate bill?

Mr. **Cline**. Right. As I mentioned, the report language has some suggestions of the type of criteria that would be used to develop or determine that level of comparability.

Mr. **Payne**. Does the department have any concerns about this question of affordability as it relates to the various entities across the country that will be required to expend funds to be able to come into compliance with this legislation?

Mr. **Mross**. Do we have any concerns?

Mr. **Payne**. That's correct.

Mr. **Mross**. I think there is a concern that has been expressed here this morning during the hearing. But I made the statement earlier that we feel that this is the direction that public transit has been moving. Once the priorities become clearly established, we will be able to accommodate those costs within the budgets, essentially, that we have operating now.

I mention that there will be additional costs for the lifts. But, again, this is the direction that public transit has been going and I think it will be accommodated within local budgets.

Mr. **Payne**. I understand the criteria that you have used, or that you base that upon, is that some 35 percent of all buses now already have the lifts and that the cost, per bus, is between $10,000 and $15,000? Is that a correct assumption?

Mr. **Cline**. That's correct. For public transit systems, the average cost of a lift, itself, is roughly $10,000 to $15,000.

Mr. **Payne**. Given that, do you feel that that could be—in the existing system, those kinds of costs could be accommodated satisfactorily?

Mr. **Cline**. Yes, we do. We recognize that these are substantial costs, but that it is important to achieve the civil rights intention of the bill.

Mr. **Payne**. Thank you very much, Mr. Chairman. Those are all the questions I have.

Mr. **Mineta**. Any other questions? Second round?

Mr. **Shuster**. The—Budget Office was unable to determine the cost of the paratransit requirements of the Senate bill because of the uncertainties in the language of the bill and its potential demand for service. Do you agree that these costs cannot be calculated, and what factors contribute to the uncertainty of the language?

Mr. Cline. Yes; we would agree that today we could not compute a solid number. The things that contribute to the——

Mr. Shuster. Could you compute a squishy number?

Mr. Cline. I suppose, probably, anybody could. Do we have a rough estimate, Don, or a range?

Mr. Trilling. It is, really, very squishy. It is just full of assumptions that we do not know whether——

Mr. Shuster. One of those assumptions is that the need for paratransit will decline as lift-equipped buses are put into service under the terms of this bill. Do you agree with that assessment?

Mr. Cline. That is one of the difficult parts. We are not, currently, able to determine what, exactly, will happen with the demand for paratransit.

Mr. Shuster. So that is an assumption we cannot make, is what you are saying?

Mr. Cline. Today, no.

Mr. Shuster. The bill would mandate both lift requirement and a comparable paratransit requirement on public transit entities. Do you believe the transit authorities will be able to absorb the extra costs of providing essentially duplicative services without increased Federal funding or increased fares?

Mr. Mross. We think that the costs are going to be marginal. The undue burden of financial hardship would apply in the case of paratransit.

Mr. Shuster. What does that mean, the cost will be marginal? A few moments ago, we calculated that the total cost of maintenance, on the lifts alone, will be $100 million a year. 35 percent of that cost is now being absorbed, $35 million a year. So that is another $65 million a year. Is that marginal?

Mr. Cline. It is based on the reality that for example, many transit systems are moving in the direction, of lift-equipping their fixed-route buses.

Mr. Shuster. Yes; you have already testified they are going to from 35 percent to 50 percent.

Mr. Cline. Right; and beyond the 50 percent. The 50 percent would be attained within the next year or two absent any action on this bill, and we would anticipate that it would even go beyond the 50 percent.

Mr. Shuster. So if it goes to 60 percent, we are still looking at $40 million a year or more on maintenance. Let me ask my question again. Do you believe that transit authorities will be able to absorb the extra costs, or I guess you call them marginal costs, of providing essentially duplicative services without increasing Federal funding or increasing fares?

Mr. Cline. That would be a difficult question to answer in terms of the fares without Federal funding. Yes, we do.

Mr. Shuster. Yes, you do believe that the local facilities can absorb these costs?

Mr. Cline. The cost of the fixed-route lift-equipped——

Mr. Shuster. So you are testifying that these costs can be absorbed by the local transit authorities; therefore, this Congress should not entertain any consideration of increasing Federal transit funding to cover these costs because it is your testimony that these costs will be covered by local transit authorities? I thank you.

Let me go further. It is likely that the existing service might have to be cut to accommodate these costs?

Mr. CLINE. Once again, I would say that this all comes back to the local decision-making process in terms of what the locality determines is important in the area of public transit.

Mr. SHUSTER. What is your estimate as our experts in Washington on transit?

Mr. CLINE. Whether service will be reduced as a result of action on this bill?

Mr. SHUSTER. Yes. You are shaking your head no. I presume that means you don't know.

Mr. CLINE. Frankly, Congressman, I really couldn't say.

Mr. SHUSTER. So we don't know. It's a question mark.

Mr. CLINE. Right.

Mr. SHUSTER. It may and it may not. We have heard from several cities who have experimented with lift-equipped buses and found them to be unsatisfactory in serving the needs of the disabled communities in their area in some of those cities, particularly those in northern climates. Many of these cities have answered the needs of their disabled population through extensive paratransit services. Isn't this flexibility important in order for transit authorities to best meet the needs of their disabled passengers in light of local factors?

Mr. CLINE. As you are aware, currently, there is flexibility in the current 504 Regulations.

Mr. SHUSTER. I am not talking about current. We are talking about this new legislation.

Mr. CLINE. Correct; I am just referring to the fact that that flexibility currently exists.

Mr. SHUSTER. We are going to take that away. We are going to mandate lifts on every bus.

Mr. CLINE. Right. The arguments that we have heard in support of mandating the lifts on every bus is that each local area has continued to have a great deal of conflict over this issue of lift-equipped buses versus paratransit. After going back and forth for many years on that issue, the Department and the Administration——

Mr. SHUSTER. I am not asking what arguments you have heard. I have heard the arguments, too. I am asking what your expert opinion is.

Mr. CLINE. Our opinion whether the lifts would accomplish the same goals that they currently do now?

Mr. SHUSTER. Isn't the flexibility needed to let local transit authorities make the decisions as to what kind of response they provide for the disabled? You are nodding your head yes. Does that mean yes?

Mr. CLINE. I will have to stop moving my head. Clearly, the Administration's policy that we have gone forward on in this area is that the local flexibility has not served and met the needs of the disabled community in the recent past.

Mr. SHUSTER. So you are opposed the current local flexibility?

Mr. CLINE. Correct.

Mr. SHUSTER. The Senate bill contains a provision that the public entity could be relieved of the comparable transit requirement if it presents an undue economic burden which would be defined by you, by regulation. How do you presume to come up with such a flexible numerical formula that could be applied to all transit entities fairly?

Mr. CLINE. We have not had a chance, yet, to examine that through the regulatory process, but that will be the debate that ensues.

Mr. SHUSTER. You have already been asked about the air carrier comparability. What about the competitive problem of holding the bus industry to a standard more stringent than the airline industry. Whatever standard we pass in terms of accessibility of the disabled, why shouldn't that same standard be applied to both the bus industry and the airline industry?

Mr. TRILLING. All the standards should be fair, of course. I assume what you mean by the same standard is the loss of revenue seats which is addressed in the Air Carrier Access Act but has not yet been addressed in any regulations written about the inter-city bus.

Mr. SHUSTER. Shouldn't we have the same standards?

Mr. TRILLING. I would think, in that particular context, that would be a rule that should hold. The differences between, as I said before, what the regulations are in the Air Carrier Act and what they would be under inter-city buses is a matter of the physical restraints on the equipment that is being used.

It is very much more difficult to put in accessible lavs in a small commuter plane than it is on a bus. On the other hand, the bus has limitations by regulation for how big and how long they may be. Some review of that has to be done, also.

Mr. SHUSTER. My last question. With regard to service cuts that might result from intercity bus requirements—for example, there are 10,000 communities that Greyhound serves. 9,000 of them are not served by any other form of intercity transportation. What if, as a result of these increased costs, which we have described here, Greyhound decides not to serve, or to reduce service to, 10 percent of its communities—"only" 10 percent of its communities.

That is 1,000 communities. Since we have had regulatory reform with the bus industry, what is to stop Greyhound from doing this? Nothing; right?

Mr. CLINE. Obviously, no, we do not have any control over Greyhound's business plan decision.

Mr. SHUSTER. Do you think it is reasonable to assume that if you increase a company's operating cost it is going to try to find ways to reduce those costs, and one way is to cut service to those marginally-profitable service areas? Isn't that a rather classic economic business decision that gets made?

Mr. CLINE. Let me start out by saying that the Department is very sensitive and fully recognizes the nature of the intercity transit system and the fact that it is a fragile industry. We would look to the study that is to be conducted on this issue to find those answers that——

Mr. SHUSTER. You are talking about a law that mandates requirements on the industry before the study is completed. Does that make sense, to have a study after we mandate the requirements?

Mr. TRILLING. There is a lead time between when the study is completed and when the requirements go into effect.

Mr. SHUSTER. But they will be in the law. They will already be in the law.

Mr. TRILLING. But there is a postponement provision in the law as well that if the President sees that intercity service will deteriorate, he may postpone that requirement.

Mr. SHUSTER. Why shouldn't we simply not put these particular provisions in the law until the study comes out and then, based on the study, make a decision?

Mr. TRILLING. As you point out, the intercity buses are a very vital component of the national transportation system. Another goal and objective that we are seeking is full accessibility for those with disabilities. The Administration, at least, feels that the full accessibility goal is one that they wanted to support in this particular context.

Mr. SHUSTER. Let me close by telling you a story. A member of Congress with the President last week. He said to the President, "Mr. President, in my little town there is a little charter bus company. It has five buses. Do you realize this law is going to require that charter bus company to put lifts on all those buses?"

The President said, "Oh, no, no. That is not required in the law."

He said, "Mr. President, you'd better go back and read the law."

The President said, "Well, if it is, I guess we better fix it." So my suggestion to you, gentlemen, is you better go back and fix it.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much. Mr. Duncan?

Mr. DUNCAN. I don't have any questions.

Mr. MINETA. Fine. Thank you.

Mr. Mross, Mr. Cline and Mr. Trilling, I think you have a good feel for what we are going to be facing in terms of some of the other unanswered questions about the Americans With Disabilities Act. I think there are, clearly, concerns that have been expressed. As Mr. Shuster has just said, maybe in some respects you are going to have to make sure that we have the kinds of fine tuning on this bill that will make it possible to get support and get it passed through the Committee and onto the House floor.

So, again, thank you very much for your being here, Mr. Mross, for your first time before this subcommittee in your new capacity. Congratulations on being the deputy. We will look forward to working with you in the future.

Thank you very much.

Mr. MROSS. Thank you, Mr. Chairman.

[Mr. Mross' prepared statement follows:]

STATEMENT OF ROLAND J. MROSS
DEPUTY ADMINISTRATOR
URBAN MASS TRANSPORTATION ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 20, 1989

Mr. Chairman, members of the Committee, my name is Roland J. Mross. I am the Deputy Administrator of the Urban Mass Transportation Administration (UMTA), at the Department of Transportation. I am pleased to have this opportunity to appear before you today to present the views of the Department of Transportation on the "Americans with Disabilities Act," which the Senate passed on September 7, 1989. As I am sure you know, the Administration strongly supports enactment of Federal legislation extending civil rights to Americans with disabilities.

Appearing with me today to discuss this bill are John Cline, Associate Administrator for Budget and Policy, UMTA; and Donald Trilling, Deputy Director, Office of Transportation Regulatory Affairs, Office of the Assistant Secretary for Policy and International Affairs.

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this

Nation still lead their lives in a state of isolation and dependence. Sixteen years have gone by since the Rehabilitation Act was passed. In that time the doors of educational opportunity have been opened to persons with disabilities. Nevertheless, persons with disabilities are still too often shut out of the economic and social mainstream of American life. The Americans with Disabilities Act would directly address this problem.

In brief, the purpose of the Act is to provide a clear national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

Let me now briefly summarize for you some of the key provisions in the Americans with Disabilities Act, as passed by the Senate, affecting transportation. Under that bill -

0 Public entities must purchase or lease accessible vehicles - bus, rail and other fixed route vehicles - in any solicitation made thirty days after enactment of the Act.

0 DOT may "temporarily relieve" a public entity from purchasing a lift-equipped bus if a lift is unavailable and the public entity has made a good faith effort to locate a lift-equipped bus.

0 A public entity providing fixed route transit service must provide comparable level paratransit service to handicapped individuals who cannot otherwise use the fixed route service. The Department would issue service criteria in this regard. If providing such service presents an "undue financial burden," the Department may allow the public entity to limit its service pursuant to a "flexible numerical formula".

0 A public entity only providing demand responsive service must buy or lease accessible vehicles unless it can demonstrate that its system provides a level of service to disabled people equivalent to that provided to the general public.

0 New facilities built by a public entity must be accessible. Existing facilities with major alterations will, to the maximum extent feasible, be made accessible in the altered areas. Regarding rail systems, at least one car per train must be accessible as soon as practicable but in no less than five years. Existing key rail stations must be made accessible within three

years except that DOT may extend that time to twenty years for "extraordinarily expensive structural changes..." necessary to achieve accessibility.

The proposal that public transit agencies purchase only lift-equipped buses is necessary to accomplish the goal of the legislation to provide civil rights to individuals with disabilities - that is, to "mainstream" them into daily American life. For disabled people who lead or want to lead independent lives and to be integrated into their communities, the availability of lift-equipped buses provides the broadest and most immediate benefits.

Such accessibility can be accomplished relatively easily, since more than thirty-five percent of public transit buses already are lift-equipped. We estimate that it would take ten to twelve years for all public transit buses to be lift-equipped. Disabled persons want to use lift-equipped vehicles once they become widely available, and this demand should lower costs and advance the technology and reliability of the lifts. Regarding current costs, adding lifts to buses costs approximately $10,000 to $15,000 per bus, and adds annual maintenance costs per bus of approximately $2,000.

The ADA legislation would also require that paratransit services be made available to those individuals who cannot use accessible fixed route transit. The Senate-passed legislation recognizes, however, that in some cases the provision of unlimited paratransit service may be an undue financial burden on the transit provider. The Senate-passed bill thus would allow the use of a flexible numerical formula that incorporates appropriate local characteristics such as population, interim degree of accessible bus service, and residential patterns to determine when provision of paratransit reaches a level of undue financial burden, and limits the provider's required paratransit to that level. If the bill is enacted, the Department would look forward to working with the disabled community and providers of transit services through the regulatory process, to establish a workable formula in this regard.

It is important to note, moreover, that if another entity in the area provides paratransit services that meet the requirements of the ADA, the local transit authority would not be required to duplicate that service.

In those urban areas where rail transit is available, it is just as important to provide access for the disabled to that system as it is to provide access to the fixed route bus system. The ADA requires that, within five years, all rail systems have one car per train that is accessible to the disabled. New construction of transit facilities would be made accessible. The bill also provides for retrofitting of existing "key stations" in light, rapid and commuter rail systems. The transit agencies and members of the disabled community would work together to plan the strategy for key station accessibility. The pattern of New York and Philadelphia, which already have worked out agreements to retrofit key stations, would serve as an excellent model in this regard for other cities. The ADA as passed by the Senate would require no incremental effort by New York and Philadelphia.

Entities that operate only demand-responsive systems for the general public are, for the most part, small rural communities. Therefore, it is appropriate that in those areas a new vehicle need not be lift-equipped if the entity can demonstrate that its system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level for service provided to the general public.

The ADA also extends to transportation provided by private entities. Hotel and airport shuttle services and around-the-mall parking lot vans, when they offer demand-responsive services; would be required to provide adequate levels of service to individuals with disabilities, and need not equip all vehicles with lifts.

Private intercity bus companies clearly provide an important transportation service. They are a transportation "safety net" providing service to regions not otherwise serviced by other modes of transportation and to people who do not generally have other transportation options available to them. Therefore, the Senate-passed legislation would require these operations to be made accessible within seven years for small operators and six years for all others. The Department must issue regulations within a year of enactment to implement these requirements. This legislation also calls for a three-year study of how best to achieve this accessibility for inter-city carriers. The rule promulgated by the Secretary will thus be available to serve as a baseline against which other approaches can be compared. This study required by the bill should indicate cost-effective methods for making over-the-road buses accessible within the statutory time period.

Finally, the Department supports provisions adopted in the Senate-passed bill that appropriately distinguish the obligations of employers with respect to active alcoholics and drug abusers, on the one hand, and those who are no longer using illegal drugs or abusing alcohol, on the other hand. Moreover, these provisions would allow an employer to prohibit the use of illegal drugs by an employee and prohibit the use of alcohol at the workplace.

Mr. Chairman, twenty-five years ago Congress and the President were finalizing enactment of the Civil Rights Act of 1964, one of the most comprehensive civil rights legislation ever passed. We now have the chance to extend the Nation's civil rights guarantees to the disabled community, and the Department and the Administration are pleased to support this landmark legislation.

Mr. Chairman, that concludes my remarks and we would be pleased to answer any questions you may have.

Mr. MINETA. At this time, I would like to call forward a gentleman who is going to have to catch a plane, but who has done just outstanding service not only to the business community but to this country and serves, presently, as the Chair of the Task Force on the Rights and Empowerment of Americans with Disabilities. So, at this point, I would like to call forward Justin Dart. I appreciate Mr. Roffee, the Executive Director of the Architectural and Transportation Barriers Compliance Board allowing Mr. Dart to be inserted and to testify at this point.

TESTIMONY OF JUSTIN DART, CHAIRPERSON, TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

Mr. MINETA. Mr. Dart, it is good to have you with us. If you would go ahead and proceed in your own fashion, sir.

Mr. DART. Thank you, Mr. Chairman. It is a privilege to appear before this distinguished Committee. I deeply appreciate, Mr. Chairman, your support for the rights of people with disabilities, and that of your colleagues. My name is Justin Dart. I serve as Chairman of the President's Committee on Employment of People with Disabilities. I am exceedingly proud to serve in the Administration of the first President and Vice-President of the United States to endorse comprehensive civil-rights protection for people with disabilities.

I address you today not as an official representative of the Administration but as Chairperson of the Task Force on the rights and empowerment of Americans with disabilities. As a fiscal conservative, as an active Republican, and as a lifelong advocate for the principles of individual responsibility, individual productivity and individual rights which have made America great.

Mr. Chairman, you and your colleague members of the Congress have contributed to a miracle of progress for people with disabilities in the last few decades. Yet we all know that the job is far from finished. Blocked by discriminatory and paternalistic practices, and environmental barriers from fulfilling their potential for productive and satisfying lives, 43 million citizens with disabilities form this nation's most isolated, unemployed, impoverished and dependent minority.

The depth of their spiritual suffering would be impossible to express in words. It is absolutely imperative for the integrity and the prosperity of this nation that the Americans With Disabilities Act become law in a form that provides equal or greater protection to people with disabilities as the version endorsed by the President and passed by the Senate.

The provisions of the act that require the eventual total accessibility to people with disabilities of all bus systems serving the public are particularly important. It will do little good to prohibit discrimination in employment if people with disabilities are still denied the right to use the mainline public transit services necessary to prepare for employment, to travel to and from places of employment and to access the public facilities and services necessary to maintain themselves in and advance in employment.

There must be no exceptions to the requirement for equal opportunity to transit services. Transportation is just as vital to the ability to be employed. Intercity tour and charter bus transit is, often, the only possible method by which hundreds of thousands of rural and impoverished inter-city residents with disabilities can access the educational and cultural activities necessary to become qualified for employment and for advancement in employment and can travel to and from places of employment.

Airport, hotel and other similar transit services are absolutely necessary to many types of employment and to the full enjoyment of American citizenship. Experience has clearly demonstrated that there is no area of this nation where local circumstances, such as inclement weather, render accessible public transit impractical or unnecessary.

During the heavy snows of 1987, here in Washington, D.C., I negotiated the sidewalks in my wheel chair to be in my offices when only two or three able-bodied employees out of, perhaps, 60 were present. There is no city where totally paralyzing weather conditions occur more than a few days in a year.

Paratransit systems for persons with certain types of severe disabilities are essential, not as a substitute for but as a supplement to 100 percent accessible public transit. I can tell you, from 40 years of personal experience and from testimony I have taken in each of the 50 states, that paratransit and other demand-response systems for people with disabilities simply do not serve the needs of fully-employed, fully-active citizens.

The President's Committee on Employment of People with Disabilities feels so strongly about this issue that we moved our 1991 national meeting from a city that did not plan for fully-accessible public transit to one that did, from San Antonio to Dallas, Texas. I am delighted to report that San Antonio has since adopted a policy of total equality and that we look forward to having our annual meeting there in some future year.

But what about cost? Is ADA and is accessible public transit affordable? Mr. Chairman, is equality affordable in the United States of America? Not since the abolition of slavery has equality been negotiable for money in this country. But while we all agree that equality is not contingent on economic expediency, we also agree that there is, always, the responsibility to implement equality as affordably as possible.

Mr. Chairman, cost and fiscal responsibility provide the strongest possible arguments for ADA. The forced dependency of a large proportion of our increasing population of people with disabilities has resulted in heavy and rapidly-escalating economic burdens on government, business, families and tax payers.

Using data provided by Federal agencies, the Congressional Task Force which I chair estimates that the unnecessary unemployment of more than 8 million citizens with disabilities costs our society in excess of $246 billion annually. The President of the United States has used the figure $300 billion.

Mr. Chairman, I can sympathize with the fear of the unknown on the part of some of my colleagues in the transit industries who, perhaps, are not fully knowledgeable about the problems and the potential of people with disabilities. I can understand, particularly, the concerns of the representatives of privately-owned systems that do not benefit from public subsidies.

But these fears of undue burdens are not justified. Accessible public transit has been operating productively in many communities for years. As technology and public attitudes mature, as other aspects of the environment become accessible, and as incentives for productivity are refined, accessible public transit will be accomplished with increasing economy, increasing ridership and increasing profitability to operators, to tax payers, and to every citizen of this nation.

Mr. Chairman, the time has come for fiscally and morally responsible Government leadership to lay the foundation for a fully just and productive society. We cannot continue to pass the unconscionable social and financial burdens of discrimination to our children. ADA must not be amended to a statement of partial equality because partial equality is not equality, and partial equality is no longer tolerable to Americans with disabilities.

Partial equality written into law simply institutionalizes discrimination and guarantees more segregation, more unemployment and more public and private expenditures for welfare. Mr. Chairman, the Americans With Disabilities Act must be passed as a true mandate for equality and for productivity.

I thank you.

Mr. MINETA. Mr. Dart, thank you very, very much for your very fine statement, very moving statement from the bottom of your heart. Let me ask about the work of the Task Force. How would you say that the work of your Task Force has been incorporated into the ADA bill, itself?

Mr. DART. Many members of our Task Force have conferred with the Congressional leadership and writers of the ADA in both houses. They have conferred with individuals in the White House and with all who have been concerned with writing the Americans With Disabilities Act. I would to add, Mr. Chairman, that I did preside at 63 public forums, at least one in each of the 50 states. These forums were attended by several thousand, more than 8,000, individuals. I have addressed other meetings, maybe 100 other meetings, attended by almost 20,000 persons in the last 18 months in every state on this subject.

We have made every effort to distill the information which we gained and to convey it to the Congress and to the White House.

Mr. MINETA. I have heard repeatedly that non-accessible public transportation is one of the principal barriers to employment of the disabled. Does this situation vary in different parts of the country such as between urban and rural areas, or does it have a uniformly negative impact on employment of our fine fellow citizens who, unfortunately, are struck with disabilities regardless of where they might be living?

Mr. DART. It is my impression and experience that the lack of transportation is a problem which is universal and which exists in every community in the United States, be it large or small.

Mr. MINETA. Do you believe that the ADA goes far enough in removing the transportation barrier to employment?

Mr. DART. Mr. Chairman, the Americans With Disabilities Act is not going to solve all of the problems of people with disabilities. It is an essential foundation for all other solutions because, until we eliminate the insidious assumption that people with disabilities are less than fully human, and until we eliminate the discrimination that results from that assumption by a mandate for equality to every citizen of this nation, we are not going to solve all of the other problems.

I think it will begin to solve the transportation problems. But it will be a beginning, an essential beginning.

Mr. **Mineta**. Thank you. That is very, very fine.

Mr. Duncan?

Mr. **Duncan**. Mr. Dart, thank you for a very fine statement. I just want to ask you one thing. It seems that almost everything we do up here benefits big business and the big giant corporations in the end. Yet it seems as if the Federal government is driving small business out of existence in this country at a very rapid rate no matter what field you look at.

I am a little bit concerned. Do you think that this bill will hit adversely on small business or cause more small businesses to go out of existence?

Mr. **Dart**. I do not believe so. As a matter of fact, as a person who has been a small businessman, have been a founder and a chief executive officer of three small businesses and of a business that, fortunately, became larger—and I have done all of the things which are required by this act. I know as Chairman of the President's Committee and through my researches over the years, over the last ten years, that all of the requirements of this bill are being complied with successfully and productively by some small businesses somewhere, that I think I can tell you that I know that properly implemented, properly enforced and implemented, with common sense as I know our administration will do it, that this bill will not negatively impact small businesses.

As a matter of fact, it will help them because people with disabilities are the natural customers of the neighborhood small business, and they are the natural employees of the neighborhood small business. If they can get into the small business and if they can overcome the attitudinal barriers that now prevent them from being employed.

Mr. **Duncan**. Have you seen this editorial from The New York Times, September 6, which says, Blank Check for the Disabled?

Mr. **Dart**. Yes, I have.

Mr. **Duncan**. What do you think about that editorial?

Mr. **Dart**. I think that that editorial is not correct. I think that, at some point in our addressing of this subject, we need to ask not only how much is it going to cost to have equality, but how much does it cost not to have it and how much are we going to profit by investing in productivity as our forefathers have wisely done throughout the history of this nation.

Mr. **Duncan**. I was told a few days ago that one of the major cities in the West had put lifts on their buses within the last few years and that they had found that they were being used once every two days on the average, and that they had found it was less expensive to just provide individual vans or more personalized transportation to the disabled. Is that what you are talking about when mention in your testimony paratransits?

Mr. DART. In regard to the situation which you address about the apparently low ridership of lift-equipped mainline public transit, I believe that we are in the pioneering stages of this great initiative to make our society accessible to millions of people with disabilities. I think the same arguments were made against early trains, and early airplanes and early cars, which were demonstrably inferior at one time to horses and buggies.

I think that is true. That sounds like a joke, but they were demonstrably inferior, at some point in their development, to horses and buggies. People ask why are we going to subsidize railroads that carry no passengers to the nowhere that exists in the Western wilderness of this country.

I believe, Mr. Congressman, that it is virtually certain that, as technology improves, as the accessibility of this society improves, as people with disabilities lose their fear of addressing society—and, of course, that is the whole point of ADA, to make equality popular and fashionable and acceptable. As those things occur, I think you will see that the ridership and the utilization of accessible public transit will become very profitable and will become an investment in the productivity of this nation.

Mr. DUNCAN. What you are really saying is that this unnecessary unemployment that you mention, you think that the government will end up making money because of increased tax revenues and so forth if some of these unemployed disabled people are able to have income and so forth? Is that what you are saying?

Mr. DART. I think the government will make money. Tax payers will make money. Families will make money. Businesses will make money. We do well to recall that—I can recall that, and many of my colleagues that are younger maybe don't—that as we approached the Civil Rights Act of '64, I was a small businessman. I lived in the segregated South. I went to meetings where it was confidently predicted that if black people were allowed to come into our businesses, we would all go bankrupt.

What happened? We had the biggest boom in the history of human culture.

Mr. DUNCAN. Of the 43 million disabled Americans that you mention in your testimony, how many of those would use these lifts on public transit?

Mr. DART. Of the how many?

Mr. DUNCAN. You say in your testimony that there are 43 million disabled Americans. But I assume that you are talking about some who have epilepsy or other forms of disabilities who would not use these lifts. I am just wondering how many of those 43 million would use these lifts and other devices that you are asking to be put on public transit systems?

Mr. DART. I have heard the estimate that there are approximately, at this time, 7 million potential users. This figure will, certainly, increase as the proportion of our population of elderly persons and persons with disabilities does increase and is increasing.

Mr. DUNCAN. Just one more question. The last witness who was here, you heard Congressman Shuster end up with a story. He said that the President had lunch a few days ago with another member of Congress, and apparently expressed surprise that this law might apply to small charter bus companies who had only five buses, or something like that. Is it your understanding that this law would apply even to very small bus companies with, say, one or two buses?

Mr. Dart. I am not familiar with the exact question that was asked the President. Or, of course, with his answer, I am not entirely sure what the question was. I will say this, that I have been present at meetings with the President and heard his views on this bill and the equality of people with disabilities.

It is my experience that he is totally dedicated to having a civil rights law, and a real civil rights law, for people with disabilities.

Mr. DUNCAN. So it would apply to all companies regardless of size, period; is that what you are saying?

Mr. DART. I leave that up to some of my attorney friends who will follow. I think it should indeed—and hopefully will—apply, if you want my personal opinion, to all buses, eventually.

Mr. DUNCAN. Thank you very much.

Mr. MINETA. Mr. Payne?

Mr. PAYNE. Thank you very much, Mr. Chairman. Mr. Dart, thank you very much for being here today. I have long admired your success in business and, certainly, very much appreciate the work that you have done as chairperson of this very important Task Force. I think you have made a tremendous contribution to all of America. Certainly, all of us appreciate what you have done.

I recognize, as you point out in your testimony, that this is not a matter of dollars and cents, or cost and benefits. Certainly, it is a matter of civil rights and equality first and foremost. As you have described yourself, a man of keen fiscal responsibility, and certainly you have proven that in your business life, perhaps you have looked at the fact that today we can quantify that the cost to our society of the more than 8 million citizens that are unnecessarily unemployed, is $246 billion, or the President has used $300 billion.

I guess my question is, has the Task Force looked at attempting to quantify what this legislation might do in terms of reducing that cost from $246 billion to some other number; in other words, the quantified benefits of this legislation as it is now written. Has there been any attempt to quantify that?

Mr. DART. We have not attempted to make estimates in that regard. I am not sure to what extent one could make a responsible estimate. I believe I have stated to the Chairman previously that this is not going to solve all of the problems of people with disabilities. This is not going to result in the instant employment of those 8 million plus, or 10 million, individuals. It is, however, an essential foundation for the eventual employment of those individuals.

I believe that. I have been in disability policy for ten years now, and I have been doing it full time. I have been to every state three times gathering information on this, at least most of them seven or eight times. I am absolutely convinced that we are never going to solve our problems, the problems of people with disabilities, until we can eliminate the assumption that we are less than fully human and, therefore, not eligible for the same rights and services as other people.

I think buses are a good example. Nobody is talking about taking air conditioning which costs more than lifts off of buses. I ride in a car without air conditioning. We could, easily, ride in buses without air conditioning. They do it in many countries in the world that are very hot. And the buses get there just as quickly as ours, get to their destination.

We very easily say that it might be too expensive to take people with disabilities anywhere. But we do not say that we are willing to give up our air conditioning to allow people with disabilities to get out of the back rooms and off of social welfare.

I think that tells you something, Mr. Congressman, about how we think of the equality and the humanity of people with disabilities.

Mr. PAYNE. I thank you very much for that statement. Again, thank you for all that you have done in this matter. I yield back my time.

Mr. MINETA. When we talk about these costs, I think figures can be bandied about. Just taking a very quick look at how much is being expended totally in this whole field of transportation or transit by all levels of government, I think you could probably get to about $15 billion or so being spent.

At the same time, even if we were to assume some of the figures that Mr. Shuster used here, and I believe he used the figure $150 million for capital costs of lifts and maintenance of those lifts with the life of the bus, $150 million. $150 million in the realm of a $15 billion environment involving all of transit, really, is not that much in terms of the proportion.

As you have just very eloquently stated, the cost of air conditioning of that fleet is so much more than the cost of the lift. So it is a matter of values. I think you have put a finger on the issue very, very clearly.

Mr. Dart, I would like to, again, thank you very much for your presence here—Mr. Duncan?

Mr. DUNCAN. I would just like to ask one other question. You mentioned the buses in foreign countries. I am just curious, are there any countries where they have the requirements that are in this Act such as the special lifts and the special bathrooms and so forth on the buses? I don't know. I just was curious. You mentioned the buses in other countries.

Mr. DART. Mr. Congressman, I must tell you that I don't know either. But there are many of my colleagues in the room who do know. It is my impression that buses of that nature do exists in foreign countries. But I am going to ask you to ask that question to somebody who can give you a really accurate answer.

Mr. DUNCAN. Thank you very much. Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, again, Mr. Dart. We appreciate your being here, and especially thank you for your work as Chair of this Task Force. The results of your efforts are well-known and have been embodied, I can see, in the ADA bill. Thank you very, very much.

At this time, we will take a break and come back at 2:15.

[Whereupon, at 1:35 p.m., the Subcommittee adjourned, to reconvene at 2:15 that same day.]

AFTERNOON SESSION

Mr. **Mineta**. The Subcommittee will please come to order. I would like to call forward our next panel made up of Larry Roffee, Executive Director of the Architectural and Transportation Barriers Compliance Board; Jim Raggio, the General Counsel; and Dennis Cannon, the Accessibility Specialist of the Architectural and Transportation Barriers Compliance Board.

TESTIMONY OF LARRY ROFFEE, EXECUTIVE DIRECTOR OF THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD, ACCOMPANIED BY JIM RAGGIO, THE GENERAL COUNSEL, AND DENNIS CANNON, THE ACCESSIBILITY SPECIALIST OF THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Mr. **Mineta**. Mr. Roffee, we have your statement and it will be made a part of the record. If you would go ahead and proceed in your own fashion.

Mr. **Roffee**. On behalf of the Architectural and Transportation Barriers Compliance Board, we are happy to be here. As you noted, with me we have Mr. Jim Raggio, our general counsel, and Dennis Cannon, an accessibility specialist, specializing in the transportation area.

The Architectural and Transportation Barriers Compliance Board, or the Access Board as we are more commonly known, was established by Congress sixteen years ago to insure that buildings are designed, constructed, altered or leased with Federal funds are readily accessible to, and usable by, people with disabilities.

The Access Board had been responsible for developing and refining, through active research programs, the Minimum Guidelines and Requirements for Accessible Design. These guidelines represent the state of the art in creating an environment usable by all people and serve as a model for the Uniform Federal Accessibility Standard. Those standards are used to implement the Architectural Barriers Act of 1986 and are also used in the Vocational Rehabilitation Act of 1973. They apply to post offices, government buildings and Federally financed housing and transit facilities across the country.

Mr. Chairman, I would like to speed things up; if we can have the written statement put in the record, I will just summarize quickly.

The Access Board has studied many and various architectural, transportation, communication and attitudinal barriers which limit the full participation of citizens with disabilities in our society, and have published a series of technical papers and staff reports on how to eliminate these barriers; for example, Lifts and Wheel Chair Securement gives guidance on providing access to buses and paratransit vehicles; Aircraft Stowage Procedures for Battery-powered Wheel chairs explains how to stow power wheel chairs on aircrafts in accordance with the hazardous materials regulations; and Transit Facility Design for Persons with Visual Impairment gives guidance to transit facility designers and operators on making transit systems usable by person with visual impairments.

Through these and other activities, tne Access Board has become a natural resource and center of expertise on accessibility for persons with disabilities.

The Access Board, along with the President and the rest of the Administration wholeheartedly support the broad goals of the Americans With Disabilities Act. This legislation would extend basic civil-rights guarantees to over 36 million Americans with disabilities and eliminate discriminatory barriers in public accommodations, place of employment, public transportation and telecommunications.

The legislation would significantly promote independence, freedom of choice and the productive involvement in the social and economic mainstream for our nation's disabled citizens. Through conducting public forums around the country and sponsoring research projects and studies, the Access Board has gathered extensive information about the extent and effects of discriminatory barriers experienced by people with disabilities and public accommodations and transportation.

The Access Board has carefully analyzed the provisions of the Americans with Disabilities Act which have passed the Senate, and believes that they provide a comprehensive solution to removing these barriers.

As we have seen, the public transit industry has expressed some technical and financial concerns about the act's provisions. To accommodate those concerns, some amendments have been incorporated in the Senate-passed version of the act which we would like, now, to discuss. The Administration endorses the Senate approach which includes a narrow, temporary exception to the lift requirement for new buses in the cases where a public transit agency can demonstrate that manufacturers are unable to supply lifts for the new buses.

The Access Board maintains extensive files on lift manufacturers and their products. There are, now, several qualified lift manufacturers. With the passage of this act, we believe that American industry will respond to the increased demand for the lifts and that exceptions will be unnecessary.

Consistent with the Senate-passed version of the act, the Administration also recommends that if the provision of paratransit services would impose an undue financial burden on a public transit agency, such services should be required only to the extent that they would not impose an undue financial burden.

The Access Board believes that a flexible approach should be used for determining what constitutes an undue financial burden and that it should take into account such factors as population, service area size and characteristics, current level of paratransit service and interim degree of fixed-route accessible services.

As fixed-route services are substantially achieved, the use of paratransit services will then shift to a feeder distributor system which would be more cost-effective than alternative services presently provided. The over-the-road bus industry has also expressed concerns about the Act's provisions based upon a lift which costs about $35,000 and takes up one luggage bay and seven seats. There are other lifts which cost between $7,000 and $10,000 and displace no luggage space and only two seats.

The act, as passed by the Senate, would require the Office of Technology Assessment to conduct a study of the most cost-effective means for making over-the-road buses accessible and extending the period of compliance to seven years for small providers and six years for other providers, with the possibility of an additional year extension based upon review of the study.

The Access Board would be involved in reviewing and comments upon the study. We believe that this study will provide a firm basis for establishing minimum guidelines and requirements for access to such vehicles.

Finally, there is a technical assistance provision in the act as passed by the Senate which we would especially recommend to you. The provision would require the attorney general, in consultation with the Access Board and certain other federal agencies, to develop a plan to assist entities covered by the act to understand their responsibilities and to provide information and technical assistance on cost-effective means for achieving compliance with the Act.

The Access Board currently has an extensive technical assistance program and believes that such a program is important to help public agencies and private businesses fully understand the responsibilities under the act and how to achieve compliance.

The Access Board and other federal agencies have developed long and varied experience in cost-effective approaches for applying the principles of readily-accessible and reasonable accommodation which are embodied in the act. By making this expertise available to all who must comply with the act, we can hasten its implementation, we can prevent unnecessary litigation, and, I think most importantly, we can avoid the unnecessary costs to those entities covered by the act. We strongly urge the House and this Committee to include a technical provision in the act.

The Access Board looks forward to working with Congress, the administration and other federal agencies in crafting and implementing a workable law that will insure the full protection and guarantees of civil rights and an accessible environment for Americans with disabilities.

If there are any questions from you, sir, we would be glad to answer them.

Mr. MINETA. Before I get into the questions, let me recess so that we can respond to the call of the House for a vote, and convene in about fifteen minutes.

[Recess from 2:35 p.m. to 2:55 p.m.]

Mr. MINETA. The Subcommittee will please come to order. Mr. Roffee, thank you very much for your testimony. We are pleased to have good friends here on the panel and especially, to see my good friend, Dennis Cannon, before the Subcommittee.

Mr. Roffee, how will the functions and responsibilities of the Architectural and Transportation Barriers Compliance Board differ from what they are today under the Americans with Disabilities Act?

Mr. ROFFEE. Sir, under the ADA, we would be required to update and enhance and revise the MGRAD publication, the Minimum Guidelines and Requirements for Accessible Design, to include standards for rolling stock. We would also have a much larger role as bill has passed the Senate providing technical assistance and, I think, see a significant increase in the number of requests for technical assistance coming into our office. I would also imagine that our current caseload of complaints under the Architectural Barriers Act would probably decrease.

Mr. MINETA. I am wondering, is there a current design criteria that the Access Board has for transit bus and rail facilities?

Mr. ROFFEE. May I turn the microphone over to Dennis.

Mr. CANNON. We don't have, as yet, any specific guidelines for those vehicles and what-not because we have not, heretofore, had the authority to define those kinds of things. The ADA would give us that authority for the first time.

However, those requirements are not new. They were embodied, in many respects, in the 1979 DOT regulation which I helped draft when it was written in '79. There have been subsequent studies as well. The Urban Mass Transportation Administration sponsored an industry panel in 1968 to come up with guidelines, advisory guidelines, for lifts, ramps and wheel chair securements. Our intention would be to borrow from those very heavily in writing the minimum guidelines.

In essence, we also have some previous studies that have to do with the accessibility of things like platforms. We are developing advisory guidance at this time on a number of issues that we would anticipate to be able to translate into minimum guidelines and requirements.

So we don't see that as a major contractual or study obligation. Our role would be to define the envelope, if you will, into which the DOT standards would fit. The DOT standards would be more explicit. Ours would provide the guidance for setting the upper and lower limits for a variety of things.

Mr. MINETA. Do I understand that under the ADA, design standards would now extend to privately-operated facilities where, up to this point, that has not been covered.

Mr. CANNON. At the present time, the minimum guidelines only cover things which are Federally financed and Federally funded. What would change is not so much the technical provisions of those, but the scope of coverage. And we have with the Uniform Federal Accessibility standard, for example——

Mr. MINETA. Could you explain scope of coverage a little more, then?

Mr. CANNON. The current Architectural Barriers Act, which we enforce the standards for, sets forth facilities in buildings which are designed, altered, constructed or leased with Federal financial assistance. That covers a very broad range of things and types of facilities.

What would change under the Americans With Disabilities Act is that those same standards, or similar ones, would now apply to privately-operated and privately-built motels and so forth, or transit facilities, or transit vehicles which are not currently covered under the standards. We don't believe that the technical requirements would be substantially different.

What it would do is extend the coverage beyond the very limited coverage that is currently under the Architectural Barriers Act.

Mr. MINETA. As an example, if a hotel had been built under a UDAG grant, there were standards being applied. Now those same standards, or something similar, would be applied to any hotel being built?

Mr. **Cannon**. That's correct. You also need to understand that in reality the vast majority of facilities in this country are already covered by state and local regulations and laws most of which incorporate the American National Standards Insitutute standard which is almost identical to the Federal standard which we enforce for Federally-financed buildings.

In reality, for the broad majority of cases, there would be no new requirements under the ADA. Those local buildings and hotels and whatever still have to conform to the local laws. In fact, California is one of those states that has a building code which is more stringent than the Federal standard. So California is already subject to, in terms of its building requirements, a law that is being applied with little or no problems throughout the state of California and a few others that actually require more, in terms of access, than does the federal standard.

Mr. **Mineta**. In later testimony, it will be suggested that the federal government develop design standards for wheel chairs which are compatible with workable safety restraints and which will work on transit vehicles and in transit facilities.

In view of the Access Board's research in the area of wheel chair securement, what is your reaction to this suggestion. Is such a standard for wheel chairs needed?

Mr. **Cannon**. First of all, there is already a process underway to develop some standards—in fact, international standards—through an organization called RESNA which I have been a part of in developing those standards. Those standards would refer to such things as the structural integrity of the wheel chair, how strong it is and so forth, so that if you grabbed onto it with a securement device, you would some reason to believe that it would, in fact, be held in place.

The match up of securement in wheel chair is a complicated issue. What is complicated is that while you can set certain standards about the structural integrity, structural tie points, and so forth, on the wheel chair, you can't, necessarily, define a standard wheel chair. All the wheel chairs are designed, like a set of clothing, to meet the individual needs of the individual.

So there isn't any such thing, really, as a "standard wheel chair" except that you can define certain points on the frame, for example, that would have structural integrity where a clamp of a particular design could grab onto. We think those things are very necessary, and we are working on them.

My understanding of the ADA—and, perhaps, a lawyer could better answer it—is that it does not cover that to the extent that we would be given any authority to write those kinds of standards. But, as I say, we have been working on the issue and we are more than happy to cooperate and work with the designers of chairs.

We also know that there are at least two transit systems that have designed their own securement system which, in their own words, "We can secure anything that has come along so far," including the three-wheel devices which are the largest expanding market, and many of the power chairs including the one that I am using.

So those systems do exist in the sense that they can be specified for purchase or the transit agency can modify existing systems. It is true that you can't go out to the wheel-chair securement store and buy one off the shelf yet. I expect that will change.

Mr. **Mineta**. In your statement, Mr. Roffee, you mentioned wheel-chair lifts for over-the-road coaches which cost between $7,000 and $10,000, which displace no luggage space and take two seats in contrast to more seats—I believe four seats—and taking luggage space and costing something like up to $35,000.

Using what you have described to achieve accessibility on over-the-road coaches would significantly lessen the financial burden on the inter-city bus industry of eventual compliance with the ADA bill after six or seven years. Could you provide the Subcommittee with additional information about this lift? For example, is it being used by any transportation provider in the United States, and do you know what their experience has been thus far with the lift as far as its reliability and cost to maintain?

Mr. **Cannon**. Currently, the one you are referring to is, really, the one being used in Denver and has been mentioned earlier. There is limited experience with that device which is why we support the provision of the study done by the Office of Technology Assessment to really determine what that device is.

I have seen the device. It was here in Washington in 1984, a prototype of it, at the Convention Center at the APTA show. It is very similar to the kinds of lifts that are used on private vehicles in that it is extremely simple. It is much simpler than the complicated so-called passive lifts used on urban buses, so it ought to be easy to maintain.

My lift on my van, which I just recently had to replace, I bought back in 1976. It was No. 19 on the production line. Except for some modifications and maintenance and one motor replaced, it has been extremely serviceable. Those kinds of things are very easy to maintain and relatively inexpensive.

Because this lift, essentially, operates on the outside of the vehicle, it does not take up a luggage bay and, therefore, it does not restrict the carrying of baggage express or package express on which, I believe, Greyhound depends a great deal for their income.

Mr. **Mineta**. Are you going to be monitoring the experience there in Denver with regard to this Hubmatic lift?

Mr. **Cannon**. We are attempting to collect as much information as we can. According to the Senate version of the ADA, we would be involved, we would expect, with the study that the Office of Technology Assessment would do, and intend to keep a close watch on that.

Mr. **Mineta**. So you will be incorporating something of that Denver experience, so to speak, in your OTA report as provided under the ADA.

Mr. **Cannon**. That is correct.

Mr. **Mineta**. Very well. Mr. Shuster?

Mr. **Shuster**. Thank you, Mr. Chairman.

With regard to the Hubmatic lift, staff tells me that it is a prototype only, and they were installed on buses which were not typical over-the-road coaches, and that the cost of the lift, itself, was accompanied with an additional $11,000 charge to make the bus compatible with the lift.

Is that a fair characterization of the situation as you understand it?

Mr. **Cannon**. My understanding is part of that additional cost had to do with a change order which would not, necessarily, incur on an initial purchase from another manufacturer, a new manufacturer, today. That is one of the uncertainties, however, that we hope to study. It is very difficult to nail down what is the real cost of that device versus what was caused by the change order which always adds additional costs that are not really attributable to the equipment.

Mr. **Shuster**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Mineta**. Mr. Roffee, Mr. Cannon and Mr. Raggio, thank you very much for being here. I look forward to our working together as we go down this path. Again, thank you very much.

[Mr. Roffee's prepared statement follows:]

STATEMENT OF LARRY ROFFEE, EXECUTIVE DIRECTOR, ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Mr. Chairman, I am pleased to be here today on behalf of the Architectural and Transportation Barriers Compliance Board to testify on the Americans With Disabilities Act. The Architectural and Transportation Barriers Compliance Board, or the Access Board as we are more commonly known, was established by Congress 16 years ago to ensure that buildings which are designed, constructed, altered or leased with Federal funds are readily accessible to, and usable by, persons with disabilities.

The Access Board has been responsible for developing and refining, through active research programs, the Minimum Guidelines and Requirements for Accessible Design (MGRAD). These guidelines represent the state-of-the-art in creating an environment usable by all people and serve as the model for the Uniform Federal Accessibility Standards (UFAS). Those standards are used to implement the Architectural Barriers Act of 1968 and are referenced in regulations used to implement Section 504 of the Rehabilitation Act of 1973 which apply to post offices, Government buildings, and Federally financed housing and transit facilities across the country.

The Access Board has studied the many and various architectural, transportation, communication, and attitudinal barriers which limit the full participation of disabled citizens in our society and has published a series of technical papers and staff reports on eliminating these barriers. For example, Lifts and Wheelchair Securement provides guidance on providing access to buses and paratransit vehicles. Aircraft Stowage Procedures and Battery Powered Wheelchairs explains how to stow power wheelchairs on aircraft in accord with hazardous materials regulations. Transit Facility Design for Persons with Visual Impairments gives guidance to transit facility designers and operators on making transit systems usably by persons with visual impairments. Through these and other activities, the Access Board has become a national resource and center of expertise on accessibility for persons with disabilities.

The Access Board, along with the President and the rest of the Administration, wholeheartedly support the broad goals of the Americans With Disabilities Act. This legislation would extend basic, civil rights guarantees to over 36 million Americans with disabilities and eliminate discriminatory barriers in public accommodations, places of employment, public transportation, and telecommunications. The legislation would significantly promote independence, freedom of choice, and productive involvement in the social and economic mainstream for our nation's disabled citizens.

Through conducting public forums around the country and sponsoring research projects and studies, the Access Board has gathered extensive information about the extent and effects of discriminatory barriers experienced by persons with disabilities in public accommodations and public transportation. The Access Board has carefully analyzed the provisions of the Americans With Disabilities Act which have passed the Senate and believes that they provide a comprehensive solution to removing these barriers.

In the area of public transportation, the Americans With Disabilities Act would require that all new buses, rail vehicles, and other fixed route vehicles which are purchased 30 days after the enactment of the Act be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Because the average life of a bus is 12 years, accessible bus transportation would be available to disabled citizens in cities and towns throughout the country in a relatively short period. In the case of the rail systems, within 5 years, at least one car per train would be required to be accessible to individuals with disabilities, including individuals who use wheelchairs. Stations on intercity rail systems, including Amtrak, would have to be made accessible within 20 years. Key stations on rapid rail, commuter rail, and light rail systems would have to be made accessible within 3 years, with the Secretary of Transportation being authorized to extend the period up to 20 years for extraordinarily expensive structural changes.

In addition, the Americans With Disabilities Act would require public transit agencies to ensure the provision of paratransit services for individuals with disabilities who cannot otherwise use accessible fixed route transportation. Public transportation services provided by private entities and over-the-road buses would also have to be made accessible.

The Access Board would be required to supplement its Minimum Guidelines and Requirements for Accessible Design to include accessibility standards for transit vehicles and stations, as well as public accommodations. Regulations issued by the Department of Transportation and Attorney General under the Act would have to be consistent with these standards. Representatives of the Department of Transportation and the Department of Justice are members of the Access Board and have enjoyed good working relationships with the other Federal agency and public citizen members of the Board. We look forward to continuing this close relationship in the days and months after the Americans With Disabilities Act is enacted in developing accessibility guidelines and standards for public transportation and public accommodations; educating covered entities about their responsibilities under the Act; and providing information and technical assistance for achieving cost-effective compliance with the Act.

The public transit industry has expressed some technical and financial concerns about the Act's provisions. To accommodate those concerns, some amendments have been incorporated in the Senate passed version of the Act which we would like to further discuss with you. The Administration endorses the Senate approach which includes a narrow, temporary exception to the lift requirement for new buses in the case where a public transit agency can demonstrate that manufacturers are unable to supply lifts for the new buses. The Access Board maintains extensive files on lift manufacturers and their products. There are several qualified lift manufacturers and with the passage of the Act, the Access Board believes that the American industry will respond to the increased demand for lifts and that exceptions will be unnecessary.

Consistent with the Senate passed version of the Act, the Administration also recommends that if the provision of paratransit services would impose an undue financial burden on a public transit agency, such services should be required only to the extent that they would not impose an undue financial burden. The Access Board believes that a flexible approach should be used for determining what constitutes an undue financial burden which takes into account such factors as population, service area size and characteristics, current level of paratransit service, and interim degree of fixed route accessible services. As fixed route accessible services are substantially achieved, the use of paratransit will shift to feeder-distributor systems which will be more cost-effective than alternative services presently provided.

The over-the-road bus industry has also expressed concerns about the Act's provisions based on a lift which costs about $35,000 and takes up one luggage bay and seven seats. There are other lifts which cost between $7,000 and $10,000 and displace no luggage space and only two seats. The

Act, as passed by the Senate, would require the Office of Technology Assessment to conduct a study of the most cost effective means for making over-the-road buses accessible and extending the period of compliance to 7 years for small providers and 6 years for other providers, with the possibility of an additional year extension based on review of the study. The Access Board would be involved in reviewing and commenting on the study. We believe that this study will provide a firm basis for establishing minimum guidelines and requirements for access to such vehicles.

Finally, there is a technical assistance provision in the Act, as passed by the Senate, which we would especially recommend to you. The provision would require the Attorney General, in consultation with the Access Board and certain other agencies, to develop a plan to assist entities covered by the Act to understand their responsibility under the Act and to provide information and technical assistance on cost-effective means for achieving compliance with the Act. The Access Board currently has an extensive technical assistance program and believes that such a program is important to help public agencies and private businesses to fully understand the responsibilities under the Act and achieve compliance. The Access Board and other agencies have developed long and varied experience in cost-effective approaches for applying the principles of "readily accessible" and "reasonable accommodation" which are embodied in the Act. By making this expertise available to all who must comply with the Act, we can hasten implementation of the Act; prevent unnecessary litigation; and most importantly, avoid unnecessary costs to those entities covered by the Act. We strongly urge the House to include a technical assistance provision in the Act.

The Access Board looks forward to working with Congress, the Administration, and other Federal agencies in crafting and implementing a workable law that will ensure the full protection and guarantees of civil rights and an accessible environment for Americans with disabilities.

Mr. MINETA. I would like to call on David Capozzi, Vice President, Project ACTION, Jim Massara from the Eastern Paralyzed Veterans of America and Ellen Daly of the President's Committee on Employment of People with Disabilities.

I believe Mr. Jenkins wanted to get back to Pennsylvania this evening, so let me call on the General Manager of the Cambria County Transit, Harold Jenkins, to also come forward at this time.

TESTIMONY OF A PANEL CONSISTING OF DAVID CAPOZZI, VICE PRESIDENT, NATIONAL EASTER SEAL SOCIETY AND MANAGER, PROJECT ACTION; JIM MASSARA, EASTERN PARALYZED VETERANS OF AMERICA, ELLEN DALY, LEGISLATIVE ANALYST, PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES, AND HAROLD JENKINS, GENERAL MANAGER, CAMBRIA COUNTY TRANSIT

Mr. MINETA. Mr. Capozzi, we have your statement. It will be made a part of the record. Please proceed in your own fashion.

Mr. CAPOZZI. Thank you, Mr. Chairman. My name is David Capozzi. I am the Vice President of Easter Seals, and I manage Project ACTION. I just want to give you a little bit of background about myself to explain my knowledge about transportation and my interest in this bill. Prior to coming to Easter Seals, I was with the Paralyzed Veterans of America for four years where I served as the Advocacy Director where we worked very closely with Mr. Mineta in passing a very important bill a couple of years ago called the Air Carrier Access Act.

I was somewhat happy to hear that the American Bus Association and Greyhound want to be treated just like the airlines as far as private transportation because, as you know, airlines are required to have vertical lifting devices and level boarding changes in all the airplanes, since 1978. Many of them do not do that, but they have been required to do that. That is irregardless of the Air Carrier Access Act.

We don't know what the final regulations under the Air Carrier Access Act are going to say, but they do have that requirement. So it is great that they want to be treated the same.

My predecessor, that I took over from with Project ACTION at the National Easter Seal Society, was Bob Bergdorf. Bob, as many people in the room know, was the principal draft person of the original Americans With Disabilities Act that was introduced in the last Congress. So Project ACTION has considerable interest in transportation

I would like to just tell you a little bit about Project ACTION. Project ACTION stands for Accessible Community Transportation in our Nation. It is a $3 million, multi-year demonstration project that is funded through UMTA. Its basic concept is cooperation.

A lot of what you have heard today and what you are going to hear today is that there are problems and that there are successes with transportation. Many of the problems and many of the successes can be keyed to whether or not there was cooperation between the disability advocates and a local community, and the transit providers in that community. If there is good cooperation, there is generally satisfaction with the transportation that is being offered.

If there has been discord, there hasn't been cooperation, it results in problems. Project ACTION is an effort to provide cooperative efforts at the local level between transit operators and the disability community to improve access. We will do that through a demonstration project which will channel money to local communities. Like I said, it is a $3 million project. We intend on spending at least 65 percent of that money in the local areas, so we are looking at about 15 demonstration projects all over the country to improve transportation through a cooperative process.

We are looking at, specifically, five areas: one, how do you identify people with disabilities in the community; second, improving training for transit operators so that they can be more sensitive to the needs of people with disabilities; third, training disabled people so that they get over some of their fears of using public mass transportation and to teach them how to use it more effectively. How do you use a lift, how do you read a bus schedule? How do you get to the bus stop? How do you access transportation; fourth, marketing transportation, developing cooperative programs to market accessible public transportation; fifth, finally, developing technologies that will break down many of the barriers to transportation.

Those five areas, all five areas, will be critical to helping with the implementation of the ADA. Chairman Anderson of the full committee said he was interested in the implementation of the ADA. Project ACTION will specifically help out with the implementation of the ADA.

As part of our research in developing the Request for Proposals for these cooperative model program, we have done a reconnaissance survey of 119 transit districts all over the country, and we have identified 59 transit districts—I have attached that as Attachment B to my testimony—59 transit districts that either have 100 percent accessible fixed route systems, or have a commitment to achieve 100 percent fixed-route systems within a reasonable time period.

That is only 59 systems that we have surveyed. I am sure that there are more that I am leaving out. Those are 59 that we have identified that are providing accessible transportation in their communities already. They do it in a multi-modal approach. There are large rural and medium-sized cities, anywhere from New York City to Los Angeles and Greensburg, Pennsylvania to Columbia, Maryland, a variety of city size and a variety of inclement weather and sunny-weather cities, places from Long Beach, California to West Palm Beach, Florida. Buffalo, New York and Oshkosh, Wisconsin. In fact, I have a letter from the Mayor of Oshkosh that I would like to insert into the record.

Mr. MINETA. No objection.

[The letter referred to by Mr. Capozzi follows:]

CITY HALL
215 Church Avenue
P O Box 1130
Oshkosh Wisconsin
54902-1130

414-236-5000

OSHKOSH
ON THE WATER

City of Oshkosh

CITY COUNCIL
James A. Mather
Mayor
Thomas J. Binner
Deputy Mayor
Floyd R. Chapin
Jon H. Kutchera
Donald W. Pressley
Kathleen V. Propp
Robert C. Jungwirth
CITY MANAGER
William D. Frueh

September 7, 1989

The Hon. Robert Kasten
United States Senator
Senate Office Building
Washington, D.C. 20510

Dear Senator Kasten:

I am writing in support of the Americans with Disabilities Act and to dispel the notion that problems with main line transportation for persons with disabilities militates against passage of the legislation. For nearly a decade we in Oshkosh have provided public transportation for persons with disabilities and others having mobility limitations. Our buses are equiped with wheelchair lifts and have "kneeling" capability to accommodate the needs our our traveling public.

Our winters can be harsh and the snow deep and persistent yet we have encountered minimal difficulty in serving our customers. The Oshkosh Public Works Department is sensitive to the special concerns of persons with disabilities and do a yeoman's job in keeping curb cuts free of snow and in maintaining other areas to ensure that all individuals have access to public transportation.

I urge you to support the Americans with Disabilities Act to allow all citizens equal opportunity of access to the quality of life offered by this great nation of ours.

Thank you.

Sincerely,

James A Mather

James A. Mather, Mayor
CITY OF OSHKOSH

Mr. **Capozzi.** The mayor says that he is writing in support of the Americans With Disabilities Act and to dispel the notion that problems with mainline transit for people with disabilities mitigates against passage of the legislation. He goes on to say, "Our winters can be harsh and the snow deep and persistent. Yet we have encountered minimal difficulty in serving our customers."

That was one of the 59 cities that we identified that have 100 percent accessible systems.

In addition, one thing was mentioned earlier about, "doesn't it make more sense to go back to the local option policy of providing service to people with disabilities because it might be too costly to provide lifts on buses?" As part of our research, we looked at the effects of different federal policies on the provision of accessible transportation.

The local option policy and the special effort policy which was, really, the same as local option—the special effort policy of the Federal government resulted in less than 5 percent of new buses being made accessible. 95 percent of the buses that were bought during the special effort phase of Federal regulations were inaccessible.

During the local option phase, only 42 percent of the buses bought during that phase were accessible. So if we go back to that, the result will be fewer buses being purchased accessible than are being purchased today.

Another question was asked to a witness earlier, how many buses last year were purchased that were accessible? In our research, we identified about 42 percent of the buses purchased in the last two years were accessible buses. So, in city after city, the trend is to provide a multi-modal approach, buses with lifts and paratransit as a supplement for those who can't use lifts.

I want to give you just five examples of how Project ACTION can help in the implementation of the ADA. First is in the area of paratransit. One of the things that Project ACTION is going to do is, identify people with disabilities in the community, and develop marketing tools. Those two things, tied together, will assist in the concept of who cannot use public transportation.

We will identify people with disabilities in the community, target marketing to those individuals in an effort to move them from paratransit onto fixed-route accessible buses. A number of the comments that we received in our research to the 119 transit operators were, "Paratransit is a very burdensome thing for us to do because it is a very time-intensive, labor-intensive, process."

We need to, somehow, craft a way to move people onto fixed-route buses. Project ACTION is very well positioned to help in doing that.

Also, one of the things that was raised in testimony earlier was that ridership levels are very low. Project ACTION will help increase those numbers, but ridership levels are, in fact, not that low in many cities. It is based on how you count riders. In Seattle, last year, it was reported to us that they had 1,400 lift usages in their fleet. They have 770 accessible buses.

So the number of people using accessible vehicles is growing. It is a question of encouraging them to use it more through a cooperative process between transit and disability folks. Project ACTION can help in that.

The other thing that we are going to be doing is institute training programs, for transit operators and for disabled people. That will help. We also have a commitment to improving lift reliability. One thing that hasn't been mentioned here today, UMTA had funded and did a research project on lift reliability two years ago in Syracuse, New York. It was funded by UMTA. It was an accelerated lift cycle testing process where they exposed a variety of lifts to severe weather conditions, snow, salt, rain and ice in a compressed time period so that you could determine how a lift was going to withstand winters for a ten-year period, and study it in about a ten-week period.

The result of that study is that lift manufacturers now incorporate the recommendations that came out of the study into their design of lifts. So what we have now is, really, state-of-the-art lifts that are coming out. So what may have been true ten years ago, that there were problems with lift reliability, will not be true subsequent to the ADA because you have state-of-the-art lifts coming out.

We have a commitment to making those even more reliable. I want to see lifts that produce a lift every single time it is used. We don't want to see a breakdown. We are committed to helping with that.

Also, we have collected some information on maintenance figures for lifts. DOT, in their regulatory impact analysis back in 1986, assessed the cost of maintenance at $650 per lift rather than $2,000. In Seattle, last year's cost for maintenance was $471. Many cities don't even keep track of the lift maintenance cost because it is either very negligible or it is just not worth their time to keep count of it because it is such a low cost.

What we have found is that if you integrate the lift maintenance program with the regular maintenance of the bus, the cost is marginal. If you have a person that is responsible for maintenance of the bus, and make one of their tasks maintenance of a lift, as opposed to identifying one person who is just going to be the lift repair person, it makes a lot more sense to do it the other way as opposed to single out lifts as a special component. That jacks the price up considerably.

We are going to try to replicate cost-effective ways of maintaining lifts all over the country.

Securement has been raised, and I believe it is going to be raised in later testimony by the American Public Transit Association. Securement has been raised as an issue in a lot of transit districts that we have contacted in our research. As Dennis Cannon from ATBCB reported, the securement problem is not a major problem. It is a problem with matching different kinds of wheel chairs up to the current securement devices.

Project ACTION will work with transit operators and manufacturers of transit equipment and disability organizations to come up with a securement device that can be used affordably around the country that will be safe.

Finally, I want to point out a really innovative program that is starting up in Detroit. If I were in Detroit right now, I would be a bus stop. [Holding up a red mitt.] One of the things that we hear all the time is, "I can't get to the bus stop because it is up a hill. It is ten blocks away from my house," or, "It is snowing," or, "There are no curb cuts." You hear all these issues being raised. That is an answer to support paratransit.

What can work and what has worked in Detroit is, if you can get to the bus route, even though the bus stop is ten blocks away, if you can get to the bus route, and you hold up an orange mit, you are a bus stop. So if you live on a bus route and you go out your driveway, even though the bus stop is ten blocks up a hill or up a vertical cliff, and it is snowing out, you don't have to get to the bus stop. All you have to do is get to the end of your driveway and hold up a 50-cent mit, and you are on the bus.

Those are the kinds of innovative programs that we are going to examine and replicate around the country, that are cost-effective simple solutions to improving transit.

A couple more points. Mention was made earlier about a meeting with the President about charter bus. I want to answer that and then I want to, also, tell about a meeting that I had with the President since we are all meeting with the President. The answer that the President gave regarding charter bus was, in fact, correct. Not every single new charter bus need be accessible under the Senate-passed version of the ADA. There is no retrofit for charter buses or any other buses under the ADA and not every single new charter bus need be accessible.

Every scheduled service private bus put into production six or seven years after the passage of the ADA would have to be made accessible. So it is not every single new charter bus. So the President's answer was, essentially, correct.

The other thing that the President said in the meeting that a group of disability advocates had with him several weeks ago was that he has a commitment to maintaining the Senate-passed version specifically in the area of inclement weather. He doesn't want to see a broader exemption for inclement weather areas. That was a commitment that he made to us.

In conclusion, I want to say that when the Senate passed their bill, they included a piece on technical assistance. You already have a piece on technical assistance. Project ACTION is a way to help implement this bill. We fully support the Senate's version on technical assistance. I think it should be included in the House version.

But I want you to be aware that you already have technical assistance available. It is funded by UMTA, and we are ready to help.

I also want to include Mr. Dirks' testimony from Detroit for the record.

Thank you.

Mr. **Mineta**. Very well. Thank you very much.

Mr. Massara, we have your statement and will go ahead and make it part of the record. Because we are running late, I wonder if you could just go ahead and summarize in your own fashion.

Mr. **Massara**. Certainly. Thank you, Mr. Chairman.

In my professional capacity, I am in constant contact with roughly 1,300 disabled veterans in the Buffalo, New York region. Approximately 25 percent of these persons use mass transit for employment, medical treatment, shopping or other personal errands. Virtually all these people's basic personal needs would be severely curtailed without the use of lift-equipped buses and/or the light-rail rapid transit system.

I have observed, firsthand, in both Buffalo and Syracuse, New York, the paratransit systems are not conveniently available any time a disabled person may require their use. In Syracuse—I used to live in Liverpool, New York, which is just outside of Syracuse—unfortunately, the paratransit system, at that time, only came to Liverpool on Thursdays. I had to schedule my entire life around Thursdays. This is not equal access.

From the standpoint of disabled veterans, there is a dire need of transportation to and from VA medical center appointments for treatment. Cutback in the VA's budget have resulted in curtailing beneficiary travel within local areas since June, 1987. When beneficiary travel was drastically reduced, our office was deluged with calls from distressed veterans wanting to know how they could get to and from appointments.

Some of the slack was taken up by voluntary services. The rest was absorbed by lift-equipped buses. In every case handled by our office—there were 393 in the first three months—paratransit was out of the question because of scheduling problems. These veterans had no idea how long they were going to be at the VA hospital so they could not schedule their return trips. The lift-equipped buses certainly come in handy for them.

As far as the problem of snow removal is concerned, cities such as Buffalo that experience excessive snow fall are equipped to handle such snow fall. Obviously, the snow fall came before the city and the city's ability to cope with removal evolved accordingly.

Buffalo averages 96 inches of snow fall annually. The average temperature for December, January and February is 15 degrees Fahrenheit. Snow removal is rapid and efficient. Rock salt is dumped on streets and sidewalks to keep them free of ice. Bus stops are cleared concurrently as streets are cleared. The only time that the disabled person would be prevented from catching a bus or from getting to a bus stop really would be the times when nobody is traveling, everybody is snowbound, able-bodied and disabled, alike.

Mr. Chairman, I am proud to say that I live in a city which, in spite of severe winter weather, has become a leader among the nation's cities regarding accessible mass transportation. Despite a desperate need for funding sources, Niagara Frontier Transportation Authority already has successfully operated and maintained a system with more than 50 percent of its buses equipped with wheel chair lifts and a fully-accessible light-rail rapid-transit line.

As further indication of the ability to implement accessible mass transit, in spite of inclement weather, NFTA has committed itself, through a procurement policy, to having 100 percent of its buses equipped with wheel chair lifts. I have attached some information from NFTA.

But this, clearly, sends a message to other snow cities that, if we can do it, so can they.

I would just like to add one thing in the area of private transit. The Act will require intercity transit providers to purchase only accessible buses after six years. Bankruptcy and severe service cutbacks are the specters raised by Greyhound. But this does not stand up to the light of reason.

Accessible over-the-road coaches are on the road today in which access costs no more than for city buses. Lifts on these buses take up no baggage space and only one seat is lost. Rest rooms are not accessible, but the ADA would not require accessible rest rooms on these buses.

Given the rapid development of lift technology so far without a legal mandate, the cost will surely fall. The extra time given this industry, in particular, should be more than sufficient.

Thank you for affording me the opportunity to speak before this subcommittee. I would be happy to answer any questions.

Mr. Mineta. Fine. Thank you.

Now we will have Ms. Daly, from the President's Committee on Employment of People with Disabilities.

Ms. Daly. Thank you, Mr. Chairman. I will also summarize. You have my testimony. I have been involved with transportation for the last fifteen years as it relates to people with disabilities, so I would like to share with you some of the learning, I have experienced.

People with disability need to be able to choose the method of transportation that best suits them. It is true that for a small percentage of people, paratransit is the only system that will meet their need. But for a great many of the disabled population, an accessible mainline system can fully meet their transportation need.

For those who live in parts of the country served by public transportation, accessible transit can facilitate regular employment. The United States is facing a labor shortage. Yet, there are people with disabilities wanting to be employed. A 1986 Louis Harris pole report states that the lack of accessible or affordable transportation is a significant reason why they are not employed.

The hour is now. There needs to be accessible public transportation. Paratransit, as it operates in most communities today, is very restrictive and not equal to that of public transit. Paratransit systems operate on an advance reservation call-in system. That call may need to be into the scheduling anywhere from 16 to 72 hours in advance of a trip. How long would the non-disabled rider put up with that silliness?

Paratransit does not allow for any spontaneity. You can't decide on a moment's notice that you want to go shopping or stay at the office late. There is no flexibility. You awake at 6 a.m., not feeling well, and decide you will stay home in the morning. But there is an important meeting in the afternoon and you must attend. "I'm sorry, but you will have to go in the morning or you won't get there at all because you are prescheduled. Your meeting is over early, but you will have to wait until you are scheduled to be picked up."

Paratransit simply allows you no choices. Rescheduling same-day trips rarely can occur. In order to use most paratransit systems, you have to meet their eligibility standards, meaning that you have to have medical documentation that states you need the services.

Before I became disabled twenty-six and a half years ago, I used public transportation in lots of cities. Never once was I asked for documentation that I needed the service. All I needed to do was to get on the bus, pay the fare, and follow the rules.

Paratransit is not public transportation when a non-resident wishes to use it when visiting a city. Mr. Chairman, I face this problem when I travel on business throughout the United States. I certainly will face this situation when I return to Milwaukee, Wisconsin where I am still a property tax payer. To use the Milwaukee system, one must request an application form from the user-side subsidy which is their paratransit.

Upon completion of the application, the form is then returned to them with a $7.00 fee. They, then, send a form to my doctor who will, then, verify my condition and that I need paratransit. Assuming the doctor adequately responds to the user-side subsidy request, I should, then, receive a letter telling me I am eligible.

Finally, during their regular business hours, I will need to go to their office and have a photo ID made which, then, I will have to carry with me to use the service. Then, of course, I must follow the rules for scheduling

Other visitors just simply go to a corner and get on a bus. No one asks them to document why they are there or why they need the ride. Requiring action to make mainline transportation accessible would eliminate this burden and discrimination.

Paratransit hours of service, areas serviced and fare charges, often do not mirror that of public transportation. When the hours of service and area served differ from the mainline system, this puts a person with a disability at a disadvantage. They can only be employed based on operating hours in the area of paratransit operation.

The system does not offer bus passes, off-peak hour fares and they, in fact, charge more for a trip. The transit operators use this high fare as a way to keep trip demand in control while they are marketing their mainline system. An accessible mainline system could relieve the paratransit system.

The dialogue could go on and on. You need to know that fifteen years ago, there was not any public transportation accessible to people with disabilities. The people with disabilities spoke out. Bus lifts, at that time, were in their infancy, so paratransit came about. It is time, now, to take the next step and make all new mainline buses accessible to the 49 million Americans with disabilities.

The letter Mr. Capozzi mentioned from the Mayor of Oshkosh certainly points that possibility out. The Americans With Disabilities Act would make this happen. Also, as the former Executive Director of the Wisconsin Governor's Committee for People with Disabilities, I would like the record to show that since 1976, they have been on record as supporting accessible mainline transportation and have responded to all of the action, both at the Federal and state level, relative to accessible transportation and have gone on record supporting the Americans With Disabilities Act.

Thank you.

Mr. MINETA. Let me now call on Mr. Harold Jenkins, General Manager of the Cambria County Transit Authority, Johnstown, Pennsylvania.

Mr. Jenkins?

Mr. **Jenkins**. Thank you very much, Mr. Chairman, for allowing me the opportunity not only to come here this afternoon but taking care of my wishes, that I do have to be back early this evening.

As you just stated, I am Harold Jenkins. I am the General Manager of the Cambria County Authority in Johnstown, Pennsylvania. I have been asked to testify before this subcommittee this afternoon in support of the Americans With Disabilities Act of 1989. My support is based primarily upon our experience in Cambria County with operating a small, twenty-seven bus urban transit system which is 100 percent accessible to those persons confined to wheel chairs.

We have been operating a totally accessible transit system since 1983. I want to emphasize from the outset that an accessible transportation system will only be as successful as the commitment behind the decision to provide accessible transit. I believe, from our experience, unless management is firmly committed to the laudable goal of accessibility, persons with handicaps stand to be shortchanged somewhere along the line.

Let me explain what I mean very briefly. The very nature of physical disabilities contributes to the discrimination problems which exist with respect to individuals with handicaps. Many people are uncomfortable in dealing with those who are different. This pattern has contributed immensely to the reluctance of many persons with handicaps to venture out into society and to attempt to join the mainstream.

Consequently, if their fears are met by a transit system which is not seriously committed to providing reliable and safe accessible transit, their fears will only be compounded and the discrimination perpetuated.

In Cambria County, we made a commitment from the beginning to provide the best possible accessible system. We believe that only with this degree of commitment would we be able to overcome the built-in reluctance of many persons with disabilities, especially those in wheel chairs.

Let me outline some of the steps we took which go beyond the simple provisions of wheel chair lifts. From the beginning, we realized the importance of selling the concept of fixed-route accessible transit to potential users. I emphasize the word "selling" for the reasons previously mentioned.

Many folks in our community with disabilities were reluctant to utilize an untested form of public transit. Therefore, we had to sell it. These efforts took many forms. We initially conducted public demonstrations of the accessibility features of the bus. The local media provided extensive coverage, of vital consideration in any public awareness program.

Concurrent with the bus demonstrations, we inaugurated a program to contact all the organizations in the community who worked with persons with handicaps. A very detailed slide show was prepared and presented to those groups showing every step involved in the boarding and exiting of the bus.

We prepared a special publication which highlighted the accessibility components of the bus and the sequence of steps involved in using the vehicle. Thousands of these brochures were distributed throughout the community. All these efforts helped to assure to passengers with a handicap that public transportation can be a safe and reliable means of transportation.

As a result of our educational efforts, we carried an average of 200 passengers in wheel chairs a month during the first eleven months of operation in 1980. That 200 a month with only seven accessible buses. By 1983, our entire fleet of 27 buses was accessible with the result that we now carry over 3,000 passengers in wheel chairs each year.

In addition, we annually transport about 36,000 passengers with other disabilities. And we carry this number despite the inclement weather and hilly terrain. Why? Commitment, a strong commitment to quality transit.

Another important component of our program has been driver training. In addition to receiving basic training in lift operation, all operators receive intensive sensitivity training. Drivers complete a comprehensive course consisting of films, wheel chair familiarity, boarding procedures, securement and emergency evacuation.

Drivers also spend a portion of their training period confined to a wheel chair in order to enhance their sensitivity to the various needs and feelings of passengers with disabilities.

Another vital component of our program is wheel chair lift maintenance. There is no worse experience for a passenger in a wheel chair than to arrive at a bus stop expecting an accessible bus only to find that the lift doesn't work. A quality maintenance program is critical. Drivers are also required by union contract to cycle their lift prior to beginning their work day. This procedure has benefits for the mechanical components of the lift.

It also assures the operator that he or she has a functioning lift. If it does not operate properly, the operator is prohibited from leaving the garage with that bus. All these steps I have discussed go beyond the letter of the law but without them, we believe an accessible system will be doomed to failure.

Finally, let me briefly touch upon several objections to accessibility which are frequently raised. One objection concerns the weather. In Cambria County, we experience about 48 inches of precipitation each year. 30 inches of that precipitation is snow. Compounding this situation is a geography marked by steep hills. Consequently, it would be easy to assume that these apparent obstacles would significantly prohibit the utilization of our accessible system.

However, we have seen no appreciable difference in utilization rates from season to season. We attribute this fact to the tenacity of our wheel chair riders as well as to the community education service discussed earlier. On inclement days, our wheel chair riders have been instructed to call us prior to venturing outside in order to make sure that the bus is on time.

They have already come to trust the fact that when the bus arrives, it will have an operating lift. This combination of education and fidelity to lift maintenance is largely responsible for reducing inclement weather as a utilization factor.

Another objection concerns cost, the cost of the lift and its maintenance. We are in public transit to provide service to the public. It is that simple. Persons with handicaps are members of the public. Therefore, we view the cost of equipping and maintaining buses with lifts as we do our other expenses. It is the cost of doing business.

For example, if a bus' air conditioning breaks, the expense of fixing it is seen as a standard operating expense. It is that simple. Our experience demonstrates that once an honest commitment is made to provide quality accessible service, maintenance costs can be controlled. Our maintenance history over the past nine years has confirmed this point. With respect to lift costs, the cost per lift will go down as lift utilization increases.

Our experience shows that the type of lift use has a major impact on the cost associated with repairing it. Therefore, close attention should be directed to the maintenance track records of the various lifts. Secondly, advances in lift technology should soon reduce the overall maintenance costs. Thirdly, and most importantly, lift utilization will increase as the degree of commitment and quality of service increases. It is the only saying that, "As you sow, so shall you reap."

A third objection centers on the slowing down of the system due to the extra time it takes to unload and load passengers in wheel chairs. We, initially, conducted time studies to document this fear. After six months we discontinued the study because the time factor was seen as insignificant. We have carried about 15,000 passengers in wheelchairs since 1980 and have never received one complaint from ambulatory passengers about time delays due to wheel-chair transport.

The last objection, often raised, cites problems with unions. When a transit system makes an honest commitment from the outset to establish a credible accessible system, union problems will not exist. But if the union senses that management's commitment is lackluster, the door may be open for problems. As I said before, our union contract actually requires operators to cycle their lifts prior to their shift. This was an easy clause to get into the contract because the union understands the degree of management commitment.

The special training received by operators also reinforces this commitment. I would ask this august body to seriously consider the Senate version of the bill and, with some fine tuning, I think this is a piece of legislation that can work not only for Johnstown but work for the rest of the country.

Thank you very much for affording me the opportunity to appear in front of you today.

Mr. MINETA. Thank you very much, Mr. Jenkins. Let me ask the panel first, the ADA assumes that a certain number of disabled will be able to use fixed-route transit service with paratransit services provided for "those who cannot, otherwise, use the fixed-route system." Have any of you been able to determine what percentage of the disability community would be able to use accessible fixed-route service if it were available?

Mr. CAPOZZI. It is hard to determine. You need to look at each community individually. Most communities—Johnstown is a good example; Seattle is a good example—most cities that have a commitment to 100 percent accessible fleets and already have 100 percent accessible fleets, will experience very high ridership.

I analogize it to the Metro system here in Washington. People in wheel chairs know that they can get off at every single subway stop. So there is a very high usage of the subway system. If they knew that they could only get off at maybe half of the stops but they didn't know which half, chances are that people wouldn't use it very much.

So it is hard to say how many people are going to use the transit systems until you know that the system is 100 percent accessible, so that you can predict that when you want to go from Point A to Point B, you can get there.

I wouldn't use the Metro system every day to go back and forth to work if I didn't know that I could get from Shady Grove to Farragut North. If I knew that one stop was going to be out on a particular day but I didn't know which day it was going to be or what stop it was going to be, I might not use that system even though I was able to use it.

So that is very hard to predict. But most individuals can, as Harold explains, with proper training for the transit folks, with proper training for the people with disabilities, most people can use public transportation. It is not a big deal. If you can get to the bus stop, or if you can get to the bus route, in Detroit, you can use it.

Mr. MINETA. Sir, with 96 inches of snowfall annually in Buffalo, they have committed to 100 percent accessibility on their bus and light rail systems. Are you aware of any other cities in the United States which could not meet a 100 percent accessibility requirement because they have more snowfall than Buffalo?

Mr. JENKINS. I don't know what the snowfall is in the other cities, sir. There probably are not too many that get more than that.

Mr. MINETA. Mr. Shuster was suggesting maybe Nome, Alaska.

Mr. JENKINS. Possibly.

Mr. MINETA. Mr. Jenkins, in your statement, you cite the importance of wheel chair lift maintenance. Do you have any figures available on your transit authority's costs on a per-bus basis for lift maintenance?

Mr. JENKINS. Our cost for maintaining the three different types of lifts varies from almost practically zero from one particular manufacturer's type of lift that is not available to any other bus to about I would say $7,000 or $8,000 a year—I would say $7,000 a year—on the lifts that are on the other two models of buses.

I operate a bus system of twenty-seven buses with three different types of buses. The GMC-RTS-4 buses, the Grummon Flexible, or it is called the Flexible, and the Neoplan buses. The RTS lift, in my personal opinion, is the best lift that is manufactured in the industry today. The maintenance costs on that are just about zero. It is part of your normal maintenance program.

The cost on the other two lifts sometimes can get a little higher.

Mr. MINETA. Some of your colleagues in the transit industry have indicated that they would prefer to provide paratransit services for those using wheel chairs rather than making their fixed-route accessible. Cambria County has made their entire fleet accessible, a choice which, in my mind, seems to be the more cost-effective way to carry members of the disabled community who use wheel chairs.

What factors led your system to the decision to have a 100 percent accessible fixed-route system?

Mr. JENKINS. As we went out through the community—we took over from the private carrier in 1976—and started to prepare our planning process to purchase buses beginning in 1982, we went to the community to find out what they needed and what they wanted, as far as public transportation was concerned. One of the major things that they wanted was the handicapped groups, and a lot of non-handicapped groups, said that we should have accessible buses and we should have a transit system that is accessible to everybody in the community.

So we immediately made that commitment. Our Board of Directors voted and adopted that policy back in 1981. As we started purchasing new buses, then we purchased nothing but accessible wheel chair buses. We have found that to be a very simple answer to the question of providing accessible transportation in the community. And it has worked quite well for us.

Mr. MINETA. When you were talking about the figures as they relate to the lift maintenance costs, how does that cost compare relative to the cost of maintaining other bus components such as air conditioning or engines or brakes or transmissions?

Mr. JENKINS. In each and every particular case—each and every bus is an individual bus, by itself. It is just like a person. Some of them work quite well and some of them are breaking down constantly. You buy a lemon in an automobile; occasionally, you get a lemon out of the fleet in a bus. So you really can't pin it down to what each individual costs.

We feel that the cost of maintaining the lifts and the training that was needed to train our mechanics to maintain the lift was just a cost of doing business. We complied with those charges just like we have with any other things that have come up.

But if you try to compare the cost of what you are picking up a passenger for and relating that only to those passengers, then you find that you might have some costs on some particular individual buses that might be a little high.

One thing that I might just add; in 1981, when we made this commitment to buy accessible buses, the former Johnson Traction Company, which was a private carrier, never had a bus with air conditioning on the streets in Johnstown. So that when we made the commitment for the accessible buses, we made a commitment for air conditioning. We knew that there was going to be a cost associated with both, and we have accepted that cost.

Mr. MINETA. Mr. Shuster?

Mr. SHUSTER. Thank you, Mr. Chairman.

We certainly appreciate your testimony. Of course Harold Jenkins is my good friend. I have worked with him closely for many years. I have the highest regard for him. I think your outreach program that you have outlined here today, Harold, indicates if there is anybody in the country that can make it work, you can. It is an example of going far beyond simply providing the lift, but educating the community that it is there so you can maximize your ridership.

As I understand it, the entire fleet of 27 buses has been accessible since 1983 so that is for six years, now. And you have had this outreach program. One of the things that puzzles me a bit; with that kind of an outstanding outreach program, and with six years, now, of experience—and you check me on this arithmetic—with 27 buses, 3,000 passengers in wheel chairs, if you assume only a six-day week, that works out to one rider every three days on each bus; is that accurate?

Mr. JENKINS. Yes, if you do the math like that. But you can also reverse the math and say that where the wheel-chair handicapped passengers live is where the buses that are getting ten and twelve lifts a day. There might not be a person who needs a lift on every route or every block in your community.

But you are absolutely right on your figures.

Mr. SHUSTER. So, per bus, it is one rider every three days which concerns me. The other thing that concerns me is that we talk about 100 percent accessible. But, as I understand it, with Cambria Transit, every bus has a lift, but there is no paratransit system.

Mr. JENKINS. We run a paratransit system and a fixed-route system in our rural parts of Cambria County, not in our urban division.

Mr. SHUSTER. Where these buses run, there is no paratransit.

Mr. JENKINS. There is no paratransit.

Mr. SHUSTER. So to say there is 100 percent accessibility, really, isn't completely accurate. There is 100 percent accessible for people who can get on the bus. There is zero accessible for people in wheel chairs who can't get to the bus. There is no paratransit service.

Mr. JENKINS. There is somebody else in the community that is providing that service. We have never, never had one request for a paratransit trip in the Cambria County Transit Authority and in the urban system.

Mr. SHUSTER. There is somebody else providing that service?

Mr. JENKINS. Yes.

Mr. SHUSTER. Who does that?

Mr. JENKINS. The Human Social Service agencies.

Mr. SHUSTER. How does that get funded?

Mr. JENKINS. They get funded through both Federal and state programs; Area Agency on Aging——

Mr. SHUSTER. Under this law, you will be required—if this becomes law—you will be required to provide comparable paratransit service.

Mr. JENKINS. Under this portion of the law, I would be responsible, under the Senate version, for coordinating that service.

Mr. SHUSTER. So you would be responsible for providing comparable service?

Mr. JENKINS. Right; coordinating it.

Mr. SHUSTER. Well, the bill says comparable service.

Mr. JENKINS. Coordinating it.

Mr. SHUSTER. The bill says you would be responsible for providing comparable service. That is what the language of the bill is.

Mr. JENKINS. The House bill.

Mr. SHUSTER. How would you do that?

Mr. JENKINS. I guess I would have to do it just like I have done with any other federal programs that come along. I would cope and do it. It would be some cost to me and it would be a cost to my system. But we would do just like we have with any other Federal program or state regulation. We would cope and do it.

Mr. **Shuster**. So that would be an additional cost, of course?

Mr. **Jenkins**. Absolutely.

Mr. **Shuster**. Thank you.

Mr. **Mineta**. Mr. Lipinski?

Mr. **Lipinski**. No questions.

Mr. **Mineta**. Mr. Duncan?

Mr. **Duncan**. No questions.

Mr. **Mineta**. Mr. Payne?

Mr. **Payne**. No questions.

Mr. **Mineta**. Mr. Hastert?

Mr. **Hastert**. Thank you, Mr. Chairman. I was doing a little math work and, evidently, Mr. Shuster was at the same time. Mr. Jenkins, it was one rider for every three days on one of those buses at 30 percent. Now, you say there are some buses that get 10 or 12 pickups a day. That means that you have buses that are equipped, that are riding the routes, that never get a rider?

Mr. **Jenkins**. No, not necessarily so. With the 27 vehicles that we have, you have to remember that at least 3 of those vehicles are used for spares. Our peak load is about 21 buses on the street each day—22, 23 buses—as a peak each day. Out of those buses that are out there, there are some that get one lift, but there are some buses that get more than one lift.

Mr. **Hastert**. A day?

Mr. **Jenkins**. There are some days when you have holidays and when you have——

Mr. **Hastert**. Well, the numbers work out, sir, that say you get one lift every three days, average. So, evidently, you have got buses out there that never get lifts.

Mr. **Jenkins**. No. Each and every one of our buses get lifts at sometime or another. There are some buses that get more lifts than others.

Mr. **Hastert**. Every day? Every week? Every month?

Mr. **Jenkins**. I would say on a weekly basis. It depends on where the person is going, shopping or to the medical facilities or going to work.

Mr. **Hastert**. What is the extra cost of maintaining——

Mr. **Jenkins**. There is no extra cost on public service. There is a reduced cost in non-peak hours.

Mr. **Hastert**. I don't think you understood my question. What is the extra cost to put these lifts on your buses? What was the cost to do that?

Mr. **Jenkins**. The cost, when I put them on, was about $12,000 per unit. The federal government paid 80 percent of that. The state government paid 16⅔ percent of that. The local share was about three cents on a dollar.

Mr. **Hastert**. So it is a 3 percent local share. Who is that? Is it the other riders who pick that up or is the taxpayer.

Mr. **Jenkins**. The county government.

Mr. **Hastert**. The taxpayers.

Mr. **Jenkins**. The taxpayers.

Mr. **Hastert**. Then the Federal and state taxpayers pick up the rest of it; is that correct?

Mr. Jenkins. Right. That was in 1983 and 1984.

Mr. Hastert. So it would be more today?

Mr. Jenkins. The federal share has been reduced, somewhat.

Mr. Hastert. So the state and local guys would pick up more of that; right—the taxpayers?

Mr. Jenkins. Yes.

Mr. Hastert. What is that extra amount, do you think, per fare, or per rider, that the federal government and state government and local governments pick up? What is the cost per rider?

Mr. Jenkins. Our cost, per rider, of providing services is about $1.69 for every rider. It is a little less than $2.00 if you divide the handicap lifts and the cost of the maintenance and the work, without the capital investment.

Mr. Hastert. With the capital investment.

Mr. Jenkins. I have never done that calculation, sir.

Mr. Hastert. What part of that does the fare pick up?

Mr. Jenkins. Our fare cost recovery is about 42 percent.

Mr. Hastert. Under this new law, when you will be required to provide paratransit also, in addition to full lifts on your buses, what do you predict that the extra cost would be?

Mr. Jenkins. I don't think the extra cost would be that much. I would just have to divert some of my rural transit that we were already doing, call-in demand or Reserve-a-Ride, as it is called, throughout the entire county rather than just in the rural districts.

Mr. Hastert. So, evidently, there will be a reduction of service to some people?

Mr. Jenkins. There will be something happening somewhere. I can't put my finger on what it going to be, whether it is going to be an increase in the fares, a decrease in the service, or something.

Mr. Hastert. Thank you.

Thank you, Mr. Chairman.

Mr. Mineta. Let me thank the panel very much for their patience and participation at today's hearings; Mr. Capozzi, Mr. Massara, Ms. Daly and Mr. Jenkins.

[Mr. Capozzi's prepared statement, the prepared statement of Mr. Dirks submitted by Mr. Capozzi, and the prepared statements of Mr. Massara, Ms. Daly, and Mr. Jenkins follow:]

Project ACTION
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STATEMENT OF

DAVID M. CAPOZZI

VICE PRESIDENT

NATIONAL EASTER SEAL SOCIETY

ON THE

AMERICANS WITH DISABILITIES ACT OF 1989

BEFORE THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

SEPTEMBER 20, 1989

Project ACTION is funded by the Urban Mass Transportation Administration (UMTA) to increase accessibility to public mass transportation for people with disabilities

My name is David M. Capozzi and I am the Vice President for Project ACTION (Accessible Community Transportation in our Nation) of the National Easter Seal Society. Project ACTION is a $3 million research and demonstration grant program funded by the Urban Mass Transit Administration.

The project involves national and local organizations representing public transit operators, the transit industry, and persons with disabilities in the development and demonstration of workable approaches to promote access to public transportation services for people with disabilities.

It will yield a cooperative model program of techniques to identify people with disabilities in the community, develop outreach and marketing strategies, develop training programs for transit providers, and apply technology to eliminate barriers to transportation and accessibility.

Project ACTION was conceived by the Paralyzed Veterans of America, the National Easter Seal Society and the American Public Transit Association.

I. *Introduction*

Without accessible vehicles and stations, persons with disabilities are excluded from the opportunity to use transportation systems. This exclusion affects more than just their ability to travel independently. Most importantly, it effects their ability to be employed. When disabled people are able to depend on an accessible transportation system and join the work force, society as a whole benefits. Public benefit rolls are reduced and income tax revenues enhanced. Accessible transportation also allows individuals with disabilities to enjoy cultural, recreational, commercial and other benefits that society has to offer. Project ACTION is designed to increase transportation opportunities for people with disabilities through cooperation between the transit industry and disability organizations.

II. *Effects of federal transit policies on purchases of fixed route vehicles*

In order to assess the potentials for cooperative model programs for Project ACTION and to determine where the need in various communities exists, we assessed the effect of federal transit polices on the delivery of accessible transit services and then examined the level of accessible services available today.

Over the past 20 years federal transit policies have vacillated from requiring a bare amount of "special efforts" to "full access". The result of these conflicting policies is that transit providers have been confused about what they are required to provide and consumers with disabilities have been frustrated at the level of transit services that have been provided under the federal regulations.

Prior to the Urban Mass Transit Act of 1970 (UMT Act), there was no federal pronouncement on how transportation should be provided to people with disabilities. The UMT Act stated for the first time that it is the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services ... and that special efforts shall be made in the planning and design of such facilities and services.

Subsequent to this, Congress passed the Federal Aid to Highway Act of 1973 that required projects receiving federal funding to be planned, designed, constructed and operated to allow effective utilization by handicapped and elderly persons. Then shortly thereafter, Congress passed the Rehabilitation Act of 1973. Section 504 of the Act requires that "no otherwise qualified handicapped individual shall solely by reason of their handicap be excluded from participation in, be denied the benefits of or be subjected to discrimination in any program or activity that receives federal financial assistance".

After the passage of this important legislation the Department of Transportation (DOT) began a long process of regulatory activity to interpret the requirements of these federal laws.

The first set of regulations issued by DOT in 1976 were known as the special effort regulations. These regulations required that genuine good faith efforts be made to provide transportation to handicapped individuals that is reasonable in comparison to nonhandicapped persons. In 1979, in response to section 504, DOT issued the full access regulations that required that all buses and train stations be made accessible. As a result of a court decision striking down these regulations, DOT issued interim local option regulations in 1981. Finally, in 1986, DOT issued final comparable service regulations implementing section 504 and the Surface Transportation Assistance Act. The effects of each of these policy changes can be seen in the following table and attached graph. (See Attachment "A").

Policy Era	Inaccessible\Accessible Buses	Percentage
1. Pre-1973	5,308\15	.28%
2. Special effort	13,159\628	4.77%
3. Full Access	9,598\6,310	65.72%
4. Local Option	16,159\6,822	42.22%
5. Comparable service	2,791\1,161	41.60%

According to the 1987 American Public Transit Association (APTA) fleet survey there were a total of 48,264 fixed route buses of which 13,981 were lift-equipped. This represents 29% accessible vehicles. The survey also indicates that there were 3,171 paratransit vehicles in service during 1987. A total of 1,700, approximately 53%, of these special service buses were equipped with ramps or lifts.

III. *Project ACTION initial research*

In addition to reviewing the effects of the various federal policy initiatives, we have undertaken a reconnaissance survey of 130 transit authorities to get a better idea of how transportation is being provided around the country. Although the research is not yet complete, I can report that we have identified fifty nine (59) transit systems that have either 100% accessible fleets or a commitment to achieving a 100% accessible fleet. The ADA requires a multi-modal system combining access to fixed route transit as well as providing paratransit for those who can't use fixed route transportation. Many transit systems in the country offer a multi-modal system of transportation similar to that required by the Americans with Disabilities Act (ADA). (See Attachment "B").

IV. *Project ACTION can provide assistance with the implementation of the ADA*

A common theme that has emerged in our survey is that the demand for paratransit services often exceeds the capacity. Because paratransit is so expensive, it imposes untold limitations -- having to call days in advance for a ride, having a limited number of rides per month, small geographic boundaries, and limited hours of service. Many paratransit systems have waiting lists in the hundreds, people who get no transit at all. Cumbersome registration procedures mean a city's disabled visitors generally get no service.

One of our funding priorities for Project ACTION therefore is developing innovative methods of identifying people with disabilities in the community and target marketing efforts at them in order to move individuals who can use fixed route buses from paratransit onto the accessible fixed route system. There are other important areas where cooperative demonstration projects can improve the way transit services are currently being provided and which can assist in the implementation of the ADA.

1. Lift maintenance

Ten years ago lift maintenance costs were high. With increased usage of access equipment the costs have gone down considerably. We have found that the cost of lift repairs are relative to several factors. Proper care and daily maintenance results in minimal breakdowns, repairs, and cost.

This is well exemplified by the Southern California Rapid Transit District (RTD) serving Los Angeles and surrounding counties which has been dedicated to the goal of 100% accessibility since the early 1970's and has a 93% wheelchair equipment reliability average for 1986 (also a year in which their wheelchair boardings increased by 21%).

The RTD Maintenance Department is responsible for maintaining accessible equipment and accomplishes this through daily lift cycling. Each bus is cycled as it leaves the division. If a lift does not cycle properly, the lift is immediately repaired, preventing further malfunctioning. The RTD also developed a computerized tracking system that monitors daily lift boardings. Detailed information is given on specific breakdowns of accessible equipment and precautionary measures are then taken to avoid a repeat malfunction. The system monitors any operator difficulties with wheelchair boardings and rectifies these with additional operator training. The District also monitors the performance of lifts by different manufactures, information that is useful in making decisions on future lift purchases.

A 1986 DOT Regulatory Impact Analysis estimated that annual lift maintenance cost are $650. Added to this is another $150 per lift for insurance, promotion and marketing costs. These estimates were drawn from National Cooperative Highway Research Program report, Planning Transportation Services for Handicapped Persons--User's Guide, September 1983. Many transit systems have reported maintenance costs below this figure and with help from Project ACTION we hope to lower these even more. Programs such the one in Los Angeles will be improved and replicated in other areas of the country by Project ACTION.

2. Training

Proper operator training in using lift equipment is very important in keeping repair costs to a minimum. Operator training for RTD employees includes specific training on the four types of lifts the District owns along with videos that describe the operation of each lift.

Operators are allowed to maneuver in wheelchairs to develop a sensitivity not only to wheelchair users but also to the lift equipment used. Properly operated lifts have a far lesser chance of breaking down than those that are misused by operators.

Other forms of training are needed to sensitize drivers to the needs of people with various disabilities. And, training programs are needed to encourage disabled individuals to use public transit. **Project ACTION** will be working cooperatively with the transit industry and the disability community to implement better training programs.

3. **Weather conditions**

Weather conditions have been a concern for transit operators when they purchase wheelchair lifts for their buses. A 1987 Accelerated Lift Cycle Testing study conducted in Syracuse,

New York by the Urban Mass Transit Administration simulated conditions a bus lift would be exposed to during a ten-year period, compressing the ten years into nine months by inducing stresses at higher levels than originally designed.

Results from this test indicate that in cold weather, the sand and salt used to break up ice on the roads builds up on the wiring and other mechanisms of the lift, rendering them inoperable. Though salt is highly corrosive and causes an accelerated deterioration and the hydraulic oil used in the pumps that elevate the lift freeze in low temperatures, manufacturers are alleviating this problem in several ways. They are now using a lighter oil, plating ferrous surfaces with a protective coating (reducing corrosion), switching to stainless steel, lubricating and priming components more frequently, and adding shielding devices to prevent salt and sand build up.

Those properties that purchased lifts only to meet state laws or federal requirement have not had a positive experience. This is well exemplified by cities such as Milwaukee that discontinued their lift operations because of lift failures. On the other hand, almost without exception, many transit systems report that daily cycling of the lifts is the best preventive maintenance.

Denver's Regional Transportation District conducts preventive maintenance service on their lifts every 2,000 miles. This service includes lubrication, function tests, a weight test of 600 pounds, a complete cleaning, and adjustments to any of the leveling sensors and protection devices on the lift itself.

These systems are only a sample of those that are accessible and successful in inclement weather conditions. They show that weather does not pose an insurmountable impediment to the success of an accessible transit system. In fact, Denver's Regional Transportation District boasted that in 1986 99% of their 608 wheelchair lifts were kept operable, during both good and bad weather. **Project ACTION** will assist in improving the reliability of lift equipment through the development and demonstration of new programs.

4. Securement devices

Tie down and securement difficulties, especially with three wheeled motorized wheelchairs, has been identified by our initial research as being an area of concern to several transit authorities. Current wheelchair securement devices do not seem to be adequate for the new model of wheelchairs being produced. Although securement devices such as the Q-Straint system do exist that work well with three wheeled motorized wheelchairs, this is an area that is high on the Project ACTION funding priority list so that we can improve and replicate better forms of technology.

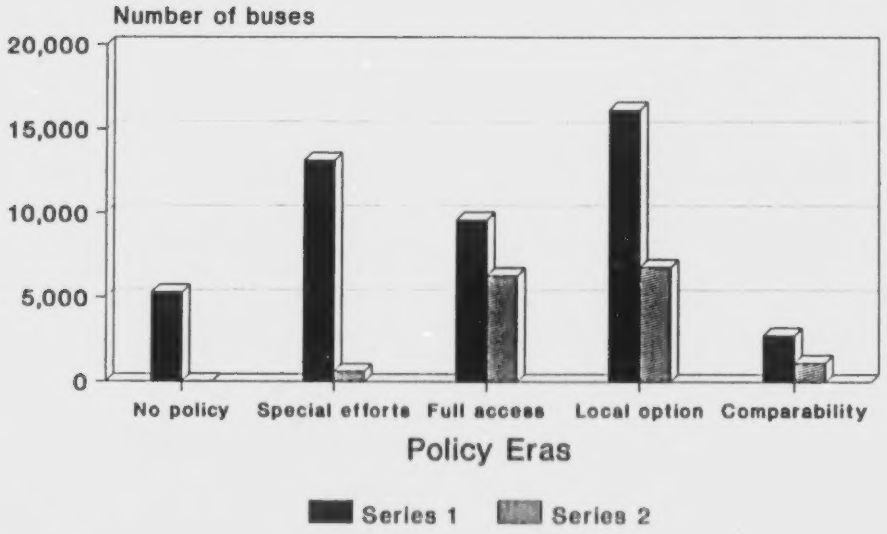
V. *Conclusion*

There are several other areas where Project ACTION can improve the accessibility of public transportation through a cooperative process. For example, many cities have bus routes that are hilly or have inaccessible bus stops. One innovative program that we have identified is the "red mitt" program instituted by the Southeastern Michigan Area Rapid Transit District (SMART). Persons with disabilities who can get to a bus route merely hold up their hand with a red mitt on and they become a bus stop. It doesn't matter that the bus stop is ten blocks down the street and up a hill or that there are no curb cuts to get to the bus stop. If you can get to the bus route you can ride the bus. Now people can wait at the end of their driveway and be picked up by a SMART bus. This program has been targeted by Project ACTION to be refined and replicated throughout the country.

Thank you for the opportunity to testify on this historic legislation and I will answer any questions that I can.

ATTACHMENT "A"

Transportation Policy Effects on Purchases of Fixed Route Buses



Series 1 = Inaccessible buses
Series 2 = Accessible buses

ATTACHMENT "B"

CITIES THAT HAVE 100% ACCESSIBLE FLEETS

State of Washington:
Olympia, WA
Pullman, WA
Seattle, WA
Tacoma, WA

State of Pennsylvania:
Greensburg, PA
Johnston, PA

State of Montana:
Great Falls, MT

State of Indiana:
Fort Wayne, IN
Mancie, IN
New Castle,IN

State of Connecticut:
Hartford, CT
Willimantic, CT

State of Illinois:
Champaign-Urbana, IL
Rock Island, IL

State of California:
Bakersfield, CA
Burlingame, CA
Concord, CA
Davis, CA
Garden Grove, CA
Long Beach, CA
Los Angeles, CA
Oakland, CA
Oceanside, CA
Monterey, CA
Riverside, CA
San Bernardino, CA
San Jose, CA
Santa Monica, CA
Visialia, CA

State of Nevada:
Reno, NV

State of Texas:
Dallas, TX

State of Georgia:
Atlanta, GA

State of Florida:
West Palm Beach, FL

State of Michigan:
Ann Arbor, MI
Bay City, MI
Kalamazoo, MI
Lansing, MI
Saginaw, MI

State of Oregon:
Eugene, OR

State of Maryland:
Columbia, MD

State of Ohio:
Dayton, OH
Grand River, OH
Steubenville, OH

State of New Jersey:
Newton, NJ
Newark, NJ

State of Colorado:
Denver, CO

State of Arizona:
Phoenix, AZ

State of New York:
Brooklyn, NY
Buffalo, NY

State of Missouri:
Columbia, MO
Saint Louis, MO

State of Massachusetts:
Boston, MA

State of South Dakota:
Sioux Falls, SD

State of Wisconsin:
Oshkosh, WI

State of Oklahoma:
Tulsa, OK

STATEMENT OF DAN DIRKS
COMMUNITY RELATIONS REPRESENTATIVE
SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION (SMART)
SEPTEMBER 20, 1989

THE STATE OF MICHIGAN HAS MANDATED ACCESSIBLE LARGE BUSES ON STATE FINANCED REGULAR ROUTE SERVICE SINCE 1979. SINCE THAT TIME, SMART HAS WORKED ACTIVELY WITH ITS OLDER ADULT AND DISABLED CUSTOMERS TO IMPROVE SERVICE THROUGH A VERY ACTIVE ADVISORY COMMITTEE.

THERE HAS BEEN MUCH CONCERN ABOUT TRANSPORTING WHEEL CHAIR USERS ON THE LARGE BUS REGULAR ROUTE SERVICE OFFERED BY LOCAL TRANSIT AUTHORITIES. I SUGGEST THAT IMPROVEMENTS CAN BE MADE IN THE SYSTEM TO MAKE THE BUS SYSTEM AVAILABLE FOR ALL THE DISABLED.

APPROXIMATELY FIVE YEARS AGO, MICHAEL PATTEN, A STAFF MEMBER OF THE VISUAL HANDICAPPED SERVICES DEPARTMENT AT THE UNIVERSITY HEALTH CENTER AT WAYNE STATE UNIVERSITY, WHO IS A MEMBER OF THE SMART ADVISORY GROUP, COMPLAINED ABOUT THE DIFFICULTY IN SIGNALING THE SMART BUS IN THE DOWNTOWN DETROIT AREA. THERE ARE TWO TRANSIT PROVIDERS IN DETROIT, THE DETROIT DEPARTMENT OF TRANSPORTATION (FOR DETROIT ONLY TRIPS), AND SMART

(FOR DETROIT TO THE SUBURBS, AND SUBURB TO SUBURB TRIPS). VISUAL IMPAIRED RIDERS COULD NOT DISTINGUISH BETWEEN A DETROIT BUS, A SMART BUS, OR EVEN A TRUCK. MICHAEL WORKED WITH THE STAFF TO DISCOVER A SOLUTION.

TOGETHER WE DEVELOPED A MITT WHICH COULD EITHER BE PLACED OVER THE HAND OR ON A CANE. THE MITT'S DESIGN COORDINATED WITH THE COLORS AND LOGO OF THE TRANSIT AUTHORITY TO MAKE IT EASY FOR THE SMART BUS DRIVERS TO RECOGNIZE. IT WAS AN IMMEDIATE SUCCESS.

THE FIRST ORDER OF MITTS WAS 100. WITHIN SIX WEEKS AN ADDITIONAL ORDER WAS MADE. LAST YEAR PAINT WAS ADDED TO THE LOGO WHICH WOULD REFLECT LIGHT MAKING NIGHT RIDING EASIER.

AFTER USING THE MITT FOR TWO YEARS, A WHEEL CHAIR MEMBER OF THE ADVISORY COMMITTEE COMPLAINED OF THE FRUSTRATION IN SOME CHAIR USERS NOT BEING ABLE TO GET TO THE MAIN LINE BUS STOP WHICH ARE 1/4 MILE OR MORE APART. SMART DRIVERS ARE NORMALLY REQUIRED TO PICK UP ONLY AT SUCH DESIGNATED STOPS, AND AS A RESULT, SOME CHAIR USERS WERE BEING PASSED UP. THE COMMITTEE RECOGNIZED THE MITTS AS A POSSIBLE ANSWER. AGAIN, IT HAS WORKED WELL. COMPLAINTS ABOUT DRIVERS PASSING WHEEL CHAIR CUSTOMERS HAVE BEEN ELIMINATED.

TODAY, SMART WILL PICK UP EITHER WHEEL CHAIR OR VISUAL IMPAIRED CUSTOMERS WHO USE THE MITT AT ANY STREET CORNER. RELIABILITY HAS IMPROVED; CUSTOMER RELATIONS HAVE IMPROVED; AND RIDERSHIP HAS IMPROVED.

IN JULY, 1989, THE ADVISORY COMMITTEE RECOMMENDED THAT SMART EXPAND THIS PROGRAM ON A SPECIAL REQUEST BASIS TO ANY DISABLED RIDER WHO HAS A MOBILITY LIMITATION WHICH COULD BE AIDED BY THE USE OF THE MITT.

A SECOND PROJECT TO ENCOURAGE RIDERSHIP BY WHEEL CHAIR USERS WAS MADE POSSIBLE THROUGH THE VOLUNTEER EFFORTS OF A MEMBER OF THE ADVISORY COMMITTEE. FRANK CLARK, THE CHAIR OF THE DETROIT COALITION FOR THE HANDICAPPED, HAS TAKEN THE PERSONAL RESPONSIBILITY OF TRAINING WHEEL CHAIR

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Member Chapter of Paralyzed Veterans of America

EPVA

STATEMENT OF

JAMES V. MASSARA, REGIONAL ADMINISTRATOR
EASTERN PARALYZED VETERANS ASSOCIATION

ON

AMERICANS WITH DISABILITIES ACT
1989

BEFORE

THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

SEPTEMBER 20, 1989

USERS ON HOW TO USE THE FIXED ROUTE SERVICE. FOR THE FIRST COUPLE OF TRIPS, MR. CLARK WILL WAIT AT THE BUS STOP WITH THE RIDER AND THEN FOLLOW THE WHEEL CHAIR RIDER IN HIS PERSONAL VEHICLE. MR. CLARK ALSO GIVES HIS PERSONAL PHONE NUMBER TO RIDERS IF A PROBLEM SHOULD DEVELOP. I SUGGEST THAT THERE ARE MANY IN THE WHEEL CHAIR COMMUNITY WHO WOULD BE WILLING TO HELP TRANSIT SYSTEMS MAKE ACCESSIBLE SERVICE WORK.

RIDERSHIP ON THE SMART LARGE BUS SYSTEM BY WHEEL CHAIR USERS IS NOT AT THE SATISFACTORY LEVEL, ONLY ABOUT 10-15 PER DAY. HOWEVER, WHEN THE SMART SYSTEM ACHIEVES 100% ACCESSIBILITY IN THE NEAR FUTURE, AND WHEEL CHAIR USERS KNOW THAT EVERY SMART BUS CAN MEET THEIR TRANSPORTATION NEEDS, RIDERSHIP WILL INCREASE. WE SUPPORT 100% ACCESSIBLE SYSTEMS. WE HAVE LEARNED THAT BY WORKING COOPERATIVELY WITH THE OLDER ADULT AND DISABLED COMMUNITY NOT ONLY WILL RIDERSHIP INCREASE, BUT SUPPORT IN THE COMMUNITY WILL GROW AS WELL.

THANK YOU.

As a wheelchair user and a representative of severely disabled veterans in the Buffalo, NY region, I must say that lift-equipped buses are essential to serve the transportation needs of disabled persons. Further, the lift-equipped buses here have worked very well under inclement conditions, and the bus stops are kept reasonably clear of snow and ice.

For a period of three weeks in January, 1988, my personal vehicle was undergoing repairs for damages which resulted from a collision. During that time I rode buses to and from work each business day and did not experience any problems. In fact, the Metro Bus system was a godsend at that time. Our income, then, was just enough to get by on. If we had been forced to defray the cost of a demand-responsive service, we would have had to either purchase less food or let some bills go for that time. As we were already on a lean budget, the cost of paratransit would certainly have put us in a very unfavorable financial situation.

In my professional capacity, I am in constant contact with severely disabled veterans and a number of non-veteran disabled persons. Approximately 25% of these persons use mass transit whether for employment, medical treatment, shopping, or other personal errands. Virtually all of these people's basic personal needs would be severely curtailed without the use of lift-equipped buses and/or the light rail rapid transit system.

I have observed, first hand, that paratransit systems in Buffalo and Syracuse, NY are not conveniently available at any time a disabled person may require their use. Especially in suburban areas, these systems are only available at certain times of the day or only on certain days of the week. It is both discriminatory and unjust to expect a disabled person's life to revolve around paratransit availability.

From the standpoint of disabled veterans, there is a dire need of transportation to and from V.A. Medical Center appointments for treatment. Cutbacks in the V.A.'s budget have resulted in curtailing beneficiary travel within local areas since June, 1987. When beneficiary travel was drastically reduced, our office was deluged with calls from distressed veterans wanting to know how they could get to and from appointments. Some of the slack was taken up by a very limited voluntary service (provided by Disabled American Veterans) and the rest was absorbed by lift-equipped buses. In every case handled by this office, (a total of 393 cases in the first three months after June 1, 1987) paratransit was out of the question because veterans were not able to tangibly schedule return trips, not knowing how long they would need to remain at the outpatient clinic.

As far as the problem of snow removal is concerned, cities such as Buffalo that experience excessive snowfall, are equipped to handle such snowfall. Obviously the snowfall came before the city and the city's ability to cope with removal evolved accordingly.

Buffalo averages 96 inches of snowfall annually. The average temperature for December, January and February is 15 degrees F. Snow removal here is rapid and efficient. Rock salt is dumped on streets and sidewalks to keep them free of ice. Bus stops are cleared concurrently as streets are cleared. Therefore, the only times that a disabled person would be prevented from getting to a bus stop by snowfall are the same times that virtually all able-bodied persons are also prevented from travelling due to snow.

Finally, I am proud to say that I live in a city which, in spite of severe winter weather, has become a leader among the Nation's cities regarding accessible mass transportation. Despite a desperate need for funding sources, Niagara Frontier Transportation Authority already has successfully operated and maintained a system with more than 50% of its buses equipped with wheelchair lifts and a fully accessible light rail rapid transit line. As further indication of the ability to implement accessible mass transit, in spite of inclement weather, N.F.T.A. has committed itself, through a procurement policy, to having 100% of its buses equipped with wheelchair lifts (See attachments). This clearly sends a message to other "snow cities" that "if we can do it, so can you."

Thank you for affording me the opportunity to speak before the subcommittee. I would be happy to answer any questions you may have.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
181 ELLICOTT STREET • P.O. BOX 5008 • BUFFALO, NY • 14205
TELEFAX: 716-855-7657 • TELEX: ESL 6290-6028

TO: NFTA Committee on the Disabled

FROM: David J. Franko
General Manager - Planning

DATE: November 9, 1988

SUBJECT: **Accessible Bus Policy**

I am pleased to advise you that the NFTC recently approved an accessible bus service policy. (see attachment). Under this resolution, the local Metropolitan Planning Organization concurs with the NFTA's recommendation that all future new transit bus procurements include lifts for non-ambulatory handicapped persons. In the long run, this will mean the fleet will be 100% accessible. It will also alleviate current scheduling problems, facilitate the allocation of accessible busses to urban transit routes, and generally improve mobility for non-ambulatory handicapped persons throughout Erie and Niagara Counties.

It should be recognized that local decision-makers have gone beyond the letter of the law in providing accessible transit services to the handicapped. It is yet another indication of our commitment to improving access to public transportation facilities in Erie and Niagara Counties. I know you will be pleased with this latest development.

Cordially yours,

David J. Franko
General Manager -
Planning

DJF/tc
Enclosure

cc: A.H. Savage
J.P. Schmidt

RESOLUTION 88-12

NIAGARA FRONTIER TRANSPORTATION COMMITTEE

ACCESSIBLE BUS SERVICE POLICY

WHEREAS, the Niagara Frontier Transportation Committee has been designated by the Governor of New York State as the Metropolitan Planning Organization responsible, together with the State, for the comprehensive, continuous, cooperative transportation planning process for the Niagara Frontier Region; and

WHEREAS, Subpart E of the Federal Department of Transportation's Regulations implementing Section 504 of the Rehabilitation Act of 1973 mandated accessible bus service in accordance with a Transition Plan approved by the Metropolitan Planning Organization (MPO); and

WHEREAS, the NFTC's Transition Plan was adopted on June 24, 1980 with the so-called three-year plan identified as the mode of compliance with the Program Accessibility Requirements; and

WHEREAS, the United States Appeals Court subsequently ruled that the Federal DOT's Section 504 Regulations exceeded the statutory authority of the Secretary of Transportation; and

WHEREAS, the NFTC's endorsement of a one-half fleet accessible bus policy was taken reluctantly since studies had shown demand-responsive service to be more effective than accessible bus service in improving mobility for severely handicapped persons; and

WHEREAS, the Secretary of Transportation issued new Regulations on July 20, 1981 which superseded Subpart E of the DOT's 504 Regulations; and

WHEREAS, the new rules rescinded the accessible bus mandate and reverted to locally defined special efforts for the elderly and the handicapped; and

WHEREAS, the NFTC on March 11, 1982, rescinded its 1980 Resolution, endorsing instead a half-fleet accessible policy, to be accomplished via new bus procurements, as the mode of compliance with revised Federal regulations; and

WHEREAS, the present administration has sought a phase-out of Federal transit operating assistance; and

WHEREAS, local governments with limited financial resources are unable to finance demand-responsive services for the handicapped without Federal financial assistance; and

WHEREAS, now that NFTA's bus fleet has reached the goal of being 50% lift-equipped, it is evident that there are many limitations in terms of scheduling, availability of lift-equipped buses, assignment to routes, etc.; and

WHEREAS, these operation problems limit the effectiveness of the Accessible Bus Program; and

WHEREAS, the Niagara Frontier Transportation Authority's Board of Commissioners, on June 13, 1988, adopted a resolution recommending to the NFTC that all future new transit bus procurements include lifts for non-ambulatory handicapped persons in order to alleviate current scheduling problems, facilitate the allocation of accessible buses to urban transit routes, and improve mobility for the disabled in the two-county service area; now

THEREFORE BE IT RESOLVED, the NFTC hereby rescinds its previous resolutions on this question and adopts herewith the NFTA's recommendation that all future new transit bus procurements include wheelchair lifts; and

BE IT FURTHER RESOLVED, the NFTC will consider implementing demand-responsive service in accordance with the service characteristics as defined in the NFTC Resolution of May 3, 1979, when necessary funds from any source other than local Governments become available to cover this program.

Resolved this day NOV 1988

BY Robert J. Russell
Robert J. Russell
Secretary
NFTC

NFTA LIGHT RAIL RAPID TRANSIT SYSTEM

RAIL STATION PLATFORM SAFETY USAGE
&
POLICY FOR WHEELCHAIRS ON TRAINS

Rail Station Platform Safety Usage

When using NFTA Metro rail surface stations, all blind and visually impaired riders should use the hand rail located on the right side to guide themselves up the ramp to position themselves to enter the lead car. When deboarding from the lead car, please use the same door to exit in order to position oneself to use the handrail located on the left side; the possible exception being Auditorium Station, where assistance from the operator may be requested.

In addition, all NFTA Metro Rail Stations (both surface and underground) are equipped with a tactile warning strip on the platform surface to serve as a safety marker. This warning strip was designed in such a manner as to be identifiable by blind and visually impaired patrons. All transit riders should use caution when approaching the platform edge.

Policy for Wheelchairs on Trains (effective 5/8/89)

1. Wheelchair users should be encouraged to ride immediately behind the lead cab and to use tie-down devices, but they are not required to do so. However, wheelchair must not be located where they block the aisle or pose hazards to other riders.
2. Brochures and signage in stations will be modified to indicate that wheelchair users are encouraged (not required) to ride behind the lead cab and to use tie-down devices. Signage will note that only the first door of the first car is accessible at Mall stations.
3. Operators will provide assistance to wheelchair users only when they locate themselves immediately behind the lead cab and only when assistance is requested or is obviously necessary.
4. All employees will be advised of this change in policy, as will be NFTA's Advisory Committee on the Disabled. Standard Operating Procedure 107.6 will be revised as appropriate and reissued.
5. Policy shall include the use of Amigo carts.

(P-9/REACH)
9/8/89

PREPARED COMMENTS OF

ELLEN D. DALY,

LEGISLATIVE ANALYST

OF THE PRESIDENT'S

COMMITTEE ON EMPLOYMENT

OF PEOPLE WITH DISABBILITIES

BEFORE THE HOUSE SUBCOMMITTEE

ON SURFACE TRANSPORTATION

SEPTEMBER 20, 1989

Mr. Chairman, my name is Ellen Daly. I am a Legislative Analyst with the President's Committee on Employment of People with Disabilities.

Before I joined the President's Committee I was the Executive Director of the Wisconsin Governor's Committee for People with Disabilities. As the Executive Director, I served on several Departments of Transportation and Health and Social Services committees that dealt with transportation issues that affected disabled individuals and rehabilitation programs.

Prior to my move in February 1983 to Madison, I resided and worked in Milwaukee County and was very much involved in the Milwaukee County transportation scene as it pertained to people with disabilities. I was an appointed member of the Milwaukee County 504 Transportation Advisory Committee, which came about following a 1975 law suit which sought to require accessible public transportation services.

I am pleased to be here today to share with this Committee what I have learned over the last fifteen years about the transportation needs of our citizens with disabilities. They need to be able to choose the method of transportation that best suits them. For a small percentage of people paratransit is the only system that will meet their needs. But, for a great many of the disabled population an accessible mainline system can fully meet transit needs.

For those who live in parts of the country served by public transportation, accessible transit can facilitate regular employment. The United States is facing a labor shortage and yet there are people with disabilities wanting to be employed. A 1986 Louis Harris Poll Report states that the lack of accessible or affordable transportation is a significant reason why they are not employed.

The hour is now; there has to be accessible public transportation.

Paratransit, as it operates in most communities today, is very restrictive and not equal to that of public transit. Paratransit systems operate on an advance reservation call-in system. That call may need to be into the schedules anywhere from 16 to 72 hours in advance of the trip. How long would the non-disabled rider put up with that silliness?

These systems often vary widely in their hours of services, fares charged, geographical area served, eligibility requirements, and trip priorities.

There are public mainline transportation systems in this country that do truly service all the public with one system. I have a letter from the Mayor of Oshkosh, Wisconsin, to Senator Kasten that will attest to the fact that accessible mainline transportation works and is used. Mr. Chairman, I would like to share Mayor's Mather's letter. **(READ LETTER).**

Paratransit does not allow one any spontaneity; you can't decide on a moment's notice that you want to go shopping or stay at the office late. There is no flexibility -- you awake at 6:30 a.m. not feeling well and decide you'll stay home in the morning, but there's an important meeting you have to attend in the afternoon, so you will go in at noon -- sorry, either you go in to work as prescheduled or you don't go at all. You have been at a meeting, the meeting ends early, you sit and wait until your ride comes. Paratransit simply allows you no choices; rescheduling same day trips rarely can occur.

In order to use most paratransit systems you have to meet their eligibility standards, meaning that you have medical documentation that states you need the service. Before I became disabled 26-1/2 years ago, I used the public transportation system in lots of cities. Never once was I asked for documentation that I needed the service. All that was required was that I got on the bus, paid the fare and followed the rules.

Paratransit is not public transportation when a non-resident wishes to use it. Mr. Chairman, I face this problem when I travel on business throughout the U.S. I will certainly face this situation when I return to Milwaukee, where I am still a property taxpayer. To use the Milwaukee system, one must request an application form from the User Side Subsidy (USS); upon completion of the application, the form is returned to USS with a $7.00 fee; USS then sends a request to your medical doctor to verify your disabling condition and the need for paratransit services.

Assuming the doctor adequately responds to the USS request, you should then receive a letter of eligibility; finally, during regular business hours, you are required to go to the USS office (one must assume by means other than paratransit) to have a photo I.D. made, which you must have with you when you use the service. Then, of course you must follow the rules for scheduling a trip.

Other visitors just simply get on a bus. No one asks them to document who they are or why they are riding. Requiring action to make mainline transportation accessible would eliminate this burden and discrimination.

Paratransit hours of service, area serviced and fare charges often do not mirror those of the public transportation. When the hours of service and area served differ from the mainline system, this puts a person with a disability at a disadvantage.

They can only be employed based on the operating hours and area the paratransit operates.

This system doesn't offer bus passes, off peak hour fares and may in fact charge more for a trip. Transit operators use the "high fare" as a way to keep trip demand in control, while they are marketing their mainline system. An accessible mainline system could relieve the paratransit system.

And the dialogue could go on and on. You need to know that 15 years ago there wasn't any public transportation accessible to people with disabilities and the people with disabilities spoke out. Bus lifts were in their infancy, so paratransit came about.

It's time, now to take the next step and make all new mainline buses accessible to the 43 million Americans with disabilities. Mayor Mather's letter certainly pointed out that it is possible to have such a system. The Americans with Disabilities Act would do that.

Thank you.

City of Oshkosh

OSHKOSH

CITY COUNCIL

CITY MANAGER

September 7, 1989

The Hon. Robert Kasten
United States Senator
Senate Office Building
Washington, D.C. 20510

Dear Senator Kasten:

I am writing in support of the Americans with Disabilities Act and to dispel the notion that problems with main line transportation for persons with disabilities militates against passage of the legislation. For nearly a decade we in Oshkosh have provided public transportation for persons with disabilities and others having mobility limitations. Our buses are equiped with wheelchair lifts and have "kneeling" capability to accommodate the needs our our traveling public.

Our winters can be harsh and the snow deep and persistent yet we have encountered minimal difficulty in serving our customers. The Oshkosh Public Works Department is sensitive to the special concerns of persons with disabilities and do a yeoman's job in keeping curb cuts free of snow and in maintaining other areas to ensure that all individuals have access to public transportation.

I urge you to support the Americans with Disabilities Act to allow all citizens equal opportunity of access to the quality of life offered by this great nation of ours.

Thank you.

Sincerely,

James A Mather

James A. Mather, Mayor
CITY OF OSHKOSH

TESTIMONY OF

HAROLD C. JENKINS

GENERAL MANAGER

CAMBRIA COUNTY TRANSIT AUTHORITY

JOHNSTOWN, PENNSYLVANIA

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

SEPTEMBER 20, 1989

THANK YOU, MR. CHAIRMAN, AND GOOD AFTERNOON. MY NAME IS HAROLD JENKINS AND I'M THE GENERAL MANAGER OF THE CAMBRIA COUNTY TRANSIT AUTHORITY HEADQUARTERED IN JOHNSTOWN, PENNSYLVANIA.

I'VE BEEN ASKED TO TESTIFY BEFORE THIS COMMITTEE THIS AFTERNOON IN SUPPORT OF THE AMERICANS WITH DISABILITIES ACT OF 1989. MY SUPPORT IS BASED PRIMARILY UPON OUR EXPERIENCES IN CAMBRIA COUNTY WITH OPERATING A SMALL, 27-BUS URBAN TRANSIT SYSTEM WHICH IS 100% ACCESSIBLE TO THOSE PERSONS CONFINED TO WHEELCHAIRS. WE'VE BEEN OPERATING A TOTALLY ACCESSIBLE TRANSIT SYSTEM SINCE 1983.

I WANT TO EMPHASIZE FROM THE OUTSET THAT AN ACCESSIBLE TRANSPORTATION SYSTEM WILL ONLY BE AS SUCCESSFUL AS THE COMMITMENT BEHIND THE DECISION TO PROVIDE ACCESSIBLE TRANSIT. I BELIEVE FROM OUR EXPERIENCE THAT UNLESS MANAGEMENT IS FIRMLY COMMITTED TO THE LAUDABLE GOAL OF ACCESSIBILITY, PERSONS WITH HANDICAPS STAND TO BE SHORTCHANGED SOMEWHERE ALONG THE LINE. LET ME EXPLAIN WHAT I MEAN.

THE VERY NATURE OF PHYSICAL DISABILITIES CONTRIBUTES TO THE DISCRIMINATION PROBLEMS WHICH EXIST WITH RESPECT TO INDIVIDUALS WITH HANDICAPS. MANY PEOPLE ARE UNCOMFORTABLE IN DEALING WITH THOSE WHO ARE "DIFFERENT". THIS PATTERN HAS CONTRIBUTED IMMENSELY TO THE RELUCTANCE OF MANY PERSONS WITH HANDICAPS TO VENTURE OUT INTO SOCIETY IN AN ATTEMPT TO JOIN THE

MAINSTREAM. CONSEQUENTLY, IF THEIR FEARS ARE MET BY A TRANSIT SYSTEM WHICH IS NOT SERIOUSLY COMMITTED TO PROVIDING RELIABLE AND SAFE ACCESSIBLE TRANSIT, THEIR FEARS WILL ONLY BE COMPOUNDED AND THE DISCRIMINATION PERPETUATED.

IN CAMBRIA COUNTY, WE MADE A COMMITMENT FROM THE BEGINNING TO PROVIDE THE BEST POSSIBLE ACCESSIBLE SYSTEM. WE BELIEVED THAT ONLY WITH THIS DEGREE OF COMMITMENT WOULD WE BE ABLE TO OVERCOME THE BUILT-IN RELUCTANCE OF MANY PERSONS WITH DISABILITIES, ESPECIALLY THOSE IN WHEELCHAIRS, TO USE ACCESSIBLE TRANSIT. LET ME OUTLINE SOME OF THE STEPS WE TOOK WHICH GO BEYOND THE SIMPLE PROVISION OF WHEELCHAIR LIFTS.

FROM THE BEGINNING, WE REALIZED THE IMPORTANCE OF SELLING THE CONCEPT OF FIXED-ROUTE ACCESSIBLE TRANSIT TO POTENTIAL USERS. I EMPHASIZED THE WORD "SELLING" FOR THE REASONS PREVIOUSLY MENTIONED. MANY FOLKS IN OUR COMMUNITY WITH DISABILITIES WERE RELUCTANT TO UTILIZE AN UNTESTED FORM OF PUBLIC TRANSIT. THEREFORE, WE HAD TO "SELL" IT. THESE EFFORTS TOOK MANY FORMS.

WE INITIALLY CONDUCTED PUBLIC DEMONSTRATIONS OF THE ACCESSIBILITY FEATURES OF THE BUS. THE LOCAL MEDIA PROVIDED EXTENSIVE COVERAGE, A VITAL CONSIDERATION IN ANY PUBLIC AWARENESS PROGRAM. CONCURRENT WITH THE BUS DEMONSTRATIONS, WE INAUGURATED A PROGRAM TO CONTACT ALL THE ORGANIZATIONS IN THE COMMUNITY WHO WORKED WITH PERSONS WITH HANDICAPS. A VERY

DETAILED SLIDE SHOW WAS PREPARED AND PRESENTED TO THESE GROUPS, SHOWING EVERY STEP INVOLVED IN THE BOARDING AND EXITING OF THE BUS. WE PREPARED A SPECIAL PUBLICATION WHICH HIGHLIGHTED THE ACCESSIBILITY COMPONENTS OF THE BUS AND THE SEQUENCE OF STEPS INVOLVED IN USING THE VEHICLES. THOUSANDS OF THESE BROCHURES WERE DISTRIBUTED THROUGHOUT THE COMMUNITY. ALL THESE EFFORTS HELPED TO ASSURE THE PASSENGER WITH A HANDICAP THAT PUBLIC TRANSPORTATION CAN BE A SAFE AND RELIABLE MEANS OF TRANSPORTATION.

AS A RESULT OF OUR EDUCATIONAL EFFORTS, WE CARRIED AN AVERAGE OF 200 PASSENGERS IN WHEELCHAIRS A MONTH DURING THE FIRST ELEVEN MONTHS OF OPERATION IN 1980. THAT'S 200 A MONTH WITH ONLY SEVEN ACCESSIBLE BUSES. BY 1983, OUR ENTIRE FLEET OF 27 BUSES WAS ACCESSIBLE, WITH THE RESULT THAT WE NOW CARRY OVER 3000 PASSENGERS IN WHEELCHAIRS EACH YEAR. IN ADDITION, WE ANNUALLY TRANSPORT ABOUT 36,000 PASSENGERS WITH OTHER DISABILITIES. AND, WE CARRY THIS NUMBER DESPITE OUR INCLEMENT WEATHER AND HILLY TERRAIN. WHY? COMMITMENT. A STRONG COMMITMENT TO QUALITY TRANSIT.

ANOTHER IMPORTANT COMPONENT OF OUR PROGRAM HAS BEEN DRIVER TRAINING. IN ADDITION TO RECEIVING BASIC TRAINING IN LIFT OPERATION, ALL OPERATORS RECEIVE INTENSIVE SENSITIVITY TRAINING. DRIVERS COMPLETE A COMPREHENSIVE COURSE CONSISTING OF FILMS, WHEELCHAIR FAMILIARITY, BOARDING PROCEDURES, SECUREMENT, AND EMERGENCY EVACUATION. DRIVERS ALSO SPEND A

PORTION OF THEIR TRAINING PERIOD CONFINED TO A WHEELCHAIR IN ORDER TO ENHANCE THEIR SENSITIVITY TO THE VARIOUS NEEDS AND FEELINGS OF PASSENGERS WITH DISABILITIES. ANNUAL REFRESHER COURSES ARE ALSO PROVIDED.

ANOTHER VITAL COMPONENT OF OUR PROGRAM IS WHEELCHAIR LIFT MAINTENANCE. THERE IS NO WORSE EXPERIENCE FOR A PASSENGER IN A WHEELCHAIR THAN TO ARRIVE AT A BUS STOP EXPECTING AN ACCESSIBLE BUS, ONLY TO FIND THAT THE LIFT DOESN'T WORK. A QUALITY MAINTENANCE PROGRAM IS CRITICAL. DRIVERS ARE ALSO REQUIRED, BY UNION CONTRACT, TO CYCLE THEIR LIFT PRIOR TO BEGINNING THEIR WORK DAY. THIS PROCEDURE HAS BENEFITS FOR THE MECHANICAL COMPONENTS OF THE LIFT. IT ALSO ASSURES THE OPERATOR THAT HE OR SHE HAS A FUNCTIONING LIFT. IF IT DOESN'T OPERATE PROPERLY, THE OPERATOR IS PROHIBITED FROM LEAVING THE GARAGE WITH THAT BUS.

ALL THESE STEPS I'VE JUST DISCUSSED GO BEYOND THE LETTER OF THE LAW. BUT WITHOUT THEM, WE BELIEVE AN ACCESSIBLE SYSTEM WILL BE DOOMED TO FAILURE.

FINALLY, LET ME BRIEFLY TOUCH UPON SEVERAL OBJECTIONS TO ACCESSIBILITY WHICH ARE FREQUENTLY RAISED.

ONE OBJECTION CONCERNS THE WEATHER. IN CAMBRIA COUNTY, WE EXPERIENCE ABOUT 48 INCHES OF PRECIPITATION EACH YEAR. THIRTY INCHES OF THAT PRECIPITATION IS SNOW. COMPOUNDING THIS

SITUATION IS A GEOGRAPHY MARKED BY STEEP HILLS. CONSEQUENTLY, IT WOULD BE EASY TO ASSUME THAT THESE APPARENT OBSTACLES WOULD SIGNIFICANTLY PROHIBIT THE UTILIZATION OF OUR ACCESSIBLE SYSTEM.

HOWEVER, WE HAVE SEEN NO APPRECIABLE DIFFERENCE IN UTILIZATION RATES FROM SEASON TO SEASON. WE ATTRIBUTE THIS FACT TO THE TENACITY OF OUR WHEELCHAIR RIDERS AS WELL AS TO THE COMMUNITY EDUCATION PROGRAM DISCUSSED EARLIER. ON INCLEMENT DAYS, OUR WHEELCHAIR RIDERS HAVE BEEN INSTRUCTED TO CALL US PRIOR TO VENTURING OUTSIDE IN ORDER TO MAKE SURE THE BUS IS ON TIME. AND THEY'VE ALREADY COME TO TRUST THE FACT THAT WHEN THE BUS ARRIVES, IT WILL HAVE AN OPERATING LIFT. THIS COMBINATION OF EDUCATION AND FIDELITY TO LIFT MAINTENANCE IS LARGELY RESPONSIBLE FOR REDUCING INCLEMENT WEATHER AS A UTILIZATION FACTOR.

ANOTHER OBJECTION CONCERNS COSTS. THE COST OF THE LIFT AND ITS MAINTENANCE. WE ARE IN PUBLIC TRANSIT TO PROVIDE TRANSIT TO THE PUBLIC. IT'S THAT SIMPLE. PERSONS WITH HANDICAPS ARE MEMBERS OF THE PUBLIC. THEREFORE, WE VIEW THE COSTS OF EQUIPPING AND MAINTAINING BUSES WITH LIFTS AS WE DO OUR OTHER EXPENSES. IT'S THE COST OF DOING BUSINESS. FOR EXAMPLE, IF A BUS AIR CONDITIONER BREAKS, THE EXPENSE OF FIXING IT IS SEEN AS A STANDARD OPERATING EXPENSE. IT'S THAT SIMPLE. OUR EXPERIENCE DEMONSTRATES THAT ONCE AN HONEST COMMITMENT IS MADE TO PROVIDE QUALITY ACCESSIBLE SERVICE, MAINTENANCE COSTS CAN BE CONTROLLED. OUR MAINTENANCE HISTORY OVER THE PAST NINE YEARS HAS CONFIRMED THIS POINT.

WITH RESPECT TO LIFT COSTS, THE COST PER LIFT WILL GO DOWN AS LIFT UTILIZATION INCREASES. AND, OUR EXPERIENCE SHOWS THAT THE TYPE OF LIFT USED HAS A MAJOR IMPACT ON THE COSTS ASSOCIATED WITH REPAIRING IT. THEREFORE, CLOSE ATTENTION SHOULD BE DIRECTED TO THE MAINTENANCE TRACK RECORDS OF THE VARIOUS LIFTS. SECONDLY, ADVANCES IN LIFT TECHNOLOGY SHOULD SOON REDUCE THE OVERALL MAINTENANCE COSTS. AND THIRDLY, AND MOST IMPORTANTLY, LIFT UTILIZATION WILL INCREASE AS THE DEGREE OF COMMITMENT AND QUALITY OF SERVICE INCREASES. IT'S THE OLD "AS YOU SOW, SO SHALL YOU REAP" APHORISM.

A THIRD OBJECTION CENTERS ON THE SLOWING DOWN OF THE SYSTEM DUE TO THE EXTRA TIME IT TAKES TO LOAD AND UNLOAD PASSENGERS IN WHEELCHAIRS. WE INITIALLY CONDUCTED TIME STUDIES TO DOCUMENT THIS FEAR. BUT, AFTER SIX MONTHS, WE DISCONTINUED THE STUDY BECAUSE THE TIME FACTOR WAS SEEN AS INSIGNIFICANT. WE HAVE CARRIED ABOUT 15,000 PASSENGERS IN WHEELCHAIRS SINCE 1980 AND HAVE NEVER RECEIVED ONE COMPLAINT FROM AMBULATORY PASSENGERS ABOUT TIME DELAYS DUE TO WHEELCHAIR TRANSPORT.

THE LAST OBJECTION OFTEN RAISED CITES PROBLEMS WITH UNIONS. WHEN A TRANSIT SYSTEM MAKES AN HONEST COMMITMENT FROM THE OUTSET TO ESTABLISH A CREDIBLE ACCESSIBLE SYSTEM, UNION PROBLEMS WILL NOT EXIST. BUT, IF THE UNION SENSES THAT MANAGEMENT'S COMMITMENT IS LACKLUSTER, THE DOOR MAY BE OPENED FOR PROBLEMS. AS I SAID BEFORE, OUR UNION CONTRACT ACTUALLY REQUIRES OPERATORS TO CYCLE THEIR LIFTS PRIOR TO THEIR SHIFT. THIS WAS AN EASY CLAUSE TO GET INTO THE CONTRACT BECAUSE THE UNION UNDERSTANDS THE DEGREE OF MANAGEMENT COMMITMENT. THE SPECIAL TRAINING RECEIVED BY OPERATORS ALSO REINFORCES THIS COMMITMENT.

I THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO PRESENT CAMBRIA COUNTY'S EXPERIENCES. IF YOU HAVE ANY QUESTIONS, I'LL BE HAPPY TO ANSWER THEM.

Mr. MINETA. I would now like to call on David Tripp, the Executive Director of St. Cloud, Minnesota Metropolitan Transit Commission; Kathleen Wingen, Director and Founder of Advocacy Plus Action, INC., and Mr. Mark Johnson from Alpharetta, Georgia.

Mr. Johnson? Ms. Wingen and Mr. Tripp, if I could have Mr. Johnson testify first since he has a plane to catch.

Mr. TRIPP. That's fine.

Mr. MINETA. Mr. Johnson, do you have some written testimony or are you going to make an oral presentation?

Mr. JOHNSON. Yes.

Mr. MINETA. Please proceed.

TESTIMONY OF DAVID TRIPP, EXECUTIVE DIRECTOR, ST. CLOUD METROPOLITAN TRANSIT COMMISSION; KATHLEEN WINGEN, DIRECTOR AND FOUNDER, ADVOCACY PLUS ACTION, INC., AND MARK JOHNSON, FOUNDER, AMERICAN DISABLED FOR ACCESSIBLE PUBLIC TRANSPORTATION, ALPHARETTA, GA

Mr. JOHNSON. First of all, thank you for allowing me to go out of order. As mentioned, my name is Mark Johnson. I do live in Alpharetta, Georgia. That is a suburb of Atlanta, Georgia. I am a founder of a group of people called the American Disabled for Accessible Public Transportation. As some people are aware, that is a group of people who feel total access is the only answer. We are totally committed to doing whatever we have to do to accomplish that goal.

First of all, let me make a couple of observations. It is too bad that Representative Shuster just left because one of them is an observation about him. First of all, I was kind of embarrassed by UMTA's presentation. I think after twenty years of dealing with this issue not to be able to provide him the answers to his questions is appalling. I know that I have answered those same questions numerous times.

So I began to feel embarrassed for the Department of Transportation officials when they can't answer such simple questions.

Second of all, although Representative Shuster's questions may have been personally necessary, I found them personally offensive; that after twenty years of answering those questions, he still can't find the answer to those questions. I think those questions, to me, were personally offensive. To imply that I, and people with disabilities, ought to settle for less than total access is offensive. To imply that the cost of implementation of the Americans With Disabilities Act is too much for the taxpayer to bear when I am a taxpayer is insulting and offensive.

So it is too bad that the Representative had to leave at the time he did, but I am sure that he will have access to this testimony. I understand that, after twenty years, he should be able to get the answers to his questions and after twenty years, we ought to quit asking offensive questions.

I was originally scheduled to testify after the American Public Transit Association. The American Public Transit Association, for years, has opposed total access. So I found it kind of enlightening to read their testimony that neither says we are for ADA or against ADA; however, if you decide that we need to do this, we would like a few changes and we would like some money to do it. So it is neither for nor against. For twenty years, they have been adamantly opposed to total access.

One reason why I am returning to the Atlanta area this evening is to continue my efforts in organizing a series of public protests aimed at the American Public Transit Association and the American Bus Association. ADAPT has followed APTA around for six years trying to get them to the point where they want to form a partnership. Year after year, they denied our appeals. Year after year, they have supported local option. Year after year, they have been as offensive as those questions were to me.

What we hope to accomplish, and it is up to APTA if they want to accomplish this, is to see them recognize our resolution of 1983 calling for total access, to see them recognize their own task force's resolution calling for total access. We will see by the 28th of this month whether they are willing to do that. We will see whether the Secretary of Transportation wants to sign an order mandating total access to public transit.

He has that legal authority right now because of the Third Circuit Court of Appeals decision, and he has not chosen to utilize it. So we will see by September 28 whether APTA, or the Department of Transportation, really care and whether they want to provide total access. I think that would be a good-faith gesture by both this administration, Secretary Skinner, and APTA to accomplish that by the 28th of this month.

Let me give you a little history of the struggle. First of all, APTA would have you believe that local option is working. Second of all, they would have you believe that access only affects or benefits people with disabilities. Third of all, they would have you believe that the public participation program, as outlined in the current regulations, worked and is working.

I would encourage you to talk to people with disabilities in Savannah, Georgia, Charlotte, North Carolina, Washington, D.C., Cincinnati, Ohio, Madison, Wisconsin, Rochester, New York, Pittsburgh or Tulsa, Oklahoma, and you will not see the option that the people with disabilities want exercised in their communities being exercised.

You will see the option that the Transit Authorities want exercised in those communities.

Now, some facts. Most people with disabilities don't have access to private transit. If the original mandate had remained in effect, every bus in the country would have been lift-equipped by 1991, a mere two years from now—if the original mandate had remained in effect. Instead, inconsistency in approach, court action, and controversy continue.

Chicago Transit Authority was forced through litigation and over two years of public protest to provide access, regardless of what the Secretary of Transportation says about his role in that. It was pure litigation and pure street action that led to access in Chicago, Illinois.

The city of Portland, Maine was forced through litigation. The city of Detroit was hit with a $2.1 million judgment for failure to provide accessible public transportation. Six people with disabilities filed the original law suit. The number of plaintiffs has grown to

1,100 people. Cincinnati Queen City Metro bought 87 lift-equipped buses in 1981, over 100 in 1986. Over half their fleet is now lift-equipped, but Metro doesn't choose to use their lifts. It is their option and it is legal.

The general manager of San Antonio told a group of people with disabilities, "Lifts? Over my dead body." Well, you heard earlier testimony that someone must have died in San Antonio because San Antonio has made a commitment to total access.

Washington, D.C., continues to insult its disability community, with a 50 percent policy. One out of every two buses will be lift-equipped until they get to 50 percent which added to the insult. To even add to the insult, they raised the 50 to 75 recently. It makes no sense. I can go out to the bus stop with you. You can catch all four. I can catch three of the four. It makes a lot of sense.

Atlanta, Georgia, which I moved to in July of 1986, had no commitment, made a commitment to 100 percent in 1987. However, it will be the year 2000 before I can ride the same buses that you do—the year 2000—twenty-seven years after the passage of 504.

I am not aware of any city whose paratransit-only approach accommodates out-of-town guests. I am only aware of people who, one, haven't taken jobs, have taken certain kinds of jobs, have been denied promotions, or are not looking for work because of paratransit-only approaches.

None of Greyhound's vans or buses—there had been no disussion about the fact that Greyhound has vans—over 4,000 have no lifts. Instead, they have their "helping hands" program. In other words, you bring someone to carry you on and then they can refuse to transport the chair that I am sitting in. That is Greyhound's commitment to people with disabilities and Greyhound's commitment to providing access.

Hotel shuttles from airports don't exist. When is the last time you took a trip on an accessible tour bus?

In summary, clearly local option means no option. Clearly anybody who supports local option believes in inequality.

I am going to summarize, finally, by reading one article that appeared in the Atlanta Journal paper on Friday, July 14, 1989.

> Wheel Chair Rolls into Lake Carrying Man to his Death. A 38-year old man with cerebral palsy, in a rickety motorized wheel chair rolled into a Snellville lake Thursday, drowning him only months before he was to receive a custom-fitted chair purchased with local donations. Gwinnett County rescue teams struggled in vain to resuscitate Dwayne Jones, who was found submerged near the bank of Brisco Park Lake by passers by at about 2:15 p.m., Gwinnett police said.
>
> Mr. Jones, who was almost completely paralyzed, was still strapped in his chair, police said. Mr. Jones was rushed to the hospital in Snellville and pronounced dead at 3:09 p.m. Police said Mr. Jones' wheel chair, which had a history of breakdowns, was examined for signs of malfunction. Staff members at the Snellville Nursing and Rehabilitation Center where Mr. Jones had lived for two years discounted the possibility of suicide but said he had been depressed recently.
>
> They said Mr. Jones had become close to a nurse who moved to Florida two months ago. "He has always gone in and out of depression," said the Director of Nursing, "and he had lots of friends and we loved him."
>
> Mr. Jones captured the hearts of Snellville residents two months ago with his efforts to buy a $9,000 wheel chair to replace his eight-year-old chair. This year's annual Snellville Days Spring Festival raised money for him and caught the attention of several Atlanta Falcons football players. Donations which poured in from all over the county totaled $11,000, enough to have some special features built into the chair, which had already been ordered.

The chair was custom built and delivery was not expected for months. Ms. Cobol said she and other staff members began worrying about Mr. Jones unaccompanied visits to the park after he began having gastrointestinal difficulties this winter. "They feared he might choke without help nearby," she said. But Ms. Cobol said Mr. Jones valued his freedom more than anything else.

The reason I read that article into the minutes is nobody asked "What is a 38-year-old man living in a nursing home for?" Nobody asked, "Why did he have the wrong chair in the beginning?" Nobody asked, "Why did he have to beg his community for $11,000 to buy the chair that is rightfully his?" Nobody asked a lot of questions about Mr. Jones.

If you think your decision about the Americans With Disabilities Act is difficult to come to grips with, wait until you have to answer these questions and wait until you have to provide the kind of support so that we can live in our communities.

Atlanta is not only, and Georgia is not only, blessed with folks that are dying. We have got people who want to commit suicide. Why do they want to commit suicide? It's because they continue to be treated inequal. And it beats you down. And it holds you down. And it makes you feel less than whole.

To pass the Americans With Disabilities Act that is not whole will only continue to perpetuate those personal feelings of inadequacy.

Thank you.

Mr. MINETA. I have no questions. Do any members have any questions? If not, again, thank you, Mr. Johnson, very much. We will go ahead and excuse you so you can get to your plane.

Mr. JOHNSON. May I add one thing?

Mr. MINETA. Surely.

Mr. JOHNSON. If you look at APTA's statement, it says paratransit costs a whole lot of money, and they are the people that have been providing it. Second of all, to imply that if there are not enough of you to ride, we are not going to do it is, once again, offensive.

I can remember the days when building owners would say, "Unless you prove to me that you are going to come into this building, we are not going to build a ramp?" Isn't it interesting today that you cannot build a new building unless it has a ramp.

Mr. MINETA. Thank you very much, Mr. Johnson.

At this time, I would like recognize our colleague from Minnesota, Mr. Stangeland.

Mr. STANGELAND. Thank you, Mr. Chairman. Mr. Chairman, I have a statement that I would like to have made part of the record. I am not going to go through it, in the essence of time.

Mr. MINETA. No objection; so ordered.

[Mr. Stangeland's prepared statement follows:]

STATEMENT OF HON. ARLAN STANGELAND, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Thank you, Mr. Chairman. Let me commend you for your leadership in holding today's and next week's hearings on H.R. 2273, the Americans with Disabilities Act. This legislation will affect how we live, work and travel in immeasurable ways. It may be one of the most important bills we address this year.

As the House's Transportation Committee, we need to look long and hard at H.R. 2273's far-reaching impacts on public and private transportation. I recognize the bill is widely supported and, as they say in Washington, on a "fast track." I also support the basic aim of the legislation and many of its proposed reforms. But there are some potential problems and pitfalls in the transportation titles. These hearings should be helpful if we can put aside some of the rhetoric and platitudes and focus on specific concerns raised by a broad spectrum of interests. Then we'll be in a much better position to improve the bill—making it more workable—while not delaying its progress or lessening our commitment to the disabled.

Some of the concerns I have, and that many of our witnesses will explain, involve cost, flexibility, and implementation. This has the potential to become landmark legislation, Mr. Chairman. But if we don't address its far-reaching and controversial transportation provisions, it could eventually undercut our efforts to remove barriers and end discrimination.

Mr. Chairman, I want to personally thank you for accommodating my request to allow two witnesses from St. Cloud, Minnesota, to testify. Because of their expertise and involvement, David Tripp of the St. Cloud Metropolitan Transit Commission and Kathy Wingen of Advocacy Plus Action are in positions to offer valuable insight. They have unique perspectives on the transportation needs of the disability community in rural America—specifically in Minnesota.

David will describe St. Cloud's highly acclaimed paratransit program which is tailored to the disability community's particular needs. St. Cloud's door-to-door, specialized service has a $215,000 annual budget, offers maximum opportunities for increased mobility, and enjoys broad support among the disability and non-disability community. He will also mention some concerns about the House and Senate legislation involving cost and local flexibility.

The Metropolitan Transit Commission fears that a Federal mandate to equip every new fixed-route bus with a wheelchair lift regardless of the localized factors will adversely impact their paratransit program, and ultimately decrease transportation opportunities for both disabled and non-disabled passengers. It becomes a question of cost effectiveness and flexibility of local governments to design programs that the disability community is confortable with and that addressa special factors such as winter conditions and elderly passengers.

Kathy will testify about St. Cloud's disability community and its transportation opportunities. Kathy has a long list of accomplishments. She is the leader and founder of Advocacy Plus Action. She is an advocate for improved transportation and recognizes that mandating both paratransit and specially-equipped fixed-route service may be unrealistic in given circumstances.

So, I want to welcome both Dave and Kathy to Washington and to the Public Works Committee. I think our members can benefit from their views and ultimately improve the Americans with Disabilities Act.

Finally, I want to thank you, Mr. Chairman, for your leadership, cooperation and willingness to listen. This legislation is too important for us not to address the concerns of transportation experts and impacted citizens.

Mr. STANGELAND. But I would like to introduce two of my constituents from Minnesota. I want to thank you personally, for accommodating my request to allow them to be here to testify.

First of all, I would like to introduce Mr. David Tripp, who heads the St. Cloud Metropolitan Transit Commission. I am not going to tell you what he is going to say because he can articulate that far better than I. With him is Ms. Kathy Wingen. Let me say that I have known Kathy for about seven, going on eight, years, now, when I first got St. Cloud into my district as a result of redistricting.

Kathy Wingen is one of the people in St. Cloud that heightened my consciousness and my sensitivities to the problems of the handicapped. St. Cloud has an extremely active, extremely aggressive, handicapped community. Kathy Wingen is a leader in that community and has been for years, and in Minnesota as well.

I am going to ask unanimous consent as well to submit for the record Kathy's resume so that you know that she comes here with very, very high credentials.

I think they are going to give you some testimony that is a little different than what you have heard as to what St. Cloud has done and, possibly, to what this legislation could do to a program such as St. Cloud where the handicapped community created a sensitivity to the city government of St. Cloud fifteen years ago.

The City of St. Cloud has been providing for fifteen years good transportation for the handicapped. It is a real success story, and I hope the committee will take note of what they say, certainly ask them any questions you would like. They are here to give you a very candid view of what St. Cloud has done and how they feel that, without some exceptions, exemptions or recognition of what some small rural, northern communities have done to provide service to the handicapped, this legislation could cause some irreparable harm to the handicapped and to the transit commissions in northern parts and in small towns.

So, with that, Mr. Chairman, I would certainly welcome the testimony of Mr. Tripp and Ms. Wingen.

Mr. MINETA. Ms. Wingen, we have your statement for the record. Mr. Tripp, proceed in your own fashion. Then we will hear from Ms. Wingen.

Mr. TRIPP. Good afternoon, Chairman Mineta, Congressman Stangeland, distinguished members of the subcommittee. I believe a written copy of my testimony is now being presented.

Again, my name is David Tripp. I am the Executive Director, Chief Executive Officer, of the St. Cloud Metropolitan Transit Commission, a political subdivision of the state of Minnesota. As the expression goes, every coin has two sides. I guess I am here, today, to talk about the other side, of some concerns that we have in Minnesota.

For your information, the St. Cloud MTC, as we call it, serves a three city service area of about 54,000 population with two services; a fixed-route fleet, seventeen peak hour, 21 buses with nine routes transferring in downtown and a specialized service fleet of four buses for mobility-impaired citizens utilizing driver-assisted door-to-door service.

More specifically, our MTC special service was Minnesota's very first door-to-door system in 1974. The six service criteria for a specialized service as established by the United States Department of Transportation have been exceeded by far means and including the 3 percent minimum expenditure, has been far exceeded by an almost 13 percent expenditure of the total operating budget of the MTC.

Not included within that 13 percent operating budget are two very modern state-of-the-art accessible minibuses from a photograph that you will be seeing soon. Also, for your information, there are approximately 1,100 registered passengers in our service. We carry about 190 passenger trips each weekday for an annual total of 50,000 trips.

These are not necessarily eldrly trips. However, the great majority of registered passengers 65 and over, are elderly. You have got to be transportation-disabled in regards to utilizing the fixed-route service to be eligible for the specialized service.

But 50,000 trips a year is a pretty good figure when you consider we have a 54,000 population area. The average fully-allocated, (including the cost of the vehicle) cost per trip for 88–89, is $4.10 per trip, which I think is a relatively low figure from figures you have, perhaps, heard of elsewhere. The total annual operating budget is $210,000. That compares to the total annual operating budget for the fixed-route system of $1,430,000.

The fixed-route has an annual ridership of 1.4 million at a fully-allocated cost-per-trip of $1.09. The reason I am here today is that I am concerned about the mobility of all citizens of the St. Cloud area. I, as a public transit professional, having worked with the disabled communities and the non-disabled communities, citizenry, in our area, to design their transportation programs that are requested, that they request, that they need, I am here to inform you of some facts that I believe are being overlooked or overshadowed by discussions to date on mainline transit accessibility.

In particular, some factors regarding small urban cities such as the size that St. Cloud has, and I will have to refute or, at least, disagree with some earlier comments in regards to some of the climatal conditions of the North and how we see that in St. Cloud.

St. Cloud MTC and—and I put an emphasis on "and"—its disabled citizenry has continually, in the last fifteen years, put its money and its efforts into the specialized service system because in Minnesota we all feel that a fixed-route accessible transit system would, realistically, be unaccessible five months of the year.

St. Cloud does have some very real conditions that laws are not able to change. For example, the very health-endangering frigid temperatures that Minnesota does experience; neighbors who don't shovel their sidewalks one or two or three or even more days after heavy snowfalls or even light snowfalls and make mobility very difficult to impossible; snow-plow hills and ridges that border every street and every intersection among our three cities.

If a disabled citizen depends on public transit for their job, for school, for college, for physical therapy or for whatever on a daily basis, they need reliable and safe mobility, the type of mobility our specialized service provides and a fixed-route accessible system in St. Cloud, we feel, cannot provide: reliability.

St. Cloud's disabled citizenry realizes this statement and, since 1980, with the meetings and public hearings on 504, has argued that with the limited governmental subsidies and local efforts, monies and efforts should be expended on the mobility service needed and requested by St. Cloud's great majority of disabled citizens.

Accessible fixed-route transit will cost additional local funds for lift purchase, lift maintenance, driver training and whatever. There is a very legitimate fear that, with this additional fixed-route expenditure, decisions in the future to either decrease or to not increase the specialized service may be made.

I do realize that in the ADA bill, fixed-route accessibility also requires a level of paratransit or a level of specialized service; but, at what level? Again, we are providing 13 percent right now, with a federal minimum of 3 percent. If the Commission, in future years, decided with an accessible fleet, and the budgets are tight, that maybe we can drop the specialized budget 3 percent, to go to 10 percent; that $45,000 to $50,000 means a lot of mobility. It would definitely decrease the mobility for disabled citizens with that kind of a decision.

You will see in front of you pictures I distributed of Mrs. Elodie Brengman of St. Cloud, shown here being picked up at her Northside home for a trip to the St. Cloud clinic. Mrs. Brengman is 80 years old and lives independently in her Northside home.

Once the user of our fixed-route, prior to her disabling accident in 1983, Mrs. Brengman uses our specialized service to go to the doctor, buy groceries and other staples, see her husband in a nursing home: basically remaining independently in her home. She is familiar with our fixed-route system because she once used it. She flatly states that if there was not a specialized service system—a door-to-door service from her alley to the door of the clinic, and that the only option was to go out to a route and use an accessible fixed-route bus, that she would hardly get out.

We all know, socially, what happens to the elderly when they start to stay at home too much and not get out and be active. As stated earlier, the great majority of our passengers, utilizing our service, are over the age of 65 and many share the same concerns and needs as Mrs. Brengman. As a transportation professional, I just hope that with all this discussion on accessibility and mobility that the Mrs. Brengman's of this country are not forgotten about and allowed to slip through the cracks. I do question if their mobility needs are really being adequately represented.

I then, also, must express some very genuine concerns about the negative impacts we see with mandated accessibility on the small fixed-route system like St. Cloud. Again, St. Cloud has a total of twelve routes, but only nine come into the downtown.

Most transit systems the metropolitan city size of St. Cloud have what is called a pulse or a time-transfer system. It is like a wagon wheel with the routes being the spokes and the transfer terminal being the hub. St. Cloud has that. We have thirty-minute and one-hour routes. They come downtown every thirty minutes at 15 and 45 minutes after the hour. We have three minutes for transferring.

Believe me, there are many times when those transfer conditions can be very, very tight. When transfers are missed, the system breaks down. It totally breaks down, at least for that passenger that is missing their transfer. From experiences from other lift-equipped cities, we feel that the boarding, the tie-down and the deboarding time required for our accessible route, that there would have to be some hard decisions and some changes made to our route system.

We have three options; one, we take our 30-minute route system and we extend it to 35 or 40 minutes. In other words, we add slop time, to accommodate the wheel chair trip. This lengthens the transit travel time for all passengers, makes transit less convenient and, we believe, results in a passenger loss or the ability to not attract as many choice riders in the future.

The current 30-minute system is also very, very easy to understand. We can tell people on the phone for information that, "Your bus will be there at 7 after, or 37 after, every hour on the hour." When you go to 35 or 40, all of a sudden, now, it is 7 after and 42 after and 17 after, etc.

That doesn't seem to be a big deal for my staff. It doesn't seem to be a big deal for me because I can understand schedules and maps quite well. It is amazing, when you are standing along a dispatch counter and you hear your dispatcher talk to the general public, answering their information calls, that the simpler you make your system, the more successful you will be, and people's mobility will be. People have a hard time understanding schedule times.

The second option is to cut off the far ends of that 30-minute route so as to still have a 30-minute route. That is kind of silly because then you reduce availability of public transit to all citizens.

Your third option is just to leave your 30 minute route structure the same, don't do a thing with it. But then, in the case of a missed transfer because of the boarding and tie-down and deboarding time, you are going to have a bus with some bitter people. Minneapolis just finished a two-year demonstration project and has released their study. And they show about rider reactions. They will state that, generally, fixed-route passenger—able-bodied fixed-route passenger reactions—have been pleasant. But when they start missing their transfers, then the opinions start to become very, very negative.

In either one of those cases, as far as our fixed-route situation, I feel we are in a lose/lose situation. We are spending $210,000 on a service which meets the mobility needs. If we were in the South, or in a better climatal condition, we could, literally, have a $60,000 door-to-door service and take $150,000 and put it into the fixed-route system to accommodate 15-minute service instead of 30-minute service. Would that bring more mobility? I think it would to able-bodied passengers because, now, you have made your fixed-route even more convenient with more frequent service. But it would not bring more mobility to the disabled in St. Cloud. That is a strong statement, and I will stand behind that.

Our commission requests that this committee realize that what St. Cloud is currently practicing and committed to is superior to what most of the transit systems are practicing and that our disabled citizenry be allowed to decide what type of transit service best meets their mobility needs. We respectfully request some sort of amendment with regards to a waiver or local option be seriously requested and written into this historic legislation.

Mr. Chairman and members of the Committee, thank you for your consideration. I am more than happy to answer questions. However, I would like to hold off questions until after Ms. Wingen has her testimony.

Mr. MINETA. Than you very much. Ms. Wingen?

Ms. WINGEN. Thank you very much, Mr. Chairman, and other members of the Subcommittee on Surface Transportation. I am here today as both a person with a disability and an advocate for persons with disabilities in the St. Cloud, Central Minnesota, area.

I am currently the founder and executive director of a non-profit organization by the name of Advocacy Plus Action, INC. I am here in support, basically, of what Mr. Tripp has already outlined. The ability to get from one place to another, as well as to get there inexpensively and quickly, has become a necessity for any American who wants the opportunity to be employed, to participate in recreational activities, to enjoy a full and stimulating life. However, the reality is that a significant minority of the nation's population does not have the mobility that most people take for granted. To be a person with a disability and disadvantaged can mean exclusion from the social and economic mainstream of American society. Until December of 1974, most people with disabilities, in the St. Cloud area, had to rely almost entirely on friends and relatives for travel.

Because of advocacy efforts on the part of the local disabled population, along with nondisabled individuals, the St. Cloud Metropolitan Transit Commission realized this basic transportation need and has since provided disabled persons who are not able to use fixed-route transit service with door-to-door service. In fact, St. Cloud Specialized Transit Program for people with disabilities was the first of its kind to be developed in the state of Minnesota and, I am very proud to say, it is, perhaps, one of the first established in the United States. I just want to interject, here, that you keep in mind that this happened without the existence of enforceable rules and regulations, either on the state or federal level—504 had been passed but had not been enforceable at that point.

Even with the passage and enforcement of Section 504 of the Rehabilitation Act of 1973, some communities, municipalities and/or entities throughout the country still provide little or no transportation services for citizens with disabilities.

Certainly, in areas where this is true, the Americans With Disabilities Act of 1989 addresses the discrimination faced by disabled persons who are attempting to live normal and independent lives. This landmark legislation affords citizens with disabilities the same equality of opportunity which our nation values so highly, but sometimes, takes for granted.

Disabled citizens of St. Cloud, Minnesota, however have one particular concern about the Americans With Disabilities Act of 1989. Locally, persons who are disabled, have often discussed door-to-door transportation versus on-line accessible, transit. Within these discussions, several pertinent issues have come to surface. First, the existing Specialized Service Program is providing an excellent and necessary service to local disabled persons who are mobility-impaired. The program features two Orion II buses with front and rear ramps, an air-suspension kneeler, front-wheel drive, forward-facing wheelchair positions and an extremely flexible seating plan. These are backed up with two older-model buses which have conventional lifts, located in the rear of each vehicle, and are able to accommodate three people in wheelchairs and six seated passengers. In addition, a back-up service, through use of taxi cabs, is available for persons who are semi-ambulatory. Currently, well over 1,000 citizens who are disabled and mobility-impaired utilize the service to get to and from different functions, social activities, work, etc. On the average, 4200 trips are provided, per month, to persons, with disabilities, by this service.

Secondly, because inclement weather conditions are the "norm" in this part of the United States, during six months of each year, just the act of getting to and from regular pickup points in the winter is an insurmountable barrier. Too many individuals with disabilities experience just as many difficulties in warm climates as in cold.

Thirdly, if a disabled person were able to make it to a regular bus stop or pick-up point, he or she would not necessarily be assured of a place to sit on the next available bus. According to the present text of the Americans with Disabilities Act, not all vehicles, within a fixed-route public transportation system, need to be readily accessible to individuals with disabilities. Furthermore, vehicles, which are determined to be accessible, will only be able to accommodate a certain number of people with disabilities. This is especially true with respect to people who use wheelchairs. If I were able to get to a regular route, pick-up point, the next available bus might already be filled with people who are mobility impaired and would not have room to pick me up because of lack of tie downs. If this kind of situation should arise, what then happens? Do I wait for the next available bus to come through? Do I go back to my home or wherever I came from? This is especially pertinent with respect to people who utilize wheelchairs for mobility.

Operational problems relating to lift or ramp reliability, transfers and maintaining fixed-route schedule flexibilitas could be extremely difficult to resolve. If such a situation should prevail, persons with disabilities would, once again, be perceived as the "bad guys."

If the Americans with Disabilities Act passes into law, as it presently is written, St. Cloud's Specialized Service Program for persons with disabilities could, eventually, be greatly diminished. True, the Americans With Disabilities Act does not create an either/or situation that forces transit agencies to choose between fixed-route accessibility and paratransit service. The bill mandates both types of service. When a body such as the St. Cloud Metropolitan Transit Commission is required to spend thousands of dollars in making the on-line service accessible, it only makes sense that it would not want to continue spending X amount of dollars to provide the current level of door-to-door service. At the same time, if the same body is mandated to provide both services, it will first look at its budget, and cut costs, whenever possible. If the latter is the case, it could very well happen that costs will be cut whenever possible and necessary and, in the end, both the regular route service and the paratransit would be ineffective.

My one question to you is why should cities such as St. Cloud, Minnesota be penalized for complying with existing laws in regard to providing accessible transportation for persons with disabilities and, at the same time, has a proven track record of success? Rather, members of the Subcommittee on Surface Transportation are encouraged to support an amendment to ADA which would encompass a waiver for existing door-to-door service.

I want to stress that throughout the whole process, from 1974 to this present day, people with disabilities have continually been involved in making the decisions that have been made. They are the people that have said, "We want the door-to-door service. We don't want the regular route service to become accessible."

I have one other letter that I would like to be recorded into the record to support my testimony.

[The letter referred to follows:]

DISABILITIES COUNCIL • ST. CLOUD AREA
P.O. BOX 5004 • ST. CLOUD, MINNESOTA 56302
PHONE: (612) 255-1882

MEMBER AGENCIES

Assumption Home
Benton County Health
Bureau of Education
Catholic Charities -
  St. Cloud Diocese
Central MN Council Boy Scouts
Central MN Mental Health Center
Development Education Corporation
Division of Rehab Services
Division of Rehab Services -
  Workers Comp. Unit
Glasrock Home Health Care
Handicap Club of Central MN
Home Medical, Inc.
Job Service
Med Home Care Equipment
Minnesota Services for the Blind
  and Visually Handicapped
Murphy Med-Cab
National Federation of the Blind -
  Central MN Chapter
Opportunity Training Center
People Too - Center for Independent
  Living, Inc.
Pilot Parents of Central MN
Reach-Up, Inc. - Head Start
St. Cloud Hospital -
  Rehabilitation Center
St. Cloud ARC
St. Cloud Area Family YMCA
St. Cloud Metropolitan
  Transit Commission
St. Cloud Recreation Division
St. Cloud School District 742 -
Community Education
Sherburne County Health Services
Stearns County Community
  Health Services
Students Aware and Involved
  With Disabilities
United Cerebral Palsy of Central MN
VA Medical Center
WACOSA
West Central Office -
  Epilepsy Foundation of MN
Whitney Senior Center

September 18, 1989

To Whom It May Concern:

The Disabilities Council - St. Cloud Area is an organization comprised of disabled individuals, agencies that provide services or products to people with disabilities and other interested citizens. The stated purpose of the Council is to enhance the quality of life for all people with disabilities. Our current membership consists of eighty-two (82) members.

As president of the Disabilities Council - St. Cloud Area, it is my firm belief that the transportation section of the Americans with Disabilities Act, as introduced, would not benefit the disabled community in the St. Cloud area and could cause adverse effects on the disabled population who must rely on public transportation. I have had conversations with numerous disabled people who use the door-to-door service in our area and no one has indicated that they thought mainline accessible transportation would be beneficial to them.

I would like to tell you about my personal situation. I am a T-6 level paraplegic with average arm strenght. I use a manual wheelchair. I do drive my own car but on rare occasions do use public transportation (i.e., when my car is inoperable or the winter weather is severe).

Recipient of the 1984 Minnesota Human Rights Award
Decade of Disabled Persons 1983 - 1992

If mainline accessible transportation were available, I could use it in good summer weather. However, on rainy days I would not use it. It is impossible to hold an umbrella and manuever a manual wheelchair. Ponchos are not practical for wheelchair users. In winter months I would not attempt to use it. I would never know if I could get to or from a bus stop due to unshoveled snow or snow ridges. Since I do not have any sensation or mobility from the chest down, I would not dare to risk the chance of frost bite should it become necessary to wait outside for more than ten minutes.

The Disabilities Council - St. Cloud Area has not taken a position on the transportation section of the ADA bill, at this point. However, the topic will be discussed at our regular membership meeting scheduled for September 25, 1989. At that time we do plan to present a resolution in opposition to this section of the bill. We would like to have the opportunity to submit the results of the vote on the resolution to you before you make any further decision on the bill.

It is my feeling, and I believe the clear consensus of the disabled community in this area, that each local community should have the option of deciding wheter or not they wish to expend funds for accessible mainline buses.

Respectfully,

Richard M. Visser

Richard M. Visser, Pres.
Disabilities Council - St. Cloud Area

I thank you very much.

Mr. Mineta. Thank you very much, Ms. Wingen for your testimony, and Mr. Tripp. Mr. Tripp, what are your costs per ride in providing paratransit services? You mentioned it in the testimony. What was that figure?

Mr. Tripp. Mr. Chairman, that is a fully-allocated cost of, I believe I said, $4.10 per passenger trip.

Mr. Mineta. Would it be less expensive to provide many of these rides on your fixed-route system or use your paratransit vehicles to feed riders to a fixed-route system?

Mr. Tripp. Mr. Chairman, I have seen usage figures and costs according to lift purchase and lift maintenance and what not that have an enormous range, an enormous range of costs. Obviously, our current fixed-route ridership cost is $1.09. The specialized service is $4.10. It is cheaper in that analogy to have more fixed-route ridership. But I think the point is that you have got to get out to the route. In St. Cloud, that is five, six months of the year, not realistic.

Mr. Mineta. In this picture that has been provided to the members of the Committee, is this vehicle now in its fully-retracted position, or is that the level at which——

Mr. Tripp. Yes; the picture of Mrs. Brengman in front of the St. Cloud Clinic is where the rear end has kneeled or deflated to within four inches of the street. The one of her getting into the vehicle in the alley, it looks like that is, probably, also kneeled at about eight inches from the street.

Mr. Mineta. What would be the clearance in its normal driving——

Mr. Tripp. Twelve inches.

Mr. Mineta. Your regular buses would be what kind of clearance?

Mr. Tripp. I am not that sure, on my regular fleet.

Mr. Mineta. So this would not get impaired, given your snow fall, et cetera? You don't have problems with it in the snow fall in getting around?

Mr. Tripp. No, we really haven't had any problems because we do, again, go through a lot of alleys and into people's driveways with the vehicle and have never experienced those problems.

Mr. Mineta. Earlier, you may have heard some testimony regarding the operation of wheel-chair lift equipped buses in cities with heavy snowfall. Of course, we heard about Buffalo and their 96 inches a year. Why do you think that you will have a problem with providing accessible service when Buffalo has committed to 100 percent accessibility?

Mr. Tripp. Mr. Chairman, if the mandate was there—the transit system, or the agency, was to provide accessible service, I don't feel there would be a problem in providing the accessible service. I question the use of the accessible service. I think if we take a look at use figures everywhere, even the most successful systems—Seattle or wherever—that you will see that door-to-door has much better ridership figures.

Mr. Stangeland. If the gentleman would yield. I think, Mr. Tripp, you have not quite explained it. I understand the Chairman better than you do. You can provide the service, but the user can't use it. Buffalo can provide that service but the Kathy Wingen's aren't going to be able to use it.

If you comply with the law to provide the service, that's great. But what have you done for the handicapped if they can't utilize the system. That is the point these people are trying to make.

Mr. **Mineta**. Has there ever been an occasion on which paratransit service has been denied to anyone because of snow fall at a time when your regular bus service was still operating?

Mr. **Tripp**. No. In fact, Mr. Chairman, it is almost the counter. There are times when, in icy conditions, the large rear-engine rear-wheel drive buses start slipping and sliding on the crowns of the road. We will pull off our fixed-route fleet before the special-service fleet because they are front-wheel drive and the traction is that much better.

Mr. **Mineta**. Very well. Thank you.

Mr. Stangeland?

Mr. **Stangeland**. Mr. Chairman, I don't have any questions. I think both have given excellent testimony, as I knew they would. I have to tell you something just a little bit humorous. I have known Kathy and, as I said, she heightened my sensitivity to the handicapped. I have known her for a long time. I suspected—and I looked through her resume today—that she might be a Democrat. I see on her resume that she is an active Democrat.

I would like to ask you one question, Kathy.

Ms. **Wingen**. Sure.

Mr. **Stangeland**. You, certainly, are in full agreement with the current law and the thrust of this legislation, which is to be certain that the handicapped are provided transportation as well as the non-handicapped.

Ms. **Wingen**. That is correct.

Mr. **Stangeland**. Thank you.

Mr. **Mineta**. Mr. Laughlin.

Mr. **Laughlin**. Mr. Tripp, I come from a rural district. I appreciate the fact that the population of St. Cloud is around 40,000. If that is the case, I have one community out of a very large area that is about 40,000. All the rest are in the area of 10,000 or smaller.

Do you have any feeling—I notice you testified that you did not recommend mandated services on all the fixed-routes. Do you have some suggestion what we in rural areas of towns of 2,000 and 5,000 population might do to help those with mobility problems?

Mr. **Tripp**. Congressman Laughlin, Minnesota has a very extensive rural and small-town transit program. There are about 65 various contracts that the Minnesota Department of Transportation has with a variety of counties and very small cities that then extend five miles or so out from their little 2000 population city.

Basically, all of those vehicles are smaller minibus, twenty-one-foot-sized vehicles and are accessible. So some of them have defined routes but with a route deviation ability so that if someone does call in that lives one or three or whatever miles from that normal route, the bus can then leave the route and go pick up that rural resident. I am hoping that is answering your question that again, in Minnesota, when we start getting out into the rural areas, those systems that do have some type of form of public transportation, that those minibus vehicles are lift-equipped.

Mr. LAUGHLIN. As I think through my district, I think there are two communities with inter-city transit systems out of 253 communities. I can think of two where there is intracity transportation and very little other inter-city transit systems within this area.

I was just wondering what your experience was in the St. Cloud surrounding area for providing transit services to those with mobility problems. Do you rely upon a call-in system out in these small communities outside of St. Cloud?

Mr. TRIPP. Again, the small communities around St. Cloud, all three counties that surround St. Cloud, do have established rural transit systems. So there is a call-in opportunity. Those counties or small towns that do not have an organized public transit system usually go through a county social-service program and a volunteer-ride program or something like that.

That still doesn't address the question of the intercity, the Greyhound if we want to call it by name, transit service. To my knowledge, it is not a severe problem, but I am not educated enough, really, to give you the best answer on that with regards to Greyhound and Minnesota.

Mr. LAUGHLIN. Thank you very much. I appreciate the testimony both of you have given us. It has been very informative to me. Thank you, Mr. Chairman.

Mr. MINETA. Thank you.

Mr. Lipinski?

Mr. LIPINSKI. I have no questions.

Mr. MINETA. Nothing? All right.

Mr. Tripp, Ms. Wingen; thank you, again, very, very much for your eloquent testimony here and suggestions that you have made. I appreciate very much your being here and we will be taking that into very serious consideration.

Mr. TRIPP. Thank you.

Ms. WINGEN. Thank you.

[Mr. Tripp's and Ms. Wingen's prepared statements follow:]

METROBUS

ST CLOUD METROPOLITAN TRANSIT COMMISSION
WAITE PARK SAUK RAPIDS ST CLOUD MINNESOTA
[illegible] FRANKLIN AVE N.E. ST CLOUD MN 56304 (612) 251 1499

STATEMENT BY
DAVID W. TRIPP, ST. CLOUD, MINNESOTA
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
HONORABLE NORMAN Y. MINETA, CHAIRMAN

SEPTEMBER 20, 1989
2167 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

COMMISSIONERS [illegible] CHAIRMAN/SECRETARY [illegible] VICE CHAIRMAN [illegible] TREASURER [illegible] MEMBER
EXECUTIVE DIRECTOR DAVID W. TRIPP

Good Afternoon Chairman Mineta, Mr. Shuster, my own Congressman Mr. Stangeland, and distinguished members of the sub-committee. My name is David Tripp. I am the Executive Director and Chief Executive Officer of the St. Cloud Metropolitan Transit Commission, a political subdivision of the State of Minnesota. I'd like to thank you for the opportunity for me to appear before you today.

St. Cloud Metropolitan Transit Commission, or MTC, serves a 3 city service area of approximately 54,000 people with two services: a fixed route fleet of 21 diesel buses with 12 routes, nine of which pulse out of a downtown transfer location every 30 minutes, and a Specinlized Service fleet of 4 buses for mobility impaired citizens utilizing driver-assisted, door-to-door service.

More specifically, the MTC's Specialized Service system was Minnesota's first door-to-door service. The six service criteria for specialized services as established by the U.S. Department of Transportation in 1986 have all been exceeded by the MTC. Furthermore, the 3% minimum expenditure is far exceeded with 12.8% of its total annual operating budget expanded on Specialized Service. The MTC has further invested into several modern, state of the art accessible mini-buses. For your information, there are approximately 1,100 registered passengers in our program, and the great majority are over the age of 65. There are an average of 190 passenger trips per day for an annual total of 50,000 trips. The average fully allocated, cost per trip in 1988-1989 is $4.10. Total annual budget is $210,000.

The fixed route system, for your information, has an annual ridership of 1.4 million, or 28 passengers per hour, at a fully allocated $1.09 cost per trip. Total annual operating budget is $1,430,000.

The reason I am before you today is that I'm concerned about the mobility needs of all citizens in the St. Cloud area. I, as a public transit professional, having worked with the disabled and non-disabled citizenry in designing their transportation programs that are requested and utilized, am here to inform you of some facts many believe are being overlooked or overshadowed by discussions to date on mainline transit accessibility, in particular some factors regarding small urban cities in northern states with winter conditions.

St. Cloud MTC and its disabled citizenry has continually put its money and efforts into its Specialized Service because in Minnesota, a fixed route accessible transit system would realistically become unaccessible to disabled citizens for 5 months of the year. St. Cloud has very real conditions that laws are not able to change: e.g.

1) health endangering frigid temperatures
2) neighbors who don't shovel their sidewalks within a day or two or three after snowfall
3) snow plow hills/ridges that border every street and intersection in our cities

If a disabled citizen depends on public transit for their job, for school or college, or physical therapy or whatever, they need reliable and safe MOBILITY- the type of mobility our Specialized Service provides and a fixed route accessible cannot.

St. Cloud's disabled citizenry realizes this and since 1980, from the meetings and public hearings on 504, has argued that the limited governmental subsidies and local efforts should be expended on the mobility service needed and requested by the tremendous majority of disabled citizens. Accessible fixed route transit will cost additional local funds for lift purchase, lift maintenance, driver training and other operational features. There is a very legitimate fear that with this additional fixed route expenditure decisions in the future to not increase Specialized Service may be made.

I'd like to have distributed among the Committee some photographs of Mrs. Elodie Brengman of St. Cloud, shown being picked up in her back alley for a trip to the St. Cloud Clinic. Mrs. Brengman is 80 years old, and lives independently in her northside home. Once a user of our fixed route, prior to her disabling accident in 1983, Mrs. Brengman uses our Specialized Service to go to the doctor, buy groceries and other staples, and to visit her husband in the nursing home. As stated earlier, the great majority of our registered passengers are over the age of 65 and many share the same needs as Mrs. Brengman. As a transportation professional, I just hope that with all this discussion on accessibility and mobility that the Mrs. Brengman's of this country are not forgotten about and allowed to slip through the cracks; I do question if their mobility needs are being adequately represented?

I must also express some very genuine concerns about the negative impacts mandated accessibility will have on small urban fixed route systems like St. Cloud's. As remarked earlier, St. Cloud has a timed-transfer, pulse routing system; picture for example, a wagon wheel with spokes and a hub. The current system has 30 minute and 1 hour routes, or "spokes" which meet every 30 minutes (15 and 45 after the hour) for a "timed transfer" at the downtown terminal, or "hub". There are three minutes in the schedule allotted for transferring, and believe me, transfer conditions can frequently be tight. If the fixed route system was made accessible, boarding-tiedown-deboarding time requirements would necessitate changes to the route and schedule system. The options are:

1. Extend all 30 minute routes into 35 or 40 minute routes to accommodate limited number of disabled riders.
    A. Lengthens transit travel time for all transit passengers, making transit even less convenient and resulting in patronage loss.

B. Current 30 minute system is easy to understand; changing it to 35 or 40 minutes would complicate schedule understanding.

2. Cut off far ends of each route to be able to still make a 30 minute pulse.

   A. Reduces availability of public transit to all citizens, resulting in patronage loss.

3. Leave 30 minute route structure the same and when a disabled citizen rides, transfers are probably missed downtown.

   A. Would result in bitterness from non-disabled passengers missing transfers with a 30 minute minimum and possible 1 hour layover, and would also result in decreased fixed route patronage.

In either one of the above three options it turns out to be a lose, lose, lose situation for current fixed route ridership. If St. Cloud was in a southern or milder climatic location, we could realistically offer fixed route accessibility, and lessen the amount of Specialized Service with the "savings" to be put back into fixed route's added costs for accessibility. But we are not in a southern or mild area, and to see reduced fixed route mobility for what's been documented as low usage of accessible transit is totally counterproductive to transit's goal to get people out of their cars so to clean up the air, reduce traffic congestion and gridlock and provide sensible land use.

The St. Cloud Metropolitan Transit Commission requests that this committee realize that what St. Cloud is currently practicing and committed to is superior to what most other transit systems are practicing, and that our disabled citizenry be allowed to decide what type of transit service best meets their mobility needs. We respectfully request that an amendment allowing for local option, or at a minimum, the ability to request a waiver to the Secretary of

Transportation, be written into this historic legislation.

Mr. Chairman, members of the Committee, thank you for your consideration. I would be happy to answer any questions whatsoever, however I ask that Ms. Kathleen Wingen from St. Cloud be allowed to give her testimony first.

DAVID W. TRIPP

1317 South Broadway Avenue
Sauk Rapids, MN 56379
Home: (612) 255-1115; Business (612) 251-1499

EXPERIENCE:

1979-present	Executive Director, St. Cloud Metropolitan Transit Commission, St. Cloud, MN •Chief Executive Officer of public transit political subdivision with 44 employees, $1.7 million operating budget and 25 transit buses.
1977-1979	Transit Coordinator, City of Winona, MN •Developed, implemented and administered Minnesota's first paratransit system
1975-1977	Administrative Intern, City of Winona, MN •Confidential researcher for the City Manager

PROFESSIONAL ACHIEVEMENTS:

1989-present	Board of Directors, Minnesota Public Transit Association
1987-1988	President, Minnesota Public Transit Association
1988	Transit Professional of the Year, Minnesota Public Transit Conference
1987-1988	Founder and Co-Coordinator, Minnesota Quality Transit Coalition
1985-1986	Vice President, Minnesota Public Transit Association
1977-present	Conference Panelist: -Numerous Minnesota Public Transit Conferences -Testimony at U.S. House, Transportation Subcommittee (Appropriations), 1988 -Minnesota Metropolitan Planning Organization Annual Conference, 1988 -Minnesota Good Roads Annual Meeting, 1988 -American Public Transit Association; Detroit 1986, San Francisco 1987 -Minnesota North Star Transportation Conference, 1987 -Washington State Transit Conference, 1987 -Illinois Public Transit Association Spring Conference, 1987

EDUCATION:

1974	Southern Methodist University School of Law, Dallas TX
1973	University of Minnesota, Minneapolis, MN Bacholor of Science Degree: Political Science and Sociology
1969	Owatonna High School, Owatonna, MN Graduate with Distinction

COMMUNITY EXPERIENCE:

	St. Cloud Rotary Club
1988-1990	*Board of Directors
1985-present	*Member
	St. Cloud Chamber of Commerce
1985-present	*Municipal/Metro Division Member
	Bethlehem Lutheran Church, St. Cloud
1984-1986	*Property Board of Directors
1980-present	*Member
	St. Cloud Childbirth Education Association
1981-1984	*Board of Directors
1982-1984	*Newsletter Editor

TESTIMONY BEFORE THE MEMBERS
OF THE SUB-COMMITTEE ON TRANSPORTATION

Wednesday, September 20, 1989

Submitted By:

Kathleen T. Wingen
Executive Director
Advocacy Plus Action, Inc.
P.O. Box 5001
St. Cloud, Minnesota 56302
Phone: (612) 253-9062

MR. CHAIR AND MEMBERS OF THE SUBCOMMITTEE ON TRANSPORTATION -

The ability to get from one place to another, as well as to get there inexpensively and quickly, has become a necessity for any American who wants the opportunity to be employed, to participate in recreational activities, to enjoy a full and stimulating life. However, the reality is that significant minority of the nation's population does not have the mobility that most people take for granted. To be a person with a disability and disadvantaged can mean exclusion from the social and economic mainstream of American society.

Until December of 1974, most people with disabilities, in the St. Cloud area, had to rely almost entirely on friends and relatives for travel. Because of advocacy efforts of the local disabled population, the St. Cloud Metropolitan Transit Commission realized this basic transportation need and has since provided disabled persons, who are not able to use fixed route transit service, with door-to-door service. In fact, St. Cloud's Specialized Transit Program for the people with disabilities was the first of its kind to be developed in the State of Minnesota and I am very proud to say, perhaps one of the first established in the United States.

Even with the passage and enforcement of Section 504 of the Rehabilitation Act of 1973, some communities, municipalities and/or entities throughout the country still provide little or no transportation services for citizens with disabilities. Certainly, in areas where this is true, the Americans with Disabilities Act of 1989 addresses the discrimination faced by disabled persons who are attempting to live normal and independent lives. This landmark legislation affords citizens with disabilities the same equality of opportunity which our nation values so highly, but sometimes, takes for granted.

The disabled population of St. Cloud, Minnesota, however, has one particular concern about the Americans with Disabilities Act of 1989. Locally, persons with disabilities have often discussed door-to-door transportation versus on-line, accessible transit. Within these discussions, several pertinent issues have come to surface.

1) The existing Specialized Service Program is providing an excellent and necessary service to local disabled persons who are mobility impaired. The program features two Orion II buses with front and rear ramps, an air suspension kneeler, front wheel drive, forward-facing wheelchair positions and an extremely flexible seating plan. Two older model buses have conventional lifts, located in the rear of each vehicle, and are able to accommodate three people in wheelchairs and six seated passengers. In addition, a back-up service, through use of taxi cabs, is available for persons who are semi-ambulatory. Currently, well over 1,000 individuals are registered for the Specialized Service Program in St. Cloud. On the average, 4,200 trips per month, are provided to persons with disabilities by the program.

2) Because inclement weather conditions are the "norm" in this part of the United States, during six months of each year, just the act of getting to a regular bus pick-up point in the winter is an insurmountable barrier. Too, many individuals with disabilities experience just as many difficulties in warm climates as in cold.

3) Even if a disabled person were able to make it to a bus stop, he or she would not necessarily be assured of a place to sit on the next available bus. According to the present text of the Americans with Disabilities Act, not all vehicles, within a fixed-route public transportation system, need to be readily accessible to individuals with disabilities. Furthermore, vehicles, which are determined to be accessible, will only be able to accommodate a certain number of people with disabilities. This is especially true with respect to individuals who use wheelchairs.

4) Operational problems relating to lift or ramp reliability, transfers and maintaining fixed-route schedule reliability could be extremely difficult to resolve. If such situations should prevail, persons with disabilities would, once again, be perceived as the "bad guys".

5) If the Americans with Disabilities Act passes into law, as it is presently written, St. Cloud's Specialized Service program for persons with disabilities could, eventually, be eliminated or greatly diminished. True, the Americans with Disabilities Act of 1989 does not create an either/or situation that forces transit agencies to choose between fixed-route accessibility and paratransit service. The bill mandates both types of service. When a body, such as the St. Cloud Metropolitan Transit Commission, is required to spend thousands of dollars in making the on-line service accessible, it only makes sense that it would not want to spend x amount of dollars to continue providing the door-to-door service. At the same time, if the same body is mandated to provide both services, it will first look at its budget, and cut costs, wherever possible. If the latter is the case, both services will, most likely, prove to be inaccurate in meeting the needs of disabled citizens.

Why should cities such as St. Cloud, Minnesota, be penalized for complying with existing laws in regard to providing accessible transportation for persons with disabilities and, at the same time, has a proven track record of success? Rather members of the sub-committee on Transportation are encouraged to support an amendment to ADA which would encompass a waiver for existing door-to-door service. In the United States Senate, an amendment in the nature of a substitute to the Americans with Disabilities Act of 1989 is being proposed.

RESUME

KATHLEEN TERESA WINGEN
1553-14th Street Southeast
St. Cloud, Minnesota 56304
PHONE: 612/253-9062

PERSONAL INFORMATION:

Date of Birth: April 28, 1949

Place of Birth: St. Cloud, Minnesota

Marital Status: Single

Social Security Number: 470-64-8915

JOB OBJECTIVE:

With fifteen years of experience, in working with children and adults who are physically and mentally challenged, to my credit, I am seeking a position which utilizes my present skills and talents. My interest is particularly in the availability of educational, governmental, rehabilitation or agency positions, which focus on advocacy, health or social welfare organization management, promotion and public relations.

PROFESSIONAL BACKGROUND:

ADMINISTRATIVE/ORGANIZATIONAL

Organized, managed and administered two innovative public service programs, in the Central Minnesota area, which instituted a number of initiatives to help disabled children and adults assimilate into their social and economic environments. Was responsible for writing the job description which started the first program, the Handicap Services Program at Tri-County Action Programs, Inc., in St. Cloud/Sauk Rapids, Minnesota, and applied for Comprehensive Employment and Training Act (CETA) funds. CETA money supported the Program for its first eighteen months. From 1979-1985, it was funded by local fundraising events, foundation grants and state supplemental grants.

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ADMINISTRATIVE/ORGANIZATIONAL (Continued)

Because of funding from the Division of Rehabilitation Services in Minnesota, during 1985, Handicap Services became an independent program. Thus PEOPLE, TOO! - Central Minnesota Center for Independent Living, was incorporated. In both positions, I worked with a Board of Directors to help establish and implement program goals and objectives, as well as to formulate and follow through with budget planning. Was responsible for training of staff and volunteers at various program levels, and supervised staff and volunteers in all levels of program activities and fund raising.

ADVOCACY

As both a volunteer and professional, advocacy services were provided to many children and adults with disabilities. Advocated, numerous years, on behalf of the total disabled population, and more importantly, assisted on a one-to-one basis, individual people with disabilities. Advocacy services have been provided relative to accessibility, attendant care, education, employment, health, housing, information and referral, legislation, public awareness, recreation and transportation. One of my most successful attempts at advocacy has been my involvement in getting the Specialized Transit System for people with disabilities started, in St. Cloud, in December of 1974. Many disabled individuals require accessible housing in order to lead "normal" lives. After advocating long and hard, regarding the dire need for such housing in the local area, LaPaz Community, a thirty-six unit, totally barrier-free complex, finally became a reality.

DEVELOPMENT/FUND RAISING

Along with organizing, managing and administering two public service programs, in the Central Minnesota area, to provide assistance to children and adults with disabilities, was responsible for both the short and long range financial planning for these programs. Handled all foundation, corporate and individual fundraising, and coordinated the planning and implementation of local special events. These kind of events have included the following: a Trivia Pursuit Tournament; raffles; roll-a-thons; a dance-a-thon; benefit dinners; a benefit jam session; and the selling of ballons, T-shirts and bumper stickers. Most often, these types of activities required the involvement of volunteers. Began with a small volunteer base and was responsible for recruiting and training hundreds of volunteers in various fund raising/development activities. Have written numerous grant proposals and letters of inquiry to foundations, United Way agencies and corporations on a statewide basis, as well as for Federal and State grants, in an effort to raise monies for the "cause".

MEDIA/PUBLIC RELATIONS

During the past ten years, served as a spokesperson for the area's disabled population, as well as on behalf of the programs I directed, before groups, from pre-school age to adults, the press and public officials, to explain necessary programs and to act as an advocate for disabled people. With regard to public relations, have participated in the following: coordinated relationships between appropriate agencies; developed a newsletter, which described available programs and services for children and adults with disabilities; designed and updated brochures; prepared and distributed news releases; took part in media interviews; conducted informal meetings; fulfilled hundreds of speaking engagements; and acted as a contact person for inquiries from other agencies, for speakers, presentations, etc.

In 1983, assisted in the writing and producing of a slide/tape presentation which illustrated the need to change attitudes toward the disabled. Developed and organized a Speakers Bureau to further spread the "word". This Bureau provided community, school and business groups with speakers who addressed a variety of issues pertinent to disabled individuals and interested, informed volunteers. With the help of a local cable station and a volunteer, established a Cable Access Program in early 1987. This half-hour program focused on services and concerns of individuals, within a ten-county area of Central Minnesota, who have disabilities.

SPECIAL EVENTS (COORDINATION & PLANNING):

Over the years, have developed special promotions for the purpose of community-relations programs. My responsibilities have dealt with opening ceremonies, to development of community relations, benefits, publicity, display and volunteer implementation, as well as organization, to carry these out. Special events, which I have planned and implemented, include, but are not limited to, the following: coordinated a Seminar on Employment of People with Disabilities, in St. Cloud, on October 8, 1975; chairperson of the State Picnic for the Service Club for the Handicapped, Inc., in 1975; chairperson of the State Convention of the Service Club for the Handicapped, Inc. in October of 1976; coordinated and planned Handicap Awareness Week activities, in the Central Minnesota area, from 1976 through 1987; coordinated the Region 7 Conference on Handicapped Individuals in June of 1976 and, again, in October of 1977; coordinated activities in recognition of the 1981 International Year of Disabled Persons and the 1982 National Year of Diabled Persons, for the St. Cloud area; coordinated all activities in recognition of the "Decade of Disabled Persons", 1983-1992, for the local area, from 1983-1987; developed the People's Protector Fire Safety Program for St. Cloud in early 1979; co-chairperson for the Opening/Closing Ceremonies, Minnesota State Summer Olympic Games, June 2, 3, & 4, 1982, at St.

SPECIAL_EVENTS (Continued)

Cloud State University, and , again in 1983; planned and coordinated two Job Fairs for People with Disabilities, in the St. Cloud area, in 1985; coordinated the Ms. Wheelchair Minnesota Pageants, from 1984 through 1987; and planned and coordinated the 1987 Ms. Wheelchair America Pageant, which was held in Bloomington, Minnesota, from August 19-23, 1987.

EMPLOYMENT_RECORD:

January 1, 1986 - December of 1987

People Too - Central
Minnesota Center for
Independent Living, Inc.
600 - 25th Avenue South
Suite #110
St. Cloud, MN 56301
Executive Director

January 19, 1978 - December 31, 1985

Tri-County Action Programs
728 South Benton Drive
Sauk Rapids, MN 56379
Handicap Services Director

July 29, 1976 - January 6, 1978

Office of Congressman
Richard M. Nolan
720 St. Germain Street
St. Cloud, MN 56301
Case Worker (Volunteer)

February 10, 1974 - June 15, 1974

St. Francis Xavier School
Sartell, MN 56377
Clerical Work (Volunteer)

October 3, 1972 - June 9, 1973

St. Cloud State University
St. Cloud, MN 56301
Cataloging

QUALIFICATION SUMMARY:

Capable of working well under pressure and communicating and coordinating work with others. Take considerable pride in the quality of my work, and am prepared to work long hours to meet whatever deadlines are imposed.

EDUCATION:

Campus Lab School in St. Cloud; 1955-1965
Sauk Rapids High School; 1965-1968
College of St. Scholastica; 1968-1972;
    B.A. Degree in Sociology
    Minor: Library Science
St. Cloud State University; 1972-1973
    Graduate Work in Information Media

COMMUNITY ACTIVITIES:

President of the St. Cloud Area Council for the Handicapped from January of 1975 through 1978, and 1980 through 1982.

President of the St. Cloud Chapter of the Service Club for the Handicapped, Inc., from the Fall of 1976 through 1979, and from 1984 through 1986.

Secretary of the St. Cloud Chapter of the Service Club for the Handicapped, Inc., from the Spring of 1974 through the Fall of 1976, and from October 1979 to 1980.

State President of the Service Club for the Handicapped, Inc., 1976-1977 and 1977-1978.

Member of the Board of Directors of United Cerebral Palsy of Central Minnesota.

Chairperson of the Board of Directors of United Cerebral Palsy of Central Minnesota from October 1986 through present.

Active in District 17 DFL.

Member of the National Advisory Board on the Handicapped in 1983.

Member of the Vocational Rehabilitation Ombudsman Project Operating Board. Represent the issues and viewpoints of consumers in the Northern Area of Out-State Minnesota, April of 1980 through 1981.

COMMUNITY ACTIVITIES (Continued)

Member of the St. Cloud Advisory Committee for the Minnesota Epilepsy League, April of 1980 through 1986.

Serve on the Eligibility Committee which approves applications for Special Transportation Services to handicapped individuals, provided by the St. Cloud Metropolitan Transit Commission and Yellow Cab Company, December of 1978 through present.

Member of the Community Task Force with the Minnesota State Council for the Handicapped from December of 1979 through April of 1980.

Member of the District 742 Community Education Advisory Council from Spring of 1980 through 1986.

Member of the Independent Living Advisory Committee in Minnesota, September of 1985 through December of 1985.

Member of the Zonta International of St. Cloud, 1981 through 1983.

Patron Member of the St. Cloud Community Arts Council in 1982.

Member of VFW Post 47-48 Women's Auxiliary, 1982 through present.

Member of the Mayor's Advisory Board for Disabled Persons from 1982 through present.

Chairperson and member of the Ms. Wheelchair Minnesota Board of Directors from September of 1984 through present.

Member of the St. Cloud Eagles, Aerie 622, from February of 1985 through present.

Member of the Minnesota State Council for the Handicapped, 1986 - present.

AWARDS:

St. Cloud Chapter of the Service Club for the Handicapped, Inc. in 1975 and 1976.

Outstanding Officer of the Year in 1975.

Outstanding Member of the Year in 1976.

One of eight individuals to receive the Volunteer Activist Award, in Minnesota, in September of 1976.

AWARDS (Continued)

Humanitarian Award, from United Cerebral Palsy of Central Minnesota, in October of 1976.

"Good Neighbor of the Day Award", on WCCO Radio, in November of 1976.

Received a National Citation for Volunteer Activist in April of 1977.

Citation of Honor, from Governor Rudy Perpich, in August of 1977.

Certification of Appreciation, from the State of Minnesota and the Minnesota State Council for the Handicapped, in April of 1978.

Notable Americans Award, from 1978-1979, from the American Biographical Institute, in April of 1979.

Received United Cerebral Palsy Bill of Rights for the Disabled in October of 1979.

Humanitarian Award, from United Cerebral Palsy of Central Minnesota, in October of 1978.

Named one of five Handicapped Persons of the Year in the Midwest, by the Department of Health, Education and Welfare, in October of 1979.

Also, selected as an Outstanding Young Woman of 1979 in November of 1979. Included in the 1979 edition of the Outstanding Young Women in America.

Chosen Outstanding Young Citizen of 1979 by the St. Cloud Jaycees.

Selected as one of ten Outstanding Young Minnesotans for 1980, by the Minnesota Jaycees - February 9, 1980.

Received the Outstanding CAA Program Award for 1979-1980. Presented to the Tri-County Action Program, Inc., for its Handicapped Services Program. Presented by the Minnesota CAP Association.

Selected to receive the 1980 Leadership Recognition Award, from the Minnesota State Council for the Handicapped and the St. Cloud Chapter of the Service Club for the Handicapped, Inc., at the 1980 Minnesota Governor's Conference on Disabled Persons - October 11, 1980.

Received the Honorary Citizenships Award, from the St. Cloud Chamber of Commerce, on May 26, 1981.

AWARDS (Continued)

Inclusion in the third edition of Notable Americans -May of 1981.

The recipient of the Rose and Jay Phillips Courage Center Award, for achievement in employment and community involvement, in October of 1981.

Service to Mankind Award, presented by Sertoma of St. Cloud, in January of 1984.

One of eleven individuals to receive the Eleven Who Care Award, from KARE Television, on April 10, 1984.

Recipient of the Sister Alice Lamb Alumni Award, from the College of St. Scholastica, in October of 1986.

Recipient of the Herberger's Outstanding Community Leadership Award - 1987.

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Mr. MINETA. I would now like to call forward a panel representing the American Public Transit Association; Mort Downey, Executive Director and Chief Financial Officer of the Metropolitan Transportation Authority of New York accompanied by Janis V. Pierce, Board Member, Memphis Area Transit Authority, Dennis Louwerse, Executive Director, Berks Area Reading Transportation Authority.

TESTIMONY OF MORTIMER DOWNEY, CHAIRMAN, APTA LEGISLATIVE SUBCOMMITTEE, FEDERAL POLICY AND PROCEDURE, EXECUTIVE DIRECTOR AND CHIEF FINANCIAL OFFICER, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK, NY, ACCOMPANIED BY JANIS PIERCE, APTA VICE PRESIDENT, GOVERNING BOARDS, BOARD OF DIRECTORS, MEMPHIS AREA TRANSIT AUTHORITY, AND DENNIS LOUWERSE, MEMBER, APTA LEGISLATIVE COMMITTEE, APTA ELDERLY AND DISABLED SERVICES TASK FORCE, EXECUTIVE DIRECTOR, BERKS AREA READING TRANSPORTATION AUTHORITY

Mr. DOWNEY. Thank you for the opportunity to appear before the Subcommittee. As you indicated, my name is Mort Downey from New York. I will be providing APTA's testimony. I am accompanied by Janis Pierce from the Memphis Area Transit Authority and Dennis Louwerse from Berks Area Reading Transportation Authority, Reading, Pennsylvania,

Mr. Robinson is stuck in Michigan due to the flight conditions today. He could not get out of Grand Rapids.

Mr. Chairman, I would ask your permission to put our full statement in the record and merely summarize so that we can get on to your questions.

Mr. MINETA. I do not object.

Mr. DOWNEY. The transit industry which APTA represents, we believe, has achieved substantial progress in meeting and serving the needs of persons with disabilities and the elderly. Even as federal funding for transit has declined in recent years, the proportion of lift-equipped buses in the national fleet has grown from 11 percent in 1981 to more than 30 percent in 1987.

Individual systems are providing service to persons with disabilities through either the use of lift-equipped buses or supplementary paratransit, or a combination of both. New fully-accessible rail systems are now operating in many cities and accessibility improvements are being made to older rail systems as they are being modernized.

In our own system in New York City, the MTA and representatives of the disabled community reached agreement embodies in the state legislation designating a number of the stations within our system as key stations. These are being made fully accessible in conjunction with our station modernization program over a period of years.

The provision of bus lifts for our bus fleet and a city-sponsored paratransit system was also made part of this plan. Within each community, transit has worked with disability groups to meet the transportation needs of the disabled as best they can be met. Obviously, some systems have done a better job than others. Some have

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done it one way, some have done it another. Some have done it with less money.

It is clear that if everyone felt the needs of the disabled had been met, this legislative initiative might not be necessary. But we believe it is, and we pledge, today, to do everything possible to successfully implement the ADA when it is enacted into law.

The transit industry wants the business of disabled persons. We sincerely hope we can work with and enlist the support of persons with disabilities. But we must remember we are in the business of providing mobility to the entire community and we do not want to reduce service in other areas in order to fully fulfill our responsibility to this group of users.

We, thus solicit your support in helping us to implement this historic legislation. As the authorizing committee for public transportation, we ask that you recognize the cost to transit of this bill as you have recognized other costs in the past.

It is difficult to determine what those precise costs will be. But I think everyone would agree the measure will result in additional costs for most transit systems and that these costs could be substantial in all aspects; in the provision of lifts, in the cost of paratransit and in the cost of station access.

Without getting into the specifics of these costs which are covered, at least in general terms in our statement, and there are a range of costs in various cities, let me just comment on a few areas of particular concern.

In terms of the Act's requirement that systems provide comparable paratransit as supplement to fixed-route service, many small systems such as St. Cloud that we heard from just recently who stretched their minimal resources to provide the general use service through time transfers or a pulse system functioning around a common hub have real problems, since they operate with virtually no money to spare, requiring them to supplement their bare-bones service with fully-comparable paratransit could inevitable, or would inevitably, lead to elimination or reduction of some other service.

We would, therefore, request that the committee consider more specific criteria for consideration of exemption from the comparable paratransit requirement than just the "undue financial burden" exemption currently included in the bill. I might note from looking at other testimony that will be given this afternoon, this is a concern for large systems as well as small.

We must also note our concerns regarding the safety of transporting individuals in wheel chairs and the responsibility our transit operators will have for their safety while riding on the bus or rail vehicle. Mr. Robinson would have covered this in more detail in his statement, and we would like to provide that at a later time to the committee.

Currently, persons in wheel chairs cannot meet the governing NHTSA standard for safety unless they are fully strapped in with a three-point harness which could well create both operational and other problems.

The Easter Seal Society is now conducting a demonstration program which you heard of earlier which Congress funded and APTA has vigorously supported. This study, among other issues it addresses, is intended to deal with means by which persons in wheel chairs can be transported safely and with dignity on mass transit vehicles.

We would ask that the ultimate legislation address these concerns including appropriate provisions for standardization and compatibility in securement of wheel chairs.

Finally, we ask that you, as members of the authorizing committee, and the people with disabilities recognize there will be costs, there will be a great deal of work, there will be obstacles involved in successfully implementing the act, and in serving, over time, the needs of the disabled at the same time we serve the needs of the rest of the population.

Thus, we request your continued and, we hope, your expanded commitment to the availability of mass transit for all of our nation's citizens. As we expand our mission to better serve the needs of disabled citizens, we should not reduce our commitment to others.

Mr. Chairman and members of the committee, we thank you for your attention to the statement and we would be happy to answer any questions you may have. Mr. Chairman, Ms. Pierce, who is with me, may have a time problem with respect to a flight and I would ask if she might say a few words before we get into questions, in case she has to leave.

Mr. MINETA. Surely. Please, Ms. Pierce, feel free to proceed.

Ms. PIERCE. Thank you very much. I appreciate the opportunity to be here. I have been asked to outline the Memphis system and the effect that the Americans With Disabilities Act would have on our system. I have been a member of the Board for approximately eight years now. We have an extensive paratransit system.

One of the most difficult things that we have done in our deliberations on the Board has been to decide how best to allocate rather meager funds. This committee is probably more aware than most of the constant struggle that our public transit providers have with funding. Memphis is not unique. We are a metropolitan area of approximately a million. We are rapidly approaching a million.

Federal funding has, essentially, been frozen since 1981 with a resulting 50 percent reduction in purchasing power. Each year, we go head in hand to the federal, state and local government for funding. The federal funds have been cut. The state funds have increased, and local funds have, in fact, pretty much kept up with inflationary costs.

We do not have a dedicated source of funds. We do not have any means of levying a tax, instituting bonds or even borrowing money independently. Our state, constitutionally, cannot levy an income tax. Consequently, those tax funds that are those funds that would be necessary in order to implement this would come from the regressive taxes which would, in fact, hit those people who are our transit-dependent riders most heavily, from gasoline tax which, I think is already the highest in the nation. We have a 7.75 percent sales tax and user fees. All of these are very regressive.

At our current budget level, as, I think, everybody here has said, it is very difficult to estimate exactly what impact the ADA would have on systems, but we have, in fact, made a projection and a conservative, very conservative, estimate that takes in only the operating costs and does not include any local capital share which we have assumed would come from other capital sources.

At our current budget level, the Memphis Area Transit Authority would have to eliminate 2.8 percent of its services or 193,626 miles annually. That is approximately 272,000 one-way trips, or 1.9 percent of our total ridership, would be lost due to required service cutbacks. We are, right now, on the verge of having to make either cutbacks or increased fare. Our fare is now 85 cents.

This is based only on additional operating costs which we have projected to be $363,000 per year. I think that is fairly conservative, considering that we have got 238 buses on the street and some 20 paratransit vehicles.

We have worked very closely during the time that I have been on the board, and this was already in place when I came on, with the handicapped community. Last month, for example, to answer some of the questions that came up earlier, or anticipate some of them, we had 10,300 handilift rides. We have an average of 20 wheel chair rides per day. The addition of lifts to our mainline service would not, in fact, probably provide service for the majority of our handicapped community.

The disabled community and the handilift service carries about 4 percent elderly, 10 to 12 percent are in wheel chair and the remaining 84 to 86 percent are, basically, cognitive disability people who go to sheltered workshops and the lifts would not help them.

We have, in the past years, worked with social service agencies to train some 188 of the cognitive disability people to ride our mainstream buses. This has been very helpful in financing and in providing space for additional people to use our handilift service.

In this current year, we will spend over 3 percent. We are not only meeting but surpassing the regulations under the 504 plan. An additional 2 percent, roughly, would be added by the Americans With Disabilities Act if, in fact, we have to provide comparable paratransit service.

In order to continue to provide maximum service while complying with the legislation, we would ask that Congress not require the operation of comparable paratransit, but that it should supplement or coordinate with the fixed-route buses, that the establishment of paratransit eligibility standards and service be left to the local communities and developed in conjunction with the disabled community and that those requirements that are established by Congress be funded by Congress.

The flexibility in determining—several people, including Mr. Capozzi, mentioned that it is difficult to pinpoint the number of people who would, in fact, move to mainline buses. We would, probably, have more riders if we did have mainline bus service. I think, even if we tripled our current wheel chair passengers, that would be 60 per day. That is two ways.

We would ask that there be standard criteria for wheel chair design in order to facilitate the accommodation of wheel chairs on mass transit vehicles and in mass transit facilities and to insure the safety of wheel chair passengers. The number of passengers who would be affected—I told you the percentages—but the numbers of passengers who would be affected if this goes into effect in its present form would be 272,000 rides for our people. Memphis is

50th in a list of 50 cities that are approximately this size in per capita income. We are not a wealthy area. Seventy-eight percent of our people do not have any other means of transportation. Those 272,000 rides would, in fact, probably deprive those people of means of getting to their jobs as well and would, in fact, put them on welfare.

We have tried over the years to provide a balance of the most effective service for the most people in both areas.

I thank you for your interest and for allowing me to participate.

Mr. MINETA. Thank you very much, Ms. Pierce. Mr. Downey, in your testimony, you asked the committee to consider using a more specific rationale than undue financial burden for exempting public transit operators from the paratransit provisions in the bill. As the MTA Chief Financial Officer, I am surprised that you have a problem with the concept of undue financial burden.

But more seriously, from your current view as well as your past experience as Assistant Secretary for Budget and Policy at the Department of Transportation, how would you suggest that we clarify this term or define it more precisely?

Mr. DOWNEY. I think it need to be defined both in terms——

Mr. MINETA. Ms. Pierce, thank you very, very much. I appreciate your being here as well as your service as a Board member there in the Memphis area.

Ms. PIERCE. Thank you, very much. I would be glad to answer any questions in writing.

Mr. MINETA. Thank you. Mr. Downey.

Mr. DOWNEY. I think the criteria have to be both financial and operational. I think the real concern is that paratransit service truly be supplementary, targeted for where it is needed and not offered so broadly as to create a real burden. That has been the approach, for example, in New York under the state legislation. We are offering both lift-equipped buses on our regular routes, and a paratransit service managed by the city.

It is clearly specified in our state legislation that that paratransit service is not to be duplicative of the trips that can be provided by the lift-equipped buses.

Mr. MINETA. Mr. Louwerse?

Mr. LOUWERSE. If I may, I am basically here to speak on behalf of the small operators throughout the country. I think one of our greatest concerns is this clause that says we need to provide comparable paratransit service. There are a number of small operators throughout the country who wonder about the wisdom of having to put lifts on their buses. There are many, for example my own system—I have been since in the 1970's operating a paratransit system that does about 25,000 rides a month, over 4,500 of which are for non-ambulatory persons.

We took an order of buses last month, and 10 of the 15 buses are lift-equipped. We are opening bids on Thursday for another 15 buses. 10 of those buses will be lift-equipped. We operated what is known as a coordinated service; that is, using our resources in our community—we have 170,000 people—the fixed-route buses stay in the urban area. The paratransit does some urban work, but mainly goes to the rural areas.

We send a bus 40 miles to pick up Mary Jones because she has to go to the hospital. This is a van, a specialized van. Now, if I have to run comparable service, I am going to have to take that van which goes to get Mary Jones and run it on a system where now I have already decided, before you have passed the law—that has a lift. So Mary Jones is going to lose service.

So a bill which is supposed to require greater mobility for the citizens of our country will have a negative impact. Specifically, I would suggest from the small operator's point of view, that you allow us to coordinate lift-equipped fixed-route system with specialized or demand-responsive system. I emphasize the word "coordinate," as opposed to comparable because comparable means you have increased my cost, I need more vehicles, and I am going to have to cut service someplace and some people are going to get very disappointed and very hurt.

But if I am allowed to coordinate those two types of service, I think we will see greater mobility needs being met. I think that is the kind of specific situation we would recommend to you.

Mr. MINETA. Can you use your paratransit to feed your fixed-route system?

Mr. LOUWERSE. Yes, we do, as a matter of fact.

Mr. MINETA. It doesn't preclude you from doing that; right?

Mr. LOUWERSE. No. Our system, for example, our specialized transportation system is open to the public, not just people who have special needs. It is open to the public. For example, in our case, the cost of the ride is $6.00. The fare is $4.50.

Mr. MINETA. Is that for operating as well as capital?

Mr. LOUWERSE. That is operating only.

Mr. LOUWERSE. Now, the cost for a fixed-route ride costs me a dollar, and my fare is 75 cents. So our system has agreed to subsidize both the fixed-route system and the specialized transportation system. Why? Because we are in the business of providing transportation to the citizens of our area.

They know me. I know them. I am saying you have this broad ranging Federal mandate. There are a lot of human people who are going to be bypassed. If I may give you just one other good example. Three years ago, in cooperation with our specialized system, our fixed-route system, and the social service agencies in our community, we took 160 people who go to work—these are people with disabilities who go work every day, some to the sheltered workshop, some to other places.

They previously had ridden specialized service. The cost of that ride was around $6.00. We, together, worked and trained these individuals to ride the regular fixed-route bus because the fixed-route bus went by their house. Now, a cost of service that was $960 a day, I reduced to $160 a day, thereby saving my system $800 a day.

We didn't say, "Isn't this wonderful? We saved $800 a day." We said, "Now, we have $800 a day to invest in providing service where there was no previous service." My point to you is that with the opportunity for coordination, not mandated comparability—the idea of getting together and working with your people and providing the best service—whether this is a right, a regulation, that is a debatable philosophical question. What is the reality? We are trying to provide the most mobility with the most effective manner.

Whether you think it is a civil right or whether you think it isn't a civil right, you still want to achieve the same thing; the most amount of mobility for the most appropriate amount of funds. So we would emphasize this coordination of our efforts.

Thank you.

Mr. MINETA. Mr. Downey, regarding the rail provisions of the bill, what criteria were used in New York to identify key rail stations to be made available or accessible?

Mr. DOWNEY. The process, Mr. Chairman, was one of negotiation, partially in conjunction with litigation that was going on and partially in conjunction with prospective state legislation. We sat down with representatives of the disabled community, identified the stations that showed the greatest promise for serving large numbers of people, those stations that were downtown locations, those that were good transfer sites, those that were out at the ends of lines, and we created some flexibility in the process.

The legislature specified 38 of our 465 stations by name and set up a further process where each side, so to speak, would designate another 8 stations or 9 stations. In fact, as it worked out, we jointly designated the remainder and retained some flexibility, as time goes on, to make substitutions and changes in that list.

But it is a relatively small number of stations that cover a wide portion of the system. It will be done over time. There is a timetable for expenditures in the legislation, but not a specific deadline by which the process would be finished. But the cooperative work that went into it has really served us well.

We are now at the point, four years or five years after the bill passed, that the first of those stations are now complete. We will be seeing, within the next year, increasing numbers of stations available and, hopefully, increasing numbers of disabled riders using them.

Mr. MINETA. What has been the experience of the New York MTA in the usage of wheel chair lift-equipped buses in fixed-route service in the metropolitan area?

Mr. LOUWERSE. We operate two separate systems within the metropolitan area. One, of course, is the large system serving New York City. One is a smaller suburban system. In the city system, we have a bus fleet of 3,800 buses. As of today, about 2,900 of them are lift-equipped or 76 percent. We should have that closer to 84 percent when our next bus order is complete. As we have gotten closer to the point of a full lift-equipped fleet, we have seen the rate of increase in the usage go up dramatically.

Four years ago, we were carrying about 11,000 people per year on lift-equipped buses. We are now carrying at a rate of about 40,000 persons per year. That works out to somewhere in the neighborhood in 150 rides a day. But the point is, it is growing very rapidly now that that service is perceived as one that is fully reliable, that basically all buses in the off-peak hours and weekend hours, and the vast majority of buses in the peak hours are lift-equipped, people are coming out and using it.

Mr. SHUSTER. Let me follow up on the 150 rides a day. How many lift-equipped buses do you have?

Ms. PIERCE. We have, as of this point, about 2,900 lift-equipped buses in the fleet.

Mr. Shuster. Which provide 150 rides a day?

Mr. Downey. Per day, yes.

Mr. Shuster. It has been mentioned that the demonstration project raises the problem of the lack of universal applicability of securement devices. How do most transit authorities with experience with lift-equipped buses currently deal with this problem?

Mr. Downey. We have a standard fleet of buses. They all have the same lift and the same securement device. It functions well with the majority of wheel chair users. To the extent that it does not secure any of the existing wheel chairs, it is a point of concern to us, and we instruct the passenger to do whatever they can to assure that their wheel chair is not going to move around.

But we would be more comfortable if we knew that there was a device that all those who present themselves to us could make use of.

Mr. Shuster. You talked about the need to redefine the exemption from comparable paratransit. We had testimony earlier today from the Cambria Transit Authority, which has selected to go the route of lifts on all their buses. I believe if that is the decision that they feel is the best decision for that area, then they should be able to make that decision.

Right across, on the other side of the mountain from Johnstown, Cambria County, is Altoona, Pennsylvania where they have no lifts on the buses but a very extensive paratransit program. What is your view about the various transit authorities being able to make those decisions? Should the transit authorities have the flexibility to decide all lifts and no paratransit, all paratransit and no lifts, or somewhere in between, or should we mandate at the Federal level what this should be?

Mr. Louwerse. I would say that you are finding in the industry, even in the small systems, an increase in the purchase of fixed-route buses with lifts. For example, I know there is some consideration in Altoona right now to look at potentially some vehicles with lifts. The question is like, in my case, we ordered 20 out of 30 with lifts because that is what we feel we need to do the job.

So do we need to spend additional money for the 10 which we don't think we really need? The emphasis I would, again, make is, obviously, there are unique and individual circumstances. I will give you an example of a system in Pennsylvania that has four vehicles. They have a bus, a specialized van, and two station wagons. What is the ADA going to say to that system? Are they going to say, "Well, now are going to get a bus with a lift on," which might be all right, but your specialized van has to run comparable service. So that means you are going to have to cut service for some of your people because now you only have three vehicles instead of, practically, four.

I think what you will find is that there are a lot of systems out there. I think that is being really missed. We hear about the people that are struggling, and there are some places where there is some turmoil. But there are a lot of places where there is a lot of agreement, where you have local people reaching proper decisions on how to best serve their people.

I would say that the greater the amount of flexibility you can provide to the local people to make their own determination, the more responsive that situation will be. I don't think you will find a major outcry if you say, "We think you need to seriously need to look at putting lifts on all new purchases of buses." But I think if you demand comparability, you are going to demand reductions in service. But if you say lifts on buses and coordination with your specialized transportation system, you will see increased mobility.

Mr. **Downey**. I would concur in the same view and draw attention to some special issues like commuter railroads where, as the Chairman indicated, the use of the paratransit as a feeder may be a very appropriate way to make use of both modes. But the parallel 100 mile trips on commuter rail is, probably, a good use of resources.

Mr. **Shuster**. Let me come back to the lift issue again, because I am having great difficulty with it. I mentioned Cambria County which testified earlier today and, indeed, was presented here as the great example of a success story because of all the promotion that went far beyond the issue of simply providing lifts, by providing 100 percent lift, six years in operation.

Yet the statistics they presented was one ride every three days, per bus. Check me on your arithmetic in New York, Mr. Downey. You have 2,900 lift-equipped buses and 150 rides a day. That is one ride per day for every 19 buses.

Mr. **Downey**. I think that is the right arithmetic, yes.

Mr. **Shuster**. I am just astonished by those statistics and how that can be presented as having satisfied the needs of the disabled, when you only have one disabled person on every 19 buses. For every 19 buses out there, one disabled ride a day. It seems to me, there have got to be more disabled people out there who are not being served, it seems to me.

Mr. **Louwerse**. If I may, I ran these numbers last night before I came down here because I think it raises the issue that you have pointed out so succinctly, and that is, we have 14 specialized transportation vehicles that are lift-equipped. We did, last month, 4,547 wheel chair rides on those 14 vehicles.

If you figure five days a week, some days six, depending on how days fell and so on and so forth. Those vehicles cost about $25,000 apiece as opposed to $150,000-some for a transit vehicle. I have, personally, severe reservations that if I took these specialized vehicles off the street and put all lifts on my vehicles, that I would be carrying 4,574 wheel chair users in a little town like Reading, Pennsylvania.

I have made a conscious decision and recommendation to my board, which they approved to put lifts on some of my buses. I am doing the same program that—as you know, Harold Jenkins and I are good personal friends. We are now beginning the program. We are marketing it. We are training our drivers.

I have some severe reservations about whether I made an investment of probably $10,000 to $15,000 a bus plus all that training, and I keep wondering how many of my people really want it. I know from my public, they said, "If we take our vans away, we are going to send you out of town."

Your question is very well taken, I think.

Mr. **Shuster**. This raises a very fundamental—almost a dichotomy, I believe. And I draw on my own personal family experience which I referred to here earlier. It is one thing, entirely, for what I would describe as my good friends, Viet Nam vets who are paralyzed, for example. These are healthy guys who can't walk. And they have the ability to get around, to move those wheel chairs around, to get to the bus stop, to get up on the bus.

They have great mobility, although limited in one respect, as opposed to a senior citizen in a wheel chair who simply doesn't have the strength, the capacity, to get from the house to the bus stop. There is an enormous difference here.

I would say with great respect to my friends who have testified here, mostly from the Washington area, the Viet Nam vets for whom I have the greatest respect, that this represents one category, one point of view—those people who are vigorous, in their youth, yet, and who have the ability to move about, which is entirely different from our senior citizens in wheel chairs.

I think we have got to be very careful here that we not only give great weight to the testimony of these healthy people who happen to have a disability, but also the people who are senior citizens and who don't have that same vigorous health.

I think it is enormously important that we don't skew our thinking because I believe most of the testimony we have received is from the category of what I would say is the healthy person with a disability.

Do you disagree with that?

Mr. LOUWERSE. I would agree 100 percent. I would certainly invite you to come to Reading any time, or any members of the committee. I think that is one of the problems. There has been the discussion about this being a national crisis. I am not saying it isn't a crisis for certain individuals in their life, and there are some major metropolitan areas where the whole idea of mainline accessibility is different.

As you said, you have different types of people who have professional mobility. But there is Mrs. Jones that I have to take 40 miles one way—that is 80 miles a day—to go to the hospital. I have to deal with that realistically every day. And there are other services exactly the same way. I am afraid that this broad-range brush is really going to result in less mobility, and you are not going to hear from—I hate to sort of use this term, but I will—the silent majority who want curb-to-curb service.

Mr. SHUSTER. Thank you very much.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Lipinski?

Mr. LIPINSKI. Thank you, Mr. Chairman.

Mr. Downey, the rail service that you were referring to: is that commuter rail or is that inside New York City Rapid Transit System?

Mr. DOWNEY. The key station concept agreement that I referred to had to do with our subway system inside New York City. We also operate two commuter railroads; the Long Island Railroad and Metro North. While we have no current legislative vehicle or settlement agreement that covers those railroads, we have also proceeded considerably towards making them accessible.

Each of those two railroads has about 50 accessible stations as of this time.

Mr. **Lipinski**. That is 50 out of how many, sir?

Mr. **Downey**. Fifty out of each of them is about 120, 130 stations, so we are——

Mr. **Lipinski**. 260, 250?

Mr. **Downey**. Yes; close to half of our commuter rail stations have become accessible.

Mr. **Lipinski**. Wait a second. You said you made 50 of them accessible?

Mr. **Downey**. Fifty on each of two railroads.

Mr. **Lipinski**. So you have 100 out of about 250 or so?

Mr. **Downey**. Yes.

Mr. **Lipinski**. On your rapid transit system within New York City, itself, how many stations do you have, total?

Mr. **Downey**. 465.

Mr. **Lipinski**. How many have you managed to make accessible so far?

Mr. **Downey**. So far, five under the program that was agreed to four years ago; three more to be completed within the next few weeks; five or six others that were constructed as part of our new routes program, so we are currently, or by the end of this year, should be at about fourteen or fifteen accessible stations.

Mr. **Lipinski**. How long have you been working on that?

Mr. **Downey**. Aggressively since 1985 when the legislation in the State of New York passed.

Mr. **Lipinski**. So about five years?

Mr. **Downey**. We have been at it about four years.

Mr. **Lipinski**. Four years, and you have managed to convert eight of them, plus you have built six new ones?

Mr. **Downey**. Six new stations, yes.

Mr. **Lipinski**. I assume that the 100 that you have made accessible on your commuter rail has been in the last four years, also?

Mr. **Downey**. Most of those have been in the last four years with the remarkable exception of Grand Central Terminal which is seventy-five years old and through planning at the time, other than good architectural design, was an accessible terminal.

Mr. **Lipinski**. Discounting the six new stations that you built that were built accessible, do you have any idea what the cost was of converting these 118 stations?

Mr. **Downey**. The conversion costs within the New York City system have run—it depends on the station and on its own architecture, but they have run from $2 million to $5 million each. The costs on the commuter railroads have been far less because, in most cases, we have been able to do that with ramps leading to the high-level platforms that we use in conjunction with commuter trains.

Mr. **Lipinski**. Do you have any idea what that figure is on the commuter railroad?

Mr. **Downey**. No. I could provide that for the record. I think we have spent, perhaps, $15 million or $20 million in the last five or six years. In many cases, it was in conjunction with the construction of high-level platforms, really at no additional cost because the ramp is used by all of the riders.

Mr. **Lipinski**. Of these stations that you have on your rapid transit line, these stations that you have made accessible, have there been any of these stations that are elevated stations?

Mr. **Downey**. Yes.

Mr. **Lipinski**. How many have there been?

Mr. **Downey**. Of the ones that are completed to date, I believe two or three are elevated stations.

Mr. **Lipinski**. Do you know what the cost has been in regards to those?

Mr. **Downey**. I could provide that for the record.

Mr. **Lipinski**. I would appreciate it.

Mr. **Downey**. They were within that range of the $2 million to $5 million. We had to put elevators up direct from the street. One of those is at 125th Street and Lexington Avenue in Harlem.

Mr. **Lipinski**. If this legislation passes in the form that it is in at the present time, and you have 465 stations, total, and you have probably got 450, we will say, left to make accessible, do you think you can do that in twenty years?

Mr. **Downey**. It would not be our expectation that all 465 or any number like that would be made accessible. We would continue the process, we believe, at the pace we have been undertaking it. We are heartened by the comments in the report on the Senate bill as well as the Administration's view that the current program we are undertaking, in their judgment, would satisfy the goals of this legislation.

Mr. **Lipinski**. Do you have a paratransit operating in New York City, also?

Mr. **Downey**. It is not our system, but under the same legislation, the state required that a Transportation Disabled Committee be set up including representation from the city, from ourselves, from the state and from the disabled community. They have managed the process of implementing a city-sponsored paratransit system.

It has been operating on a pilot basis in the borough of Manhattan and, within a few weeks, will begin on a city-wide basis. As I said, it is run by the city. Under the legislation, they diverted some of the taxes that otherwise would have gone to us to fund this system. Their budget is somewhere in the neighborhood of $10 million a year to provide this paratransit service.

Mr. **Lipinski**. The system, could you give me a little more detail on how it operates?

Mr. **Downey**. It would be a contracted system with private operators. It would provide trips on a subscription basis for regular uses and on a reservation basis for occasional users. There would be some limitation on time. It would operate eight to twelve hours per day, would have approximately 130 vehicles, and would charge fares comparable to the fares charged for regular users, $1.00 to $2.00 for a trip.

Mr. **Lipinski**. Do you have any figures on the pilot program, in Manhattan?

Mr. **Downey**. I don't. I have figures estimated by the city that their expectation is that this aggregate of four burroughs would serve about 500,000 trips a year on a budget of $10 million, which works out something like $20 per trip.

Mr. **Lipinski**. That would take in four burroughs.

Mr. **Downey**. That would cover four burroughs. Later on, Staten Island would be added. I think the plan is to add them early next year.

Mr. **Lipinski**. Thank you very much.

Mr. **Mineta**. Thank you very much, Mr. Downey and Mr. Louwerse. I appreciate your appearing here and look forward to working with you on this.

Mr. **Louwerse**. Thank you.

Mr. **Downey**. Thank you, Mr. Chairman.

[Mr. Downey's prepared statement follows:]

STATEMENT OF THE
AMERICAN PUBLIC TRANSIT ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
HONORABLE NORMAN Y. MINETA, CHAIRMAN

SEPTEMBER 20, 1989
2167 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

American Public Transit Association
1201 New York Avenue, N.W.
Suite 400
Washington, D.C. 20005

APTA WITNESS TEAM

SUBMITTING STATEMENT ON H.R. 2273, AMERICANS WITH DISABILITIES ACT

Mortimer Downey
Chairman, APTA Legislative Subcommittee on Federal Policy and Procedures
Executive Director and Chief Financial Officer, Metropolitan Transportation Authority, New York, N.Y.

Janis Pierce
APTA Vice President, Governing Boards
Board of Directors, Memphis Area Transit Authority

Dennis Louwerse
Member, APTA Legislative Committee; APTA Elderly and Disabled Services Task Force
Executive Director, Berks Area Reading Transportation Authority, Reading Pa.

Claude Robinson
Chairman, APTA Board of Governors Legislative Committee; Former APTA Chairman of Associate Member Board of Governors

STATEMENT OF THE AMERICAN PUBLIC TRANSIT ASSOCIATION BEFORE THE PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE U.S. HOUSE OF REPRESENTATIVES

GOOD AFTERNOON CHAIRMAN MINETA, MR. SHUSTER, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. MY NAME IS MORT DOWNEY. I AM CHAIRMAN OF THE AMERICAN PUBLIC TRANSIT ASSOCIATION'S FEDERAL POLICY AND PROCEDURES SUBCOMMITTEE. I AM EXECUTIVE DIRECTOR AND CHIEF FINANCIAL OFFICER OF THE METROPOLITAN TRANSPORTATION AUTHORITY IN NEW YORK CITY. I'D LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOUR SUBCOMMITTEE ON BEHALF OF THE AMERICAN PUBLIC TRANSIT ASSOCIATION, OR APTA. I WILL TRY TO BRIEFLY PRESENT APTA'S VIEWS ON H.R. 2273, THE AMERICANS WITH DISABILITIES ACT. OUR PANEL, WHICH IS REPRESENTATIVE OF THE TRANSIT INDUSTRY IS PREPARED TO ANSWER ANY QUESTIONS FROM THE SUBCOMMITTEE.

APTA IS A NON-PROFIT ORGANIZATION REPRESENTING LOCAL MASS TRANSIT SYSTEMS. APTA REPRESENTS MORE THAN 400 PUBLIC AND PRIVATE TRANSIT SYSTEMS, AND MORE THAN 430 MANUFACTURERS, CONSULTANTS, ACADEMIC INSTITUTIONS, AND GOVERNMENT AGENCIES INVOLVED WITH MASS TRANSPORTATION.

THE TRANSIT INDUSTRY HAS ACHIEVED SUBSTANTIAL PROGRESS IN MEETING AND SERVING THE NEEDS OF PERSONS WITH DISABILITIES AND

THE ELDERLY. EVEN AS FEDERAL FUNDING FOR TRANSIT DECLINED IN REAL TERMS BY SOME 50 PERCENT OVER THE LAST EIGHT YEARS, THE PROPORTION OF LIFT EQUIPPED BUSES IN THE NATIONAL FLEET GREW FROM 11 PERCENT IN 1981 TO MORE THAN 30 PERCENT IN 1987.

INDIVIDUAL TRANSIT SYSTEMS HAVE PROVIDED BUS SERVICE TO PERSONS WITH DISABILITIES THROUGH EITHER THE USE OF LIFT-EQUIPPED BUSES, SUPPLEMENTARY PARATRANSIT SERVICE, OR A COMBINATION OF THE TWO.

NEW, FULLY ACCESSIBLE RAIL SYSTEMS ARE NOW OPERATING IN SAN FRANCISCO; WASHINGTON, D.C.; ATLANTA; MIAMI; SAN DIEGO; PITTSBURGH; BUFFALO; SACRAMENTO; PORTLAND; AND SAN JOSE. ACCESSIBILITY IMPROVEMENTS ARE BEING MADE TO OLDER RAIL SYSTEMS AS THEY ARE BEING MODERNIZED. IN MY OWN SYSTEM IN NEW YORK CITY, THE MTA AND REPRESENTATIVES OF THE DISABLED COMMUNITY HAVE AGREED, UNDER STATE LEGISLATION, TO DESIGNATE A NUMBER OF "KEY STATIONS" WHICH ARE BEING MADE FULLY ACCESSIBLE IN CONJUNCTION WITH OUR STATION MODERNIZATION PROGRAM OVER A PERIOD OF YEARS.

THE INDUSTRY HAS COMPLIED WITH FEDERAL MANDATES GOVERNING ACCESSIBILITY TO TRANSIT SERVICES BY THE DISABLED. AS AN INDUSTRY, WE SEEK TO SERVE THE TRANSPORTATION NEEDS OF ALL MEMBERS OF THE COMMUNITIES IN WHICH WE OPERATE.

WITHIN EACH COMMUNITY, TRANSIT HAS WORKED WITH DISABILITY

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GROUPS TO MEET THE TRANSPORTATION NEEDS OF THE DISABLED AS BEST IT COULD. OBVIOUSLY, SOME SYSTEMS HAVE DONE A BETTER JOB THAN OTHERS, AND SOME HAVE DONE IT WITH LESS MONEY. IT IS CLEAR THAT, IF EVERYONE FELT THAT THE NEEDS OF THE DISABLED HAD BEEN MET, THIS LEGISLATIVE INITIATIVE MIGHT NOT BE NECESSARY.

WE PLEDGE TODAY TO DO EVERYTHING POSSIBLE TO SUCCESSFULLY IMPLEMENT THE AMERICANS WITH DISABILITIES ACT OF 1989 WHEN IT IS ENACTED INTO LAW. THE TRANSIT INDUSTRY WANTS THE BUSINESS OF DISABLED PERSONS. WE SINCERELY HOPE WE CAN WORK WITH, AND ENLIST THE SUPPORT OF, PEOPLE WITH DISABILITIES TO ADVOCATE THE IMPORTANCE OF INVESTING IN THE TRANSIT INFRASTRUCTURE. ADDING THEIR SUPPORT ON BEHALF OF A VIABLE NATIONAL TRANSIT PROGRAM WILL BE INVALUABLE TO OUR SUCCESS IN SERVING ALL TRANSPORTATION NEEDS.

BUT WE ARE IN THE BUSINESS OF PROVIDING MOBILITY TO THE ENTIRE COMMUNITY, AND WE DO NOT WANT TO REDUCE SERVICE IN OTHER AREAS TO FULFILL OUR RESPONSIBILITY TO THE DISABILITY COMMUNITY. WE WANT TO OFFER MORE AND BETTER SERVICE TO ALL OF OUR RIDERS AS AN INDUCEMENT TO GET PEOPLE OUR OF THEIR CARS AND ON TO MASS TRANSIT. IN THAT REGARD, WE SOLICIT YOUR SUPPORT IN HELPING US TO IMPLEMENT THIS HISTORIC LEGISLATION. AS THE AUTHORIZING COMMITTEE FOR PUBLIC TRANSPORTATION, WE ASK THAT YOU RECOGNIZE THE COSTS TO TRANSIT OF THIS BILL AND CLEAN AIR LEGISLATION. IT IS DIFFICULT TO DETERMINE THE PRECISE COST OF THIS ACT FOR TRANSIT, BUT I THINK EVERYONE WILL AGREE THAT THE MEASURE WILL

RESULT IN ADDITIONAL COSTS FOR MOST TRANSIT SYSTEMS. THESE COSTS COULD BE SUBSTANTIAL.

THE COST OF LIFTS FALLS SOMEWHERE BETWEEN $10,000 AND $15,000 PER BUS, WITH AN ADDITIONAL $1,000 TO $8,000 PER YEAR, PER BUS, IN OPERATING AND MAINTENANCE COSTS.

THE TWENTY YEAR CAPITAL AND OPERATING COSTS OF MAKING KEY RAPID RAIL STATIONS AND COMMUTER RAIL STATIONS ACCESSIBLE COULD RUN TO BILLIONS OF DOLLARS. IN THIS RESPECT, WE WOULD RECOMMEND THAT THE BILL EXPLICITLY DELEGATE TO A LOCAL PLANNING PROCESS WHICH INCLUDES REPRESENTATIVES OF THE DISABILITIES COMMUNITY, RESPONSIBILITY FOR DEFINING THOSE "KEY STATIONS" TO BE MADE ACCESSIBLE AS PART OF MAKING A RAIL SYSTEM ACCESSIBLE WHEN VIEWED IN ITS ENTIRETY.

THE COST OF PARATRANSIT IS SUBSTANTIAL. APTA HAS CALCULATED THAT IT COSTS SOME $3.32 PER TRIP IN CAPITAL AND $6.13 PER TRIP IN OPERATING COSTS FOR PARATRANSIT. MORE THAN 70 MILLION PARATRANSIT TRIPS WERE PROVIDED IN 1987. IT IS DIFFICULT TO PROJECT HOW THE BILL WILL AFFECT PRECISELY THE NUMBER OF PARATRANSIT TRIPS PROVIDED. ALTHOUGH, SHOULD SYSTEMS BE REQUIRED TO CONTINUE TO OPERATE BOTH THIS TYPE OF SERVICE AS WELL AS FULLY ACCESSIBLE FIXED-ROUTE SERVICE, ONE COULD PRESUME AT LEAST NO FEWER RIDES.

IN TERMS OF THE ACT'S REQUIREMENT THAT SYSTEMS PROVIDE COMPARABLE PARATRANSIT TO SUPPLEMENT THEIR FIXED ROUTE SERVICE, MANY SMALL SYSTEMS PROVIDE EITHER "TIMED-TRANSFERS," UNDER WHICH VEHICLES FROM DIFFERENT ROUTES ARE SCHEDULED TO MEET SIMULTANEOUSLY AT COMMON STOPS IN ORDER TO FACILITATE MINIMUM - WAIT PASSENGER TRANSFERS, OR THEY OPERATE WHAT IS KNOWN AS A "PULSE SYSTEM," WHEREBY NUMEROUS VEHICLES ARE ROUTED SO THAT THEY ALL ARRIVE SIMULTANEOUSLY AT A COMMON HUB, PASSENGERS CAN CHANGE ROUTES, AND THE VARIOUS BUSES THEN DEPART AT THE SAME TIME. BOTH SYSTEMS PERMIT TRANSIT OPERATORS TO PROVIDE MORE SERVICE, WITH LESS INVESTMENT IN ROLLING STOCK, AND HAVE THE BENEFIT OF INCREASING RIDERSHIP ON THE SYSTEM'S BUSES BY EXPANDING THE AREA OF SERVICE. SINCE MOST OF THESE SYSTEMS OPERATE WITH VIRTUALLY NO MONEY TO SPARE, REQUIRING THEM TO SUPPLEMENT THEIR "BARE BONES" SERVICE WITH COMPARABLE PARATRANSIT WOULD INEVITABLY LEAD TO ELIMINATION OF "PULSE" OR "TIMED-TRANSFER" SERVICE OR TO THE REDUCTION OF SOME OTHER SERVICE. WE WOULD THEREFORE REQUEST THAT THE COMMITTEE CONSIDER A MORE SPECIFIC EXEMPTION FROM THE COMPARABLE PARATRANSIT REQUIREMENT THAN THE "UNDUE FINANCIAL BURDEN" EXEMPTION WHICH IS CURRENTLY INCLUDED IN THE BILL.

WE MUST ALSO NOTE OUR CONCERNS REGARDING THE SAFETY OF TRANSPORTING INDIVIDUALS IN WHEELCHAIRS AND THE RESPONSIBILITY OUR OPERATORS HAVE FOR THEIR SAFETY WHILE RIDING ON THE BUS OR RAIL VEHICLE. WITH REGARD TO BUSES, RECENT NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA) STANDARDS REQUIRED THAT

SEATS BE CUSHIONED OR COLLAPSIBLE SO THAT INDIVIDUALS CAN WITHSTAND AN EIGHTEEN MILE PER HOUR CRASH WITHOUT SUSTAINING CERTAIN INJURIES. CURRENTLY, PERSONS IN WHEELCHAIRS CANNOT MEET THE NHTSA STANDARD UNLESS THEY ARE STRAPPED IN WITH A THREE-POINT HARNESS. STRAPPING-IN MULTIPLE WHEELCHAIR USERS IN A "TIMED-TRANSFER" OR "PULSE" SYSTEM MIGHT JEOPARDIZE THE COORDINATION REQUIRED FOR SUCH AN OPERATION. BUT MORE IMPORTANTLY, WE DO NOT WANT TO SUBJECT PEOPLE IN WHEELCHAIRS TO A LESSER DEGREE OF SAFETY THAN THAT PROVIDED TO OTHER RIDERS.

THE EASTER SEAL SOCIETY FOR DISABLED CHILDREN AND ADULTS IS NOW CONDUCTING A DEMONSTRATION PROGRAM, WHICH CONGRESS FUNDED AND APTA HAS VIGOROUSLY SUPPORTED. THE STUDY, AMONG OTHER ISSUES IT ADDRESSES, IS INTENDED TO DEAL WITH HOW PEOPLE IN WHEELCHAIRS CAN BE TRANSPORTED SAFELY AND WITH DIGNITY ON MASS TRANSIT VEHICLES. WE WOULD ASK THAT THE BILL ADDRESS OUR CONCERNS IN THIS RESPECT, AND THAT IT MANDATE SPECIFIC DESIGN STANDARDS FOR WHEELCHAIRS WHICH ARE COMPATIBLE WITH WORKABLE SAFETY RESTRAINTS AND WHICH FACILITATE THE ACCOMMODATION OF WHEELCHAIRS IN TRANSIT VEHICLES AND FACILITIES.

WE FURTHER ASK THAT YOU, AS MEMBERS OF OUR AUTHORIZING COMMITTEE, AND THAT PEOPLE WITH DISABILITIES, RECOGNIZE THE COSTS, WORK, AND OBSTACLES INVOLVED IN SUCCESSFULLY IMPLEMENTING THE ACT AND IN SERVING THE NEEDS OF THE DISABLED AT THE SAME TIME THAT WE SERVE THE NEEDS OF THE REST OF THE POPULATION. WE

REQUEST YOUR CONTINUED -- AND WE HOPE, EXPANDED COMMITMENT TO THE AVAILABILITY OF MASS TRANSIT FOR ALL OF OUR NATION'S CITIZENS. WE SEEK YOUR COMMITMENT TO TRANSIT IN LARGE CITIES AND SMALL TOWNS, IN RURAL COMMUNITIES AND URBAN AREAS. TRANSIT IS THE SOLUTION TO REDUCING TRAFFIC CONGESTION AND AIR POLLUTION. IT IS A CRITICAL INGREDIENT TO THE ECONOMIC VITALITY OF EVERY COMMUNITY. IT CAN PROVIDE OUR CITIZENS WITH THE ABILITY TO PARTICIPATE FULLY IN OUR SOCIETY AND STIMULATE ECONOMIC DEVELOPMENT NATIONALLY AND LOCALLY. AS WE EXPAND OUR MISSION TO SERVE THE NEEDS OF DISABLED CITIZENS, WE SHOULD NOT REDUCE OUR COMMITMENT TO OTHERS.

MR CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR YOUR CONSIDERATION. WE ARE HAPPY TO ANSWER ANY QUESTIONS WHICH YOU MIGHT HAVE REGARDING OUR PARTICULAR PERSPECTIVES ON IMPLEMENTING THE AMERICANS WITH DISABILITIES ACT.

Mr. Mineta. At this time, I would like to call a panel forward: Mr. John Hudson of the National Rehabilitation Hospital, Washington, D.C.; Mr. Jim Weisman, Program Counsel, Eastern Paralyzed Veterans Association, Queens, New York; and Mr. Henry Mayer, I understand, has a time problem and would like to come forward at this time. So if I could have Mr. Hudson, Mr. Weisman and Mr. Mayer come forward at this point. Mr. Weisman, do you have testimony for submission?

Mr. Weisman. Yes, I do.

Mr. Mineta. All three statements will be received for the record. Mr. Hudson, you may proceed in your own fashion, sir.

Mr. Hudson. Thank you, Mr. Chairman. I would like to defer to Mr. Weisman, if I could, for right now. He would like to present first.

Mr. Mineta. All right, Mr. Weisman

TESTIMONY OF A PANEL, CONSISTING OF JOHN HUDSON, SOCIAL WORK COORDINATOR, NATIONAL REHABILITATION HOSPITAL, JAMES WEISMAN, PROGRAM COUNSEL, EASTERN PARALYZED VETERANS ASSOCIATION, AND HENRY M. MAYER, TRANSIT CONSULTANT, MILWAUKEE, WI

Mr. Weisman. Thank you, Congressman. I have looked forward all day to the opportunity to speak because Congressman Shuster has been asking questions about bus ridership which I don't think have been answered adequately. I think they are fair questions and should be addressed.

I think one of the problems with answering the questions is that the experts should be USDOT. They are, really, new when it comes to advocating for accessibility. They are rookies, essentially, and don't know the right answers to the questions. I think you have to talk about ridership in the context of alternatives.

For example, these people in Seattle that we talk about who are not using the bus. We also talked about the people that are using the bus. If the alternative is to take lifts off buses, to not have lifts on buses and to provide paratransit, the question is what would it cost Seattle to provide those people with rides who are currently using the bus. Would it be cheaper than the current system or more expensive. It would be dramatically more expensive.

This is the way to illustrate it. You heard Mr. Downey say that in New York the paratransit cost is $19.00. The reason that there is no contract in Staten Island is that the bids are all too high, higher than $19.00 a ride. Paratransit costs that sound $4.00 and $6.00 are because they are giving old ladies taxi money.

But lift-equipped van services cost big money. So to substitute people lift-equipped bus rides with paratransit rides is $15.00 a ride, average, nationally in the country. In New York City it is higher because everything is higher. However, New York City's bus lift maintenance cost is about $700 a year. You should know that since we pay the highest labor costs in the country.

If you took a person to work and the subsidy was $15.00 each way, five days a week, 50 weeks a year, the cost is $7,500 a year for one person to go to work. If you took him off the paratransit vehicle and put him on the bus, in two years, he has paid for even the most expensive lift equipment. That means you run that bus free for the next ten. That lift equipment is free for the next ten years if only that one person leaves paratransit.

If you think about paratransit in the abstract, you will find that you have another driver, in addition to the driver who drives the mainline transit, either more self insurance or new insurance problems, maintenance cost, fuel costs, dispatching personnel, routing personnel. It is a very labor-intensive system that does not go down with demand. The more people that use public transportation, the less the cost per ride. The more people that use paratransit, the cost is a relative constant except that the cost of dispatching and routing becomes, perhaps higher, because it is more complicated.

In addition to that, I think that we have the same desires as the gentleman from Reading, Pennsylvania and that this bill addresses his needs and as Congressman Shuster who talked about the elderly wheel chair user. There are no paratransit systems in this country that have enough capacity to provide rides for all disabled people. They just don't. They can't take you where you want to go when you want to go.

So the thing to do is get as many people as possible off of them and into public transportation to provide rides for those who truly need paratransit because, if these healthy Viet Nam veterans that you were describing are clogging paratransit vehicles, the elderly can't go.

In addition to that, these healthy people want to work. And they want to go to work when I do, 8 o'clock, and go home when I do—or before I do, in fact, most days. And that means that there won't be enough paratransit capacity to say nothing of the time in commuting because of surface transit and things like that.

But people want to travel at 8 o'clock and 5 o'clock, or 9 o'clock and 5 o'clock. And you need to use public transit to do that.

The thing that was unsaid about New York City's settlement—I am the lawyer, by the way, that did the settlement with Philadelphia and New York that brought this stuff about—the thing that was unsaid—there are several things unsaid, in fact, that are important—but one is that even though we settled this law suit in 1985, January 1985, I think New York City's paratransit program is beginning operation this week even though our mayor, who was adamantly opposed to accessible transportation, as was every t.v. and radio station and the MTA, because paratransit was easier to accomplish.

The expensive folly, the nightmare, the impossibility of retrofitting existing rail stations with elevators happened before a single paratransit ride was provided. The reason for that is the nature of paratransit. It is tough to deal with. Who is eligible? There is not a politician worth his salt that wants to look at a frail elderly old man or woman and say to them, "You have the ability to use mass transit; therefore you are not eligible for paratransit. Just because you are afraid to use mass transit is not a good reason to be eligible for paratransit.

So the demand is overwhelming for it. It is a demand-creating mode of transportation. A lot of transit systems leave it to their disabled committee to set eligibility which is a convenient way of avoiding responsibility of saying no to old people.

But this is a real mess. And New York City has this mess, to say nothing of the fact that the bigger the geographic area, the more difficult it is to coordinate paratransit trips. If you are familiar with New York City, you will know that New York City has the North Bronx, which is the furthest, most north, point. It has Eastern Queens, which is probably 30 miles away. You could live next door to a person who works in South Manhattan, on Wall Street, in the North Bronx which is also 30 miles in an opposite direction. You need two vans. You need two hours of travel time. You need two drivers.

The vans last three to five years. The bus lasts twelve years. You have capital vehicle replacement costs. There are all kinds of things that were not discussed.

The other thing that you should know is that there are no magic numbers on rail with key stations. The reason we settled for it will probably be about forty-five stations in the end that get made accessible pursuant to our settlement agreement in New York, and the reason we settled for the number you heard in Philadelphia is that because since 1968, every rail station that is renovated in this country with Federal financial assistance has to be made accessible.

This is not a new concept. It has been violated. But it has been the law. Since 1968, every bus terminal built in the United States with Federal financial assistance has to be accessible and here we are, twenty-one years later, deciding whether or not the buses that pull into them should be accessible because of the Architectural Barriers Act.

We knew, and because in New York and now in Pennsylvania as well, and in many states, local laws require stations to be made accessible as they are renovated, that this is not the end, this 45. Just as stations are renovated, they will be made accessible.

So what we are getting is up-front spending to provide a skeletal network of usable rail stations for disabled people which can be supplemented by accessible bus and paratransit services so that disabled people can go to work. If you look at our system in New York City, you see a system in which 3.5 million people a day ride it—I don't know if Mr. Downey is still here—but not one of them likes it. Not one rider likes it, of the 3.5 million.

The reason they ride it is because they want to go to work as cheaply and quickly as possible. If you go down there on the weekend, you will know that is true because ridership is dramatically reduced and the only people down there are poor people without any alternative to using it.

We knew that in New York City, if disabled people were going to get off benefits and go to work, they were going to need cheap, efficient transportation. The more I have worked around the country with disabled groups, the more I find this to be the identical situation.

In the United States only 16 percent of the people who go to work use transit to go. Most of those people are New Yorkers because 80 percent of us use public transportation to get to work. So we are talking, really, in most cities, about probably 10 percent or less of the people that use public transportation. So, of course, ridership is low.

Ridership is low among the able-bodied. Nine out of ten of your neighbors are taking their car to work. Yet we are subsidizing the heck out of mass transit because we think it is worth it, because we listen to the business community and the transit community tell us it is vital to their economic interest to have transit.

It is no less vital to disabled people. In fact, it is more vital because they do not have, either because of severity of disability or poverty or both, the alternative of private transportation. They can't operate their own car, that is.

In addition to that, I don't have to tell you gentlemen what you have done in the last few years for disabled people. Since 1975, disabled children have been mainstreamed into the public school system. There is a new class of disabled person that is graduating high school now; an educated, trained, employable class of disabled persons who need transportation to get to and from work, who are going to join us as living longer than any generation that ever lived before us, who are not going to depend on government benefits to provide them with subsistence level existences.

The likelihood is that I will have to work well into the my 70's or 80's, if I live long enough, to support myself because the benefit system won't provide me with a decent lifestyle. And I am going to have mobility impairments even if I am healthy.

So we have passed laws to make job sites accessible, and housing accessible. This seems like the link. Years ago, we talked to a group of Broadway theater owners about making their theaters accessible. They said, "Well, if we did it, how would you people get here?" And there was no answer to that. There is now. There was no answer to that then.

Transportation is the answer. It is as vital to disabled people as it is to the public. In fact, there is no distinction. I thought Harold Jenkins' approach was the right approach. It is part of transit. You serve the public. When you look at the transit industry newsletters now, you find that transit is acknowledging special populations for several reasons.

It is losing ridership. The public is disenchanted with it. New York City has no graffiti cars now. There is not a single car with graffiti on it in the system. Yet if you asked most New Yorkers who see it every single day, "Do the cars have graffiti on them?" they would say they are loaded with them because it is perception.

That lady's perception from St. Cloud, Minnesota that she can't use the bus, is right. She cannot. But if she lived in Buffalo and her neighbor, who is just as disabled as she was riding it, she would be riding it. This is all perception. Those kids who graduate school are going to expect to ride the bus, and their able-bodied peers who went to school with them since they are five-years old are going to expect them to ride it.

That kid is going to be student-body president. He is not going to expect to stay home when he graduates high school. He is going to be the straight-A student, the superachiever. He is also going to be a moron. It runs the gambit. And they are going to have the identical transportation needs as the rest of the population.

In fact, I have spent time—I am the only one, I think, in the United States, at this point who has reviewed the 504 plans that have been submitted to DOT. I spent some times two weeks ago on a room surrounded by them. This comparability thing on paratransit we have to address.

First of all, comparability does not mean equal. Comparability has been, essentially, the law since 1982, 1983, when you passed the Surface Transportation Assistance Act Amendments calling for minimum service criteria. The only thing is that DOT copped out, and rather than—they mandated same geographic area, comparable fare, comparable service hours.

But rather than really mandate it, they said, "Spend 3 percent and you don't have to do it." It is not a new concept. And DOT has known for years, and does APTA. I am surprised to hear them saying this today, that comparable doesn't mean equal. They will never have to duplicate the commuter rail system with 100-mile paratransit trips, nor will they have to have 3-minute headways on paratransit if bus systems have 3-minute headways.

They have always argued that it is specialized service, it costs more to provide, as door-to-door and bus service isn't. There should be some leeway. And the disabled community is practical and only wants to ride. It doesn't want to bankrupt the system. So I don't think anyone expects comparable to mean equal.

I thank you for your time.

Mr. MINETA. Thank you very much, Mr. Weisman.

Mr. Hudson.

Mr. HUDSON. Mr. Chairman, members of the subcommittee. My name is John Hudson. I am a resident of Montgomery County, Maryland. I am currently employed as a social-work coordinator to the National Rehabilitation Hospital in Washington, D.C. I have used Montgomery County paratransit from November, 1985 to the present.

On April 10, 1989, at 6:30 a.m., I was informed that I would no longer be able to use the paratransit bus because my wheel chair could not be secured. Since April 10, I have become acutely aware of the inadequacies, the inaccessibility, and the inability of the paratransit system to meet the needs of the physically disabled in Montgomery County.

I am a person with a physical disability and consider myself handicapped when placed in an environment that I cannot manage, and I am now handicapped.

I would like to review my experience with paratransit. In August of 1987, I relocated in Gaithersburg, Maryland. This was done only after I coordinated my move with the dispatcher of paratransit to make sure that I would be able to get a bus that would be able to take me to the Metro. My home is located within one block of a fixed-route, now.

Here I was picked up at 6:30 a.m., and transported to the Silver Spring Metro for thirteen months. My return trip was to Shady Grove Metro where I was picked up by Barwood taxi, a minivan with a portable ramp, operated by a private company under contract with Montgomery County paratransit. I had the good fortune, immediately, of finding a driver on whom I could depend to show up and to make me aware of his variations in his schedule.

On April 10, 1989, I was faced with an unannounced change. I left the apartment at 6:15 to find no vehicle waiting. At 6:30, when the Office for Paratransit opened, I contacted them and found that

I had been transferred to Barwood Taxi for the morning trip, as well. At this time, I was assured that Barwood was aware of the change.

I contacted Barwood. They had no knowledge of such an arrangement and I was told that they could not accommodate me that morning. I recontacted paratransit. A vehicle was dispatched and I arrived at Shady Grove Metro at 7:00 a.m., forty-five minutes behind schedule. This meant that I missed my bus at Fort Totten, thus making me approximately an hour and forty-five minutes late for work.

In the evening, I was able to make arrangements with a Taxi-Plus driver to transport me both ways in the future. This was necessary because my regular dependable driver was no longer available. The rest of the week, I was picked up and dropped off within fifteen minutes; I am told that this was an allowable amount of time.

On April 18, 1989, no Taxi-Plus arrived. I contacted Barwood. The regular driver was unavailable, but I was reassured that a cab was minutes away. They dispatched another cab which arrived forty-five minutes late. That evening, I was required to wait an hour for a taxi, again after being told the cab was minutes away.

On April 19, the cab was one hour and forty-five minutes late in the morning. In the evening, it was a thirty-minute wait. On April 20, the taxi was fifty-five minutes late in the morning. On April 21, I was transferred to another taxi company. The driver assured me that he wanted the fare in the morning and the evening and would be reliable.

Between April 24 and April 26, the service deteriorated. I began with a thirty-minute wait and culminated with no service, at all, provided on April 26. On April 26, I was transported by Montgomery County paratransit, since neither Barwood nor Montgomery County taxi had available accessible service.

Throughout this time, I have maintained contact with the Paratransit Office. On April 27, at approximately 4:30 p.m., Montgomery County Paratransit contacted me to report that the transportation for the 28th was questionable. Barwood Taxi contacted me that evening at home, at 7:30, to inform me that I could be transported if I could be ready at 5:30 a.m.

This left me unclear if this meant I would be picked up at 6:00, 7:30, 9:00 and if, in fact, the 5:30 time was accurate, I would have to start getting ready at 4 o'clock to meet the 5:30 time. I refused the offer. I was not transported.

Service was, again, begun with Montgomery County Taxi on May 1. The service was, again, unreliable with no service being provided on the first day. The same was true for May 8 and May 11. Not once from April 10 to April 20 was I secured properly in the taxicab, even though this is why I was transferred, because they had adequate tie-down systems. Yet, this was not done. It seems that the drivers did not receive adequate training and they were unfamiliar with the tie-down systems and would use them only at my insistence.

On or about June 1, 1989, the original, dependable, driver returned and my transportation again stabilized. The scars of this experience run deep. My livelihood was threatened, as was my sanity. It was a constant struggle and the memory lingers on.

I am never quite sure that I will arrive on time at work or at home. This is not a healthy way to greet the day. How many able-bodied citizens would tolerate a fixed-route bus system which was this unpredictable? I need equal access if I am able to compete in the work place and to meet my employer's expectations. I need a system that permits recreational outings and permits spontaneity in my life. How many people arrange their leisure outings or shopping outings twenty-four hours in advance?

This means that buses need to be equipped with hardware that can accommodate wheel chairs. It means that a paratransit system would be available to augment the fixed-route system. It means that drivers would be trained and required to use tie-down equipment in their vehicles. This means that transportation would be available to physically disabled individuals at the same times on the same days and for the same reasons as able-bodied people.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Hudson.

Mr. Mayer, we will receive your statement for the record. Please proceed.

Mr. MAYER. I am going to summarize this in the interest of time.

Mr. MINETA. We appreciate it.

Mr. MAYER. My name is Henry Mayer. I am a resident of the City of Wauwatosa, which is a suburb of the city of Milwaukee. Today, I hope to bring two perspectives to this issue of providing public transportation to the disabled.

I offer you the perspective of a person who has devoted thirty-six years as a career employee of the transit system serving metropolitan Milwaukee, the last sixteen years as operations manager, general manager and managing director of this 600 bus operation carrying some 65 million riders each year.

But of equal importance, I offer the perspective of a disabled citizen. I suffered from necrosis of my two hips. My hips had crumbled. They were replaced by artificial hips in June of 1977 and, thanks to medical science, I am no longer dependent on a wheel chair. But I do believe that my job experience and my disability have made me particularly aware of the needs of the disabled in transportation.

As an aside, I should say one of the problems of myself as a handicapped person was the necessity to park around the corner in my wheelchair while my wife would hail a taxicab at the curb, because a New York cab driver was reluctant to pick me up. So I am somewhat aware—very much aware—of the problems of handicapped people.

There has been a great deal of rhetoric exchanged between the transit providers and the disabled people over the last ten or fifteen years on this subject. It now appears that lift-equipped buses may be mandated, rather than the local option that we have been operating under for the last seven years.

Milwaukee has been providing a successful paratransit program for a number of years. In addition, we also had accessible buses for several years. To that extent, Milwaukee can be considered a test case of the two programs. In 1978, the state of Wisconsin made funds available to improve transportation for the elderly and disabled. A committee of public officials, disabled persons and the transit operator was formed to determine the most effective method for accomplishing this end.

The program ultimately agreed upon was a user-side subsidy program for wheel chair users. This is where the existing providers of lift-equipment taxicabs were used to provide service for these people. The user-side subsidy program did not, and does not, limit trip making by purpose or frequency, thereby allowing individuals to pursue their own interest in shopping, educational, social or recreational areas rather than rely on group activities sponsored by social agencies.

Initially, each program participant paid a dollar for each one-way trip and Milwaukee County paid the remaining cost. By 1981, 15,000 trips each month were being provided under the user-side subsidy program of which some 10,500, or 70 percent, were trips by wheel chair users.

While the user-side subsidy program was developing, the Milwaukee County Transit System, in answer to a court injunction, instituted wheel chair lift-equipped bus service on seven routes in April of 1979. A sixth route was added in May of 1979 with a total bus requirement on those six routes of 59, out of the 100 buses that we had.

In 1980, an additional 150 lift-equipped buses were delivered, and lift service was expanded to 17 routes. At that time, we had a total of 250 lift-equipped buses. Usage of the lift-equipped buses by wheel chair users was minimal. On the other hand, the ridership on the user-side subsidy program grew rapidly and was, clearly, the choice of eligible, disabled individuals.

The fact that usage of a fixed-route transit system requires that an individual must independently transport himself or herself to a bus stop appears to have more to do with the inaccessibility of a transit system than the entrance steps of the bus.

The user-side subsidy program, by providing door-to-door service, even at greater cost per ride to the individuals, was clearly the preferred transportation mode of the mobility-impaired of Milwaukee County. In fact, the total ridership on lift-equipped buses during it's two and three-quarter years of operation was equal to less than four days ridership on the user-side subsidy program.

In a typical month, approximately 60 one-way rides were taken on lift-equipped buses by wheel chair users. On the other hand, over 10,000 trips were being taken monthly by wheel chair users in the user-side subsidy program.

Approximately 5,600 persons with disabilities were registered for the user-side subsidy program on which 4,200 were wheelchair users. Based on the origins and destinations by users of accessible buses, it is estimated that fewer than 25 different individuals ever use the accessible buses in almost three years of operations.

The conclusions were apparent. The use of taxis and vans and door-to-door service did, in fact, provide effective mobility for wheelchair users while lift-equipped buses provided only a symbolic accessibility which can be utilized effectively by only a very small number of persons in wheel chairs.

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In Milwaukee, the acquisition and the utilization of lift-equipped buses and fixed-route service resulted in significantly increased capital and operating costs while having no real effective impact on the mobility of wheel chair users. Based on the figures that the UMTA representatives gave this morning, to reinstitute lifts on our buses would involve a capital outlay of approximately $8 million and a maintenance outlay of approximately $1 million each year.

In April, 1982, an agreement was reached with the disability community to discontinue the lift-equipped bus operation and to concentrate our efforts on the user-side subsidy program. Today, in 1989, a monthly average of 30,000 disabled riders, of which 80 percent, or 24,000, are wheelchair users, are using the user-side subsidy program.

7600 persons are registered to user service of which 6100 are wheel chair users. The average subsidy has been $7.98 per ride so far this year. Cost-wise and service-wise, this program has proven to be an effective means of mobility for the disabled community in Milwaukee.

The annual cost of providing this service, this subsidy, is approximately $3 million, equal to 4 percent of the transit budget. The lifts in the 250 lift-equipped buses had an original cost of $2,500,000. Because of the hostile environment, the lifts which were located in the step wells and exposed to the elements, which is not an insignificant consideration in Milwaukee, there were frequent and chronic maintenance problems.

Maintenance costs per lift are approximated at $2,000 annually and, according to what UMTA said today, that appears to what it is still running. On a per-ride basis, maintenance costs, alone, approximated $1,000. The user-side subsidy program, on the other hand, requires no public capital investment and the public cost, per ride, averages $8.00.

The user-side subsidy program has increased the participation of disabled Milwaukeeans in our community even though the method used may be a separate transit service and not considered mainstreaming.

This program, however, to me, represents what may be termed "effective mainstreaming," eliminating those aspects of using a transit system which prevents access to that system but providing the individual with actual mobility so that he or she can be in the mainstream of society and take advantage of the educational, medical, social, shopping and whatever other needs he or she might want to do.

Although improvements have certainly been made in bus-lift technology since the Milwaukee experience, the point is that only a relatively few disabled persons have real effective access to accessible transit vehicles.

The accessible bus provides, bus-stop-to-bus-stop mobility and, perhaps, with experience, technology will overcome the difficulties we had with the lift and a much-improved lift, certainly, is possible. However, the unfortunate truth of the matter is that, however perfect the technology, lift-equipped buses cannot provide effective mobility for many or most disabled persons in areas such as Milwaukee County.

The barriers for the typical disabled person in a wheel chair to get to a bus stop are, oftentimes, much more severe than the bus steps, themselves. This can include the lack of sidewalks, the lack of curb cuts, wide streets, distance, hills and, of course, the snow, ice and cold for which Milwaukee is famous.

I might add that inclement weather in Milwaukee, with snow plows throwing up snow and with the individual homeowners responsible for the cross walks where, if they clean them at all, is maybe a foot-wide path, the obstacles to the wheel chair user with the Milwaukee snowfall, which averages 40 to 42 inches a year and a mean winter temperature of 28 degrees, can be significant.

Based on the Milwaukee experience, persons with disabilities prefer, if not require, door-to-door service. Don't take my word for it. The disabled of Milwaukee have expressed themselves in the most dramatic way, not by politician pressure, not by demonstration or letters, but by actually using paratransit over accessible buses when both are available.

I have attached a ridership count on the accessible buses, by month, showing how ridership varied.

There is no question that the disabled deserve true mobility and the Milwaukee area is dedicated to the fact that there will be mobility for the disabled. There is also no question that the bus, as we know it, can be made more accessible to many disabled people. But we feel we should be expending our efforts to having larger destination signs, signalling devices to aid visually-disabled people, visual aids to help the disabled with hearing problems.

Instead, we are spending large amounts of money, large amounts of time and energy on lifts that, if operated perfectly, would only serve a few people.

A transit vehicle, be it bus or rail, is but one means of accessibility to reach facilities. It is my belief that persons in Milwaukee need accessibility to work, to school, to recreation and to all the other riding objectives the same as any other person. The symbolic mobility provided by a bus lift is a cruel joke for the disabled when, in fact, it is unusable by the great majority of these individuals.

If the Milwaukee experience is at all indicative of the problem of transportation for the disabled, there is no real question of choosing alternatives. One program meets the mobility needs of the disabled, the other program makes buses, but not necessarily the bus system, accessible.

In the two-and-three-quarter years of lift bus operation, the user-side subsidy program provided an excess of 280,000 trips of which 195,000 are wheel chair users. The lift-equipped buses, in this same time period, provided 1,495 trips for wheel chair users.

Door-to-door service is not simply preferable to lift-equipped buses, but it is essential if true mobility rather than symbolic accessibility is the desired effect. Few communities can afford both. Local option and cooperation with the disabled community has been working in Milwaukee.

Thank you for your attention. I would be pleased to answer any questions.

Mr. Mineta. Thank you very much.

Mr. Weisman, in your testimony, you had indicated that the Eastern Paralyzed Veterans Association was successful in bringing suits against MTA as well as SEPTA; is that correct?

Mr. WEISMAN. Yes.

Mr. MINETA. In those instances, the suit was based on what?

Mr. WEISMAN. In New York City, it was based on the Public Buildings Law of New York State which required that when it defined a public building as a state or municipal structure, or buildings renovated with state or municipal money, and included transportation stations and terminals in the definition of public building, and said that when they were renovated or newly constructed, that they had to follow the New York State building code for facilities used by the physically-handicapped.

That law had been enacted in 1974 but was never followed by MTA. We sued them in 1979. Luckily, MTA had raised $5 billion for capital improvements to revitalize the system, and MTA was refusing to obey the state law and put ramps and elevators in as they renovated subway stations.

They were choosing to renovate, of course, key stations, the ones the public wanted to use most. We were lucky enough to be able to get a court to order them to put elevators in as part of the scope of the project. They refused. This was State money, for the most part, not Federal money that was being used.

They tried to hold the State legislature hostage by saying, "We are not going to renovate the station in your district, Senator, or Assemblyman, unless you change the law and get this disabled monkey off our backs," so to speak. The radio and TV stations and editorials, in fact, supported MTA's position.

But the legislature did not because Governor Cuomo kind of led the charge with us and he, in fact, distinguished himself as the only politician willing to say he agreed with us. When they actually did a cost analysis, they decided it was cheaper to get as many people in public transit as possible.

We have no public paratransit, so there was a choice to be made. And they sat down, when Cuomo got elected, and did an analysis and decided it was cheaper to make transit accessible and forced MTA to do it. We did a settlement agreement with MTA which was then enacted into law and made the law of the state.

If MTA chooses to violate it now, then they are not allowed—the injunction comes back into place, so to speak, and they can't renovate any more stations.

In Philadelphia, we used Section 504 of the Rehabilitation Act because the United States Department of Transportation indicated that even though rail is not a required component of a 504 compliance plan under the existing regulations, the May '86 Regulations, as you renovate stations, they have to be made accessible to be consistent with Section 504's mandate, non-discrimination mandate, and, of course, to be consistent with the requirements of the Architectural Barriers Act, as well

Philadelphia had renovated several stations in violation of that act in that they didn't provide access. So we kind of waived the violations in favor of prospective relief rather than force Philadelphia to tear out new work they had already done.

That is why I pointed out, there is no magic to key stations. You just need enough access to use the system and then you hope that, over the years, as stations are renovated, you will gain more and more and be able to duplicate the travel patterns of the able-bodied.

What we envision in New York and Philadelphia is disabled people using the rail system for long-haul transportation and the bus and paratransit systems, if necessary, for the shorter trips. Surface transit takes a long time so you would use the rail system to get great distances and you probably would have to use a combination of rail and bus to make the system work.

Mr. **Mineta**. Mr. Hudson or Mr. Weisman, are there any elements of what you heard APTA saying that causes any alarm or any concern about "commitment" to ADA?

Mr. **Weisman**. They are better than they have ever been, you know that.

Mr. **Mineta**. Given that, yes.

Mr. **Weisman**. I will tell you, I really feel like—they say they are all for the act. Mort Downey highlighted the St. Cloud system about having these problems of this pulse system and 3 minutes to make a transfer. But the same fellow from St. Cloud told you that disabled people would screw up his transfers, but the six months of bad weather that they experience doesn't screw that up; only handicapped people would.

So you have really got to separate the wheat from the chaff. When we had this out with MA, for example, we sat in Governor Cuomo's office. They brought charts and easels and talked about headway times. And they picked Bowling Green Subway Station which is down by Wall Street and said, "Do you realize that during rush hour,"—I am just going to remember to the best of my memory—"four trains come in every ten minutes on the express track, and five trains on the local track during rush hour? What if a disabled person were to slow that down, what would happen, because they are all scheduled, these nine trains, in ten minutes?"

I said, "Well, you know, I hate asking questions I don't know the answer to in advance, but I live in New York City. I know that doesn't happen. How many trains really came in on that day on time?"

And the answer was four out of nine were on time.

This is not a perfect science. It exists to serve people transit. Buses are late because elderly people go down the steps slowly. No one pushes them out of the way. Even in my city, the most callous indifferent city, with the cab drivers Mr. Mayer had to hide from when he was there—in my city, we have old people using the bus every day and no one shoves them because it is human nature to be accommodating.

When the lifts work on our buses—when we first got those buses working a few years ago, bus loads of callous, indifferent New Yorkers would break into spontaneous applause when disabled people would get on the bus and say, "It is good to see the city doing something for somebody."

It is a nice thing. People feel good about it. They don't feel bad. The fellow from St. Cloud who was worried about losing some of his—these were the words he used—losing some of his "choice ridership." In transit, by the way, choice ridership is people with the fare. So I am not sure who he was referring to.

Transit is for everybody. It is public transit. There is no such thing as choice ridership. I think that is really the message. The problem is I think that APTA is trying to serve too many masters, already. When APTA was saying local option, they meant transit-operator option.

Now there is a mandate for both, which really should satisfy everybody. It doesn't threaten anybody's existing paratransit program to require lifts on buses. That guy from St. Cloud that is worried about it, he is already spending 13 percent of 16 percent of his budget on paratransit. They are decent people. They are spending a lot of money on paratransit. Their heart is in the right place.

How many buses does he buy at a time? He probably buys one bus at a time. He has got a tiny bus system. The lift equipment will cost him $12,000. It will last him twelve years. It will cost him $1,000 a year to buy it and it is going to reduce his paratransit budget, even if he took it right out of his paratransit budget, by merely $1,000.

But, at the same, time, it will reduce the demand for his paratransit. So it might even be a wash. It is tough when you have 437 recipients of UMTA funds for one organization that addressed the needs of the consultants and the manufacturers and the operators and, sometimes, the riding public, even, to represent all that in one testimony.

They are up against it. They had four people at the table saying four different things. That lady from Memphis talked about if they put lifts on their buses that able-bodied people would lose their jobs and go on welfare. She really said that.

Mr. Mineta. Mr. Hudson, what about you?

Mr. Hudson. The thing I think is needed, is a catalyst to bring it all together. I think Mr. Weisman has made a good point in the fact that we have mainstreamed children for a number of years in special education. We are doing our best, for example, in rehabilitation now with spinal-cord and brain-injured folks, people who have had strokes, getting them back in the community.

We know that the key to success is getting people in the community and getting them active. What we need, I think, in my situation, for example, is some meat behind it that is going to cause people to stand and pay attention and try to coordinate a system and try to make something happen.

I think this Act, if it goes through, is going to have that opportunity.

Mr. Mineta. Mr. Mayer, the monthly wheelchair rides on your lift-equipped buses increased from 48 in July of 1979 to 59 in July of 1980 and then it went on to 152 in July of 1981.

Mr. Mayer. That's correct.

Mr. Mineta. Do you think that these increases in ridership would have continued if Milwaukee had not discontinued the purchase of wheelchair accessible buses?

Mr. Mayer. I believe there would have been some increase over the years, but, again, even using the 1981 figures of a yearly total of 832, which is less than three trips a day, is really a very minimal amount at a time when we were, probably, carrying 1.5 million passengers in our regular service each week.

Mr. **Mineta**. In reading your testimony, it appears that in 1980, lifts were available on 17 of your bus routes?

Mr. **Mayer**. Right.

Mr. **Mineta**. What percentage of your routes did this represent?

Mr. **Mayer**. In number of routes, it was, probably about 40 percent. The 17 routes that were chosen were principal routes, the ones that we thought, in working with the handicapped community, would have the principal destinations, the ones with the colleges and universities, the ones with the medical centers, the shopping centers, downtown, of course, the employment opportunities.

It was the 17 principal routes. I should point out that we printed a special map showing these routes. We had special brochures for the riders explaining to them how to make use of the service and that sort of thing.

Mr. **Mineta**. If we had ADA at that point, and all 100 percent of your routes were required to be accessible, would not the use of lifts have increased?

Mr. **Mayer**. Yes, I believe it would have, but I think, instead of three per day, maybe it might have been 30 per day. It would still be a relatively small number compared to the use that we have of the paratransit. The relative use would have still been very small. For the typical handicapped person, I think the door-to-door service provided by paratransit is just a superior service.

Mr. **Mineta**. But wouldn't it have been less costly than paratransit?

Mr. **Mayer**. Yes. Paratransit is more expensive. Milwaukee County made the decision that, despite the expense, we were attempting to provide service to the handicapped community and we did not believe that lifts, by themselves, were really providing transit service to the handicapped community.

Getting to the bus appeared to be a more serious problem than getting on it. Many areas of Milwaukee do not have sidewalks, have no curbs. It is a difficult problem to get to a bus stop in many instances, in the middle of the summer.

Mr. **Mineta**. Mr. Lipinski, do you have any questions?

Mr. **Lipinski**. Thank you, Mr. Chairman. Mr. Weisman, does Philadelphia have a paratransit system?

Mr. **Weisman**. Yes, they do.

Mr. **Lipinski**. Is it very extensive?

Mr. **Weisman**. It is pretty big; yes, sir.

Mr. **Lipinski**. How long has it been in operation?

Mr. **Weisman**. I am not sure; a long time. They are going to testify next, I know, so they can answer that.

Mr. **Lipinski**. You don't happen to know how many riders they have, do you?

Mr. **Weisman**. No, I don't. But I could make it available. I know the fellow who will testify will know exactly how many riders they have. I know him well.

Mr. **Lipinski**. Thank you. It seemed to me that at the beginning of your testimony—and your testimony was very articulate and very forceful—but perhaps I didn't quite pick it up right off the bat. Were you maintaining that to make stations accessible, put the lifts on buses, do anything else that you might have to do with commuter rail or other rail, is less expensive than running a paratransit system?

Mr. Weisman. Yes, it is.

Mr. Lipinski. It is.

Mr. Weisman. I think USDOT agrees with that, and so does APTA. The May 1986 fact-finding record for the 504 Regulations that DOT prepared proved that paratransit is far more expensive than accessible transit. The only issue that was debatable is the effectiveness of one system versus the other.

Mr. Lipinski. How did that come out?

Mr. Weisman. At that time, USDOT said that paratransit is more effective. I should tell you, though, the story of this record. In 1979, when USDOT required essentially what the ADA requires, lifts on buses, accessible retrofitted key rail stations and commuter rail stations and paratransit programs, the Congressional Budget Office did a report saying that paratransit is cheaper than mass transit and made, essentially, a fool of Secretary Goldschmidt and his staff and embarrassed them, terribly.

Secretary Goldschmidt issued a rebuttal, criticizing the fellow who wrote that report and said that it was politically-oriented and transit-operator-controlled and that transit operators were trying to just avoid meeting any mandate. When President Reagan was elected, APTA had won a lawsuit which Secretary Goldschmidt and President Carter would have appealed, but then President Reagan was elected and decided to live with it and they had to write new 504 Regulations, they hired the same consultant USDOT did who used to work for CBO, who they criticized only a year before, to write the new Committee report, the new record, to do the fact finding because they liked the result of it.

So this is like any other beast. It is really political.

Mr. Lipinski. I thought maybe you were going to tell me that he has come up with new results, the second time around.

Mr. Weisman. He did. He came up, now, with paratransit is more expensive but more effective. So paratransit still was more desirable. But the real goal here was to get this away from public-transit operators.

Richard Ravitch, who just ran unsuccessfully for mayor in New York City and ran on MTA for years, is essentially a liberal Democrat. He believed—he doesn't, now, by the way. I wish he were here today to say that—he believed that the transportation problems of disabled people were Social Services problems, they were not public transportation problems. And he fought us tooth and nail because of that. I think that right-thinking transit folks felt that way, too.

Mr. Lipinski. I don't mean to interrupt you, but it has been a long day and I just have one more question, here. If the disabled community prefers mass transit and mass transit is less expensive than paratransit, do you think it is fair, also, to impose upon transportation agencies in this country the dual transit systems, then?

Mr. Weisman. The answer is yes, but you want to know why, too.

Mr. Lipinski. Obviously.

Mr. Weisman. Because you are clearly doing more than you are doing for the able-bodied, if you do that. But it is because transit doesn't exist in a vacuum. That's why. Because it is meeting a need, and the need is to get people, in the case of disabled people—with able-bodied people, to get them to work and to socialize and recreation, but more importantly, in the case of disabled people, to get them off of benefits.

The status quo, doing nothing, is not free to government. Remember 80 percent of the capital and 50 percent of the operating money is federal dollars. So we are talking about government money.

Mr. LIPINSKI. It is all government money, to the best of my knowledge, except the money that comes in at the fare box.

Mr. WEISMAN. Right; and maintaining the status quo or doing nothing, even, doing less than we are doing, is not free. It is very expensive, because disabled people don't die from things they used to die from. They live. And we support them at barely subsistence levels.

Mr. LIPINSKI. We all live a lot longer today.

Mr. WEISMAN. But we support them, and we can't afford to do it. So you have to get people self-sufficient and out there and independent and in the community.

Mr. LIPINSKI. I appreciate very much your answer. Once again, it was a very articulate answer. I would like to discuss this with you further at a later date.

Mr. WEISMAN. I would be happy to.

Mr. LIPINSKI. It is a very late hour, and I have to go someplace and there is a group waiting to testify who I have been waiting to have testify all day, so we had better get to it.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much. Mr. Weisman and Mr. Hudson, thank you very much.

Mr. WEISMAN. Thank you.

[Mr. Weisman's, Mr. Hudson's, and Mr. Mayer's prepared statements follow:]

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TESTIMONY
OF
THE EASTERN PARALYZED VETERANS ASSOCIATION

House Public Works - Transportation Committee
Sub-Committee on Surface Transportation
Hearings on the Proposed
AMERICANS WITH DISABILITIES ACT

Prepared By:

James J. Weisman, Esq.
Program Counsel

September 20, 1989

The Eastern Paralyzed Veterans Association (EPVA) is a membership organization comprised of 2,000 veterans of the armed services who have incurred spinal cord injury or disease. Virtually all of our members are wheelchair users and are unable to use inaccessible transit vehicles and facilities. EPVA appreciates the opportunity afforded us by the U. S. Department of Transportation (USDOT) to participate in this forum concerning the future of the nation's transportation systems.

For many years, EPVA has advocated for the right of disabled passengers to gain access to public buildings and transit facilities.

In 1979, EPVA sued New York City's Metropolitan Transportation Authority (MTA) because it purchased 900 inaccessible buses only weeks before USDOT's first set of Section 504 regulations would have required these buses to be accessible. This was a purchase three times the size of any previous MTA purchase and, at the time, the largest single bus order in United States history.

Moreover, MTA raised 5 billion capital dollars to engage in, among other things, a massive subway station renovation program. MTA refused to include accessibility improvements in their station renovation program.

After 5-1/2 years of litigation, in which EPVA obtained an injunction preventing station renovation unless accessibility components were included, and despite the opposition of New York City's mayor and major newspapers, radio and television editorial boards, MTA decided to settle with us. The result is the retrofitting of key subway stations with elevators, a lift-equipped bus system and a paratransit program.

Recently, EPVA settled a lawsuit with the Southeastern Pennsylvania Transportation Association (SEPTA) and achieved a result similar to that which we achieved in New York City. Key subway and commuter rail stations are being retrofitted with elevators. All newly purchased buses will be accessible and the paratransit system will continue to operate.

Perhaps most significantly, EPVA's lawsuit challenging USDOT's 1976 504 regulations, which was consolidated with another suit brought by Americans Disabled for Accessible Public Transportation (ADAPT), invalidated USDOT's arbitrary and capricious "safe harbor" which allowed transit operators to discriminate on the basis of disability provided they spent an amount equal to 3% of their average annual operating budgets on disabled persons.

The aforementioned references to EPVA's involvement in transit is appropriate because we are not transit experts, we are passengers and potential passengers. We are people who want to get from point A to point B inexpensively and quickly; who want to use transit facilities ostensibly available to the public for all of the reasons that the public chooses to use transit facilities.

For far too long, transit has operated despite the needs of its constituency - the riding public. This generation of Americans will live longer than any generation which preceded it and the next generation of Americans will live longer than this generation. The population will be top heavy with older people with mobility impairments who will be unable to retire and maintain their life-styles since increases in the cost of living will out-pace their pension plans and Social Security retirement benefits. They will need to stay in the labor force and need accessible transportation systems to carry them to and from work. Persons with disabilities, who would have died years ago, are alive today due to advances in medical research and technology. Because of the passage of the Education For All Handicapped Children's Act, in 1975, these disabled individuals are educated and trained and employable. Nevertheless, too many transit systems, which exist to serve the public, would keep this newly educated, trained, ready-to-work population out of the labor force by remaining inaccessible. The public needs these disabled people to work, to contribute to the tax base, instead of depending on it for support. Many levels of government require newly constructed buildings to be accessible, insuring accessibility of the workplace as we enter the twenty-first century. Unfortunately, unless transportation to work is available, these disabled persons will remain homebound and dependent on government benefits to maintain only subsistence level life-styles. The proposed Americans With Disabilities Act will at least insure that disabled Americans have the ability to enter the American mainstream by entering the labor force.

The statute envisions a future in which those who can use accessible buses will use accessible buses, and those who cannot can use paratransit vehicles in lieu of accessible transit to reach accessible transit.

The retrofitting of key rail stations with elevators and ramps is not a new idea. USDOT's 1979 Section 504 regulations required exactly this. Transit operators intimidated the Congress, with outrageously inflated cost systems, into believing that this idea was an expensive folly. Nevertheless, retrofitting is occurring in New York City and in Philadelphia in the subway as well as at commuter rail stations all over the United States, and transit is being benefited, not burdened.

As an able-bodied New Yorker, I know that if I were to fly to St. Louis, Missouri, I would be able to access their bus system. Were I disabled, I would not know until I arrived whether I would be able to use the bus system and, in fact, in St. Louis I would not be able to use the bus system since it is inaccessible.

St. Louis, despite its size, has a very unsophisticated plan for the delivery of paratransit services. St. Louis spends an amount equal to 3% of its operating budget on paratransit services for the disabled. This is St. Louis' Section 504 compliance effort and until new regulations are imposed on transit operators pursuant to our victory in the ADAPT and EPVA v. Skinner case, St. Louis can continue to keep disabled people homebound or under-employed at great cost to taxpayers.

Transit systems exist to serve people who live within the communities in which they operate. Government provides huge subsidies to offset the capital and operating costs of these systems because there is an understanding between the citizens-taxpayers and their elected officials that adequate transportation insures economic vitality. The converse of this principle is obviously true when one considers the economic plight of mobility impaired persons, since without a means of getting to and from work, these individuals are unemployed and depend on taxpayers for subsistence. It is imperative that an economic alternative be available to this population since tens of billions of dollars are spent annually on needs-based disability related programs.

It is important to consider lift-equipped bus costs in light of the costs of the paratransit alternative. The entire capital and operating costs of a lift-equipped bus are offset in two years if one disabled person leaves paratransit and uses the bus to go to work since paratransit work trips cost government approximately $7,500 per person, per year. Since the lift will last approximately 12 years, and its amortized capital cost is $1,000 per year, the government will realize substantial savings in an extremely short period of time by providing lift-equipped bus service. Moreover, the operation of paratransit vehicles as opposed to lift-equipped buses is far more expensive. Paratransit vehicles need drivers - buses already have drivers. Paratransit vehicles need fuel - buses already have fuel. The same can be said for insurance, dispatching, routing and maintenance personnel. Additionally, paratransit vehicles only last 3-5 years compared to approximately 12 years useful life of transit coaches.

EPVA urges the Congress to act quickly to pass the Americans With Disabilities Act. This bill's transportation provisions are desperately necessary to millions of disabled Americans without the ability to travel.

Statement of John Hudson
to

Committee of Public Works and Transportation
Sub-Committee on Surface Transportation
on the
Americans With Disabilities Act

September 20, 1989

I am a resident of Montgomery County, Maryland who is currently employed as a Social Work Coordinator at the National Rehabilitation Hospital in Washington, DC. I have used the Montgomery County Paratransit System from November, 1985 to the present. On April 10, 1989 at 6:30 a.m. I was informed that I would no longer be able to use the Paratransit bus, because my wheelchair could not be secured in the Paratransit vehicles using existing hardware. This came as quite a shock, since I had used this wheelchair from November, 1987 to that date, or approximately five months. Safety was never an issue for me or the system until April 10, 1989.

Since April 10, I have become acutely aware of the inadequacies, the inaccessibility, and the inability of the Paratransit system to meet the needs of the physically disabled in Montgomery County. I am a person with a physical disablity and consider myself handicapped only when placed in an environment which I cannot negotiate. I am now handicapped!

A review of my experience with Paratransit is in order. From November, 1985 to August, 1987 I was transported from 1401 Blair Mill Road, Silver Spring MD to the Silver Spring Metro station a distance of approximately three blocks. I was picked up in the morning at 6:45-7:00 a.m.. The service was consistent and reliable. In the evenings, I was required to wait approximately 45 minutes for the Paratransit vehicle to travel the three blocks. While this was not ideal, especially in winter months, it was tolerable.

In August of 1987, I relocated to Gaithersburg, MD, only after I coordinated with the Paratransit dispatcher to insure that I would be able to continue my service at this new location. (My new residence was located one block from the fixed route Ride-On bus line) Here I was picked up at 6:30

a.m. and transported again to the Silver Spring Metro station for 13 months. My return trip was to the Shady Grove Metro station where I was picked up by Barwood Taxi Plus(a mini van with a portable ramp operated by a private company under contract with Paratransit). I had the good fortune of finding a driver I could depend on to show up each day and to notify me of variations in his schedule.

In September, 1988, with no notice, my morning pick up time was changed to 6:15 a.m. and I was taken to the Shady Grove Metro station. Since I must meet a bus at the Fort Totten station in the District of Colombia to complete my journey to work, this sudden change was disconcerting. Although users are required to notify Paratransit of changes in their schedules at least 24 hours in advance (this advance notice does not insure that accommodations can be made), it is not a practice of the Paratransit system to provide the same courtesy to it's passengers. At this time the schedule for the return trip was not changed.

On April 10, 1989 I was again met with an unannounced change. I left the apartment at 6:15 a.m. to find no vehicle. At 6:30 I contacted the Paratransit office to find that I had been transferred to the Barwood taxi for the morning trip. At this time I was assured that Barwood was aware of this arrangement. I contacted Barwood. They had no knowledge of such an arrangement, and I was told that they were unable to accommodate me that morning.

I recontacted Paratransit, a vehicle was dispatched, and I arrived at the Shady Grove Metro at 7:00 a.m. (45 minutes behind schedule). This meant that I missed my bus at Fort Totten, thus making me approximately 1 hour and 45 minutes late for work. In the evening, I was able to make arrangements with a Taxi Plus driver to transport me both ways in the future. This was necessary because my regular, dependable driver was no longer available. The rest of that week I was picked up and dropped off within 15 minutes of my scheduled times. I was informed by the Paratransit system that a 15 minute wait was considered reasonable.

On April 18, 1989 no Taxi Plus arrived. I contacted Barwood. The regular driver was unavailable but I was reassured that the cab was minutes away. They dispatched another cab which arrived 45 minutes late. That evening I was required to wait one hour for a taxi, again after being told the cab was minutes away.

On April 19, the cab was one hour and 45 minutes late in the morning. In the evening there was a 30 minute wait.

On April 20, the taxi was 55 minutes late in the morning.

On April 21, I was transferred to Montgomery County Taxicab Company. The driver assured me that he wanted the fare in the morning and evening, and that he would be reliable.

Between April 24 and April 26 the service deteriorated. I began with a 30 minute wait and culminated with no service provided on April 26 at all. On the 26th I was transported by Montgomery County Paratransit, since neither Barwood nor Montgomery County Taxicab had an available, accessible vehicle.

Throughout this time I maintained constant contact with the Paratransit office. On April, 27 at approximately 4:30 p.m. Montgomery County Paratransit reported that the availability of transportation for April 28 was uncertain. Barwood Taxi contacted me at 7:30 p.m. to inform me that I could be transported if I could be ready at 5:30 a.m.! This left me unclear if this meant that I would be picked up at 6, 7:30 or 9:00 and if the 5:30 pick up was accurate I would have to get out of bed at 4:00 a.m. to be ready in time I therefore refused this unreasonable offer. I was not transported. Service was again begun with Montgomery Taxi on May,1. This service was again unreliable with no service being provided on the morning of the first day. The same was true for the mornings of May 8 and May 11.

Not once from April 10 to April 20 was I secured properly in the cab or mini van. I informed the Paratransit office of this fact, since I lost the opportunity to be transported on the Paratransit bus for safety considerations. I also reported these serious safety violations to Barwood Cab Company. This had no effect. It seems that the drivers do not receive adequate training since many were unfamiliar with the tie-down mechanism and would only use them at my insistence.

On or about June 1, 1989 the original dependable driver(August 1987-March 1989) returned and my transportation has again stabilized. The scars of this experience run deep. My livelihood was threatened as was my sanity. It was a constant struggle and the memory lingers on. I am never quite sure that I will arrive on time at work or home. This is not a healthy way to greet each day.

How many able-bodied citizens would tolerate a fixed route bus system which was as unpredictable? I need equal access if I am to be able to compete in the workplace and meet my employers expectations. I need a system that permits recreational outings and permits spontaneity in my life. How many people arrange their leisure or shopping outings 24 hours in advance?

This means that buses be equipped with hardware which accommodates wheelchairs. It means that a paratransit system would be available to augment the fixed route bus system. This means that drivers would be trained and required to use the tie-down equipment in their vehicles. This means that transportation would be available to physically disabled individuals at the same times, on the same days, and for the same reasons that it is available to able bodied individuals.

TESTIMONY OF

HENRY M. MAYER

on

AMERICANS WITH DISABILITIES ACT OF 1989

H.R. 2273

Before the

SURFACE TRANSPORTATION SUBCOMMITTEE OF THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

September 20, 1989

MY NAME IS HENRY MAYER. I AM A RESIDENT OF THE CITY OF WAUWATOSA IN MILWAUKEE COUNTY, WISCONSIN. I HOPE TO BRING TWO IMPORTANT PERSPECTIVES TO THE ISSUE BEFORE YOU -- WHAT IS THE BEST MEANS BY WHICH TO PROVIDE PUBLIC TRANSPORTATION TO THE DISABLED. I OFFER YOU THE PERSPECTIVE OF A PERSON WHO HAS DEVOTED MY 36 YEAR CAREER AS AN EMPLOYEE OF THE TRANSIT SYSTEM PROVIDING PUBLIC TRANSPORTATION FOR METROPOLITAN MILWAUKEE (1947 - 1983). THE LAST 16 YEARS WERE SERVED SUCCESSIVELY AS OPERATIONS MANAGER, GENERAL MANAGER AND MANAGING DIRECTOR OF THE 600 BUS OPERATION CARRYING SOME 65,000,000 RIDERS EACH YEAR.

OF EQUAL IMPORTANCE, I OFFER THE PERSPECTIVE OF A DISABLED CITIZEN. I SUFFERED FROM AN AILMENT KNOWN AS NECROSIS OF MY TWO HIPS. IN ESSENCE MY HIPS HAD CRUMBLED AND FOR EIGHT LONG YEARS MY PERSONAL MOBILITY WAS DEPENDENT UPON A WHEELCHAIR, WITH THE ABILITY TO USE CRUTCHES FOR SHORT DISTANCES. THANKS TO MODERN MEDICAL SCIENCE, MY DEFECTIVE HIPS WERE REPLACED WITH ARTIFICIAL HIPS OF STAINLESS STEEL AND PLASTIC IN JUNE, 1977. THIS PROCEDURE WAS REMARKABLY SUCCESSFUL AND, AS YOU CAN SEE, I AM NO LONGER DEPENDENT UPON A WHEELCHAIR.

I DO, HOWEVER, BELIEVE THAT MY JOB EXPERIENCE AND MY DISABILITY HAVE MADE ME PARTICULARLY AWARE OF THE MOBILITY NEEDS OF PERSONS WITH DISABILITIES AND THE ATTEMPTS OF TRANSPORTATION PROVIDERS TO MEET THOSE NEEDS AS WELL AS THE EFFORTS OF THE

CONGRESS, THE URBAN MASS TRANSPORTATION ADMINISTRATION AND STATES SUCH AS WISCONSIN TO ENCOURAGE AND REGULATE SUCH EFFORTS.

THE PROVISION OF PUBLIC TRANSPORTATION TO THE DISABLED IS A SENSITIVE AND EMOTIONAL ISSUE THAT HAS BEEN BEFORE THE TRANSIT INDUSTRY FOR SOMETIME NOW. A GREAT DEAL OF RHETORIC AND VITUPERATION HAS BEEN EXCHANGED BETWEEN VARIOUS GROUPS CONCERNING THE APPROPRIATE METHOD OR METHODS FOR SERVING THE DISABLED. IT NOW APPEARS THAT LIFT EQUIPPED BUSES MAY BE MANDATED ACROSS OUR NATION -- WHETHER OR NOT THAT METHOD IS PRACTICAL OR PREFERRED BY THE LOCAL DISABILITY COMMUNITY.

MILWAUKEE HAS BEEN PROVIDING A SUCCESSFUL PARATRANSIT PROGRAM FOR YEARS. IN ADDITION, WE ALSO HAD ACCESSIBLE BUSES FOR SEVERAL YEARS. TO THAT EXTENT, MILWAUKEE COULD BE CONSIDERED A TEST CAST OF THE TWO PROGRAMS.

IN 1978, FUNDS BECAME AVAILABLE FROM THE STATE OF WISCONSIN TO IMPROVE TRANSPORTATION FOR THE ELDERLY AND DISABLED. AN AD HOC COMMITTEE OF PUBLIC OFFICIALS, DISABLED PERSONS AND THE TRANSIT OPERATOR WAS FORMED TO DETERMINE THE MOST EFFECTIVE METHOD FOR ACCOMPLISHING THIS END. THE PROGRAM ULTIMATELY AGREED UPON WAS A USER-SIDE SUBSIDY PROGRAM FOR WHEELCHAIR USERS. THIS TYPE OF PROGRAM WAS CHOSEN TO ACCOMPLISH THE FOLLOWING OBJECTIVES:

1. TO PROVIDE EFFECTIVE MOBILITY TO WHEELCHAIR USERS.
2. TO PROVIDE THE MOST TRIPS FOR THE LEAST MONEY AT A REASONABLE COST TO THE DISABLED PERSONS.

3. TO KEEP ADMINISTRATION OF THE PROGRAM SIMPLE AND ECONOMICAL.
4. TO ALLOW PROGRAM PARTICIPANTS TO EXERCISE AS MUCH CONTROL AS POSSIBLE OVER THEIR OWN TRANSPORTATION.

THE ADMINISTRATION OF THE PROGRAM WAS ASSIGNED TO THE MILWAUKEE COUNTY TRANSIT SYSTEM AND BEGAN OPERATION IN JUNE, 1978. BECAUSE THERE WERE PRIVATE COMPANIES WHICH PROVIDED BOTH TAXICAB AND LIFT-EQUIPPED VAN SERVICE IN MILWAUKEE COUNTY, IT WAS DETERMINED THAT MILWAUKEE'S PROBLEM WAS NOT SO MUCH THE LACK OF TRANSPORTATION FACILITIES THAT COULD BE USED BY PERSONS IN WHEELCHAIRS, BUT RATHER THAT THE COST OF THAT TRANSPORTATION TENDED TO BE PROHIBITIVE ON AN INDIVIDUAL BASIS. AT THAT TIME, USE OF LIFT-EQUIPPED VANS WAS ALMOST ENTIRELY LIMITED TO MEDICAID SUBSIDIZED TRIPS FOR MEDICAL PURPOSES. IT WAS CONCLUDED THAT A SUBSIDY PROGRAM UTILIZING THE VEHICLES AND DISPATCHING SERVICES OF EXISTING COMPANIES WOULD EFFECTIVELY REDUCE THE COST TO THE RIDER TO A REASONABLE LEVEL AND COULD MEET THE NEEDS OF THE DISABLED PARTICIPANTS.

INITIALLY, BASED ON THEIR PAST EXPERIENCE, THE TAXICAB COMPANIES DID NOT EXPECT THEIR SERVICES TO BE UTILIZED BY PERSONS IN WHEELCHAIRS. HOWEVER, ONCE THE PROGRAM BEGAN, THEY DISCOVERED THAT WHEELCHAIR USERS COULD AND DID USE TAXIS WHEN THE TRIP COST TO THE PASSENGER WAS REDUCED. THE WHEELCHAIR USER MUST BE ABLE TO ACCESS AND EXIT THE TAXICAB INDEPENDENTLY. THE DRIVER, HOWEVER, STOWS THE WHEELCHAIR AND SETS IT UP AGAIN UPON REACHING THE USER'S

DESTINATION. THE LIFT-EQUIPPED VAN COMPANIES ALSO EXPERIENCED LARGE INCREASES IN DEMAND, WHICH WERE EXPECTED, AND DEMAND ALSO INCREASED DRAMATICALLY DURING EVENING AND WEEKEND HOURS.

THE USER-SIDE SUBSIDY PROGRAM DOES NOT LIMIT TRIP-MAKING BY PURPOSE OR FREQUENCY, THEREBY ALLOWING INDIVIDUALS TO PURSUE THEIR OWN INTEREST IN SHOPPING, EDUCATIONAL, SOCIAL OR RECREATIONAL AREAS RATHER THAN RELY ON GROUP ACTIVITIES SPONSORED BY SOCIAL AGENCIES. INITIALLY, EACH PROGRAM PARTICIPANT PAID $1.00 FOR EACH ONE-WAY TRIP AND MILWAUKEE COUNTY PAID THE REMAINING COST.

IN NOVEMBER OF 1978, THE PROGRAM WAS EXPANDED TO INCLUDE PERSONS WHO USE WALKERS OR CRUTCHES OR WHO ARE LEGALLY BLIND. THE PROGRAM USAGE GREW RAPIDLY AND IT WAS NECESSARY TO PLACE MAXIMUM LIMITS ON THE AMOUNT OF SUBSIDY PROVIDED FOR EACH TRIP OF $10.00 FOR PERSONS IN WHEELCHAIRS AND $7.00 FOR OTHER ELIGIBLE PERSONS. BY 1981, 15,000 TRIPS EACH MONTH WERE BEING PROVIDED UNDER THE USER-SIDE SUBSIDY PROGRAM OF WHICH SOME 10,500, OR 70 PERCENT, WERE TRIPS BY WHEELCHAIR USERS.

WHILE THE USER-SIDE SUBSIDY PROGRAM WAS DEVELOPING, THE MILWAUKEE COUNTY TRANSIT SYSTEM, IN ANSWER TO A COURT INJUNCTION, INSTITUTED WHEELCHAIR LIFT-EQUIPPED BUS SERVICE ON SEVEN ROUTES IN APRIL, 1979. ALTHOUGH THESE BUSES HAD BEEN DELIVERED IN MID-1978, LIFT SERVICE WAS NOT INITIATED EARLIER BECAUSE OF MECHANICAL FAILURES AND RETROFIT NECESSARY TO MAKE THE LIFTS OPERATIONAL.

THE LIFTS WERE FINALLY CONSIDERED OPERABLE AND READY TO BE PLACED IN SERVICE ON JANUARY 29, 1979. BUT WITH 34 INCHES OF SNOW ON THE LEVEL IN MILWAUKEE COUNTY, RESULTING IN IMPASSABLE STREETS

AND SIDEWALKS, TO PLACE THE LIFTS IN OPERATION WOULD HAVE BEEN FUTILE. MEANWHILE, THE BUSES CONTINUED TO BE OPERATED THROUGHOUT THIS PERIOD DESPITE THE FACT THAT THE LIFTS THEMSELVES WERE NOT BEING USED. ABOUT TWO WEEKS LATER, IT WAS DECIDED THAT THE LIFTS SHOULD BE CYCLED AT LEAST ONCE A DAY TO PREVENT SALT OR OTHER CORROSION FROM PERMANENTLY DAMAGING THE LIFTS. UNFORTUNATELY, CONSIDERABLE DAMAGE HAD ALREADY BEEN DONE AND, OF THE FIRST TEN BUSES THAT WERE CYCLED, SEVEN OF THE LIFTS DID NOT WORK AND DISABLED THE BUSES. IT WAS NECESSARY TO STOP THE CYCLING EFFORT AND COMPLETELY REWORK EVERY LIFT AND MAKE SURE THAT FROM THEN ON THEY WERE CYCLED EVERY DAY AS THEY WENT THROUGH THEIR TAKING AND WASHING PROCESS EVEN THOUGH THEY WERE NOT ACTUALLY IN USE. ON APRIL 18, 1979, 50 BUSES WITH OPERABLE LIFTS WERE PLACED IN SERVICE ON FIVE ROUTES. ON MAY 28, 1979, A SIXTH ROUTE WAS ADDED BRINGING THE TOTAL BUS REQUIREMENT TO 59.

IT SHOULD BE NOTED THAT IN MAY, 1979, UMTA ISSUED REGULATIONS REQUIRING THAT 50% OF A BUS FLEET BE LIFT-EQUIPPED WITHIN TEN YEARS. IN 1980, AN ADDITIONAL 150 LIFT-EQUIPPED BUSES WERE DELIVERED AND LIFT SERVICE WAS EXPANDED TO 17 ROUTES.

USAGE OF THE LIFT-EQUIPPED BUSES BY WHEELCHAIR USERS WAS MINIMAL. ON THE OTHER HAND, THE RIDERSHIP ON THE USER-SIDE SUBSIDY PROGRAM GREW RAPIDLY AND WAS CLEARLY THE CHOICE OF ELIGIBLE DISABLED INDIVIDUALS. THE FACT THAT USAGE OF A FIXED ROUTE TRANSIT SYSTEM REQUIRES THAT AN INDIVIDUAL MUST INDEPENDENTLY TRANSPORT HIMSELF OR HERSELF TO A BUS STOP, APPEARS TO HAVE MORE TO DO WITH

THE INACCESSIBILITY OF A TRANSIT SYSTEM THAN THE ENTRANCE STEPS OF THE BUS.

THE USER-SIDE SUBSIDY PROGRAM, BY PROVIDING DOOR-TO-DOOR SERVICE, EVEN AT GREATER COST PER RIDE TO THE INDIVIDUALS, WAS CLEARLY THE PREFERRED TRANSPORTATION MODE OF THE MOBILITY-IMPAIRED OF MILWAUKEE COUNTY. **IN FACT, THE TOTAL RIDERSHIP ON LIFT-EQUIPPED BUSES DURING ITS 2 3/4 YEARS OF OPERATION WAS EQUAL TO LESS THAN FOUR DAYS RIDERSHIP ON THE USER-SIDE SUBSIDY PROGRAM. IN A TYPICAL MONTH, APPROXIMATELY 60 ONE-WAY TRIPS WERE TAKEN ON LIFT-EQUIPPED BUSES BY WHEELCHAIR USERS. ON THE OTHER HAND, OVER 10,000 TRIPS WERE TAKEN MONTHLY BY WHEELCHAIR USERS IN THE USER-SIDE SUBSIDY PROGRAM.**

APPROXIMATELY 5,600 PERSONS WITH DISABILITIES WERE REGISTERED FOR THE USER-SIDE SUBSIDY PROGRAM AT WHICH 4,200 WERE WHEELCHAIR USERS. BASED ON ORIGINS AND DESTINATIONS OR USERS OF ACCESSIBLE BUSES, **IT IS ESTIMATED THAT FEWER THAN 28 DIFFERENT INDIVIDUALS EVER USED THE ACCESSIBLE BUSES IN ALMOST THREE YEARS OF OPERATIONS.**

THE CONCLUSIONS WERE APPARENT. THE USE OF TAXIS AND VANS IN DOOR-TO-DOOR SERVICE DID, IN FACT, PROVIDE EFFECTIVE MOBILITY FOR WHEELCHAIR USERS WHILE LIFT-EQUIPPED BUSES PROVIDE ONLY A SYMBOLIC ACCESSIBILITY WHICH CAN BE UTILIZED EFFECTIVELY BY ONLY A VERY SMALL NUMBER OF PERSONS IN WHEELCHAIRS. IN MILWAUKEE, THE ACQUISITION AND UTILIZATION OF LIFT-EQUIPPED BUSES IN FIXED ROUTE SERVICE RESULTED IN SIGNIFICANTLY INCREASED CAPITAL AND OPERATING COST WHILE HAVING NO REAL, EFFECTIVE IMPACT ON THE MOBILITY OF WHEELCHAIR USERS.

IN APRIL, 1982, AN AGREEMENT WAS REACHED WITH THE DISABILITY COMMUNITY TO DISCONTINUE THE LIFT-EQUIPPED BUS OPERATION AND TO CONCENTRATE OUR EFFORTS ON THE USER-SIDE SUBSIDY PROGRAM. IN 1989, A MONTHLY AVERAGE OF 30,000 DISABLED RIDERS, OF WHICH 80 PERCENT OR 24,000 ARE WHEELCHAIR USERS, ARE USING THE USER-SIDE SUBSIDY PROGRAM. 7,600 PERSONS ARE REGISTERED TO USE THE SERVICE, OF WHICH 6,100 ARE WHEELCHAIR USERS. THE AVERAGE SUBSIDY HAS BEEN $7.98 PER RIDE. COSTWISE AND SERVICEWISE, THIS PROGRAM HAS PROVEN TO BE AN EFFECTIVE MEANS OF MOBILITY FOR THE DISABLED COMMUNITY.

THE LIFTS IN THE 250 LIFT-EQUIPPED BUSES HAD AN ORIGINAL COST OF $2,500,000. BECAUSE OF THE HOSTILE ENVIRONMENT, THE LIFTS WHICH WERE LOCATED IN THE STEPWELLS AND EXPOSED TO THE ELEMENTS (NOT AN INSIGNIFICANT CONSIDERATION IN MILWAUKEE), THERE WERE FREQUENT AND CHRONIC MAINTENANCE PROBLEMS. MAINTENANCE COSTS PER LIFT APPROXIMATED $2,000 ANNUALLY OR A TOTAL OF ALMOST $500,000 PER YEAR. **ON A PER RIDE BASIS, MAINTENANCE COST ALONE APPROXIMATED $1,000.** THE USER-SIDE SUBSIDY PROGRAM, ON THE OTHER HAND, REQUIRES NO PUBLIC CAPITAL INVESTMENT AND THE PUBLIC COST PER RIDE AVERAGES $8.00.

THE USER-SIDE SUBSIDY PROGRAM HAS INCREASED THE PARTICIPATION OF DISABLED MILWAUKEEANS IN OUR COMMUNITY EVEN THOUGH THE METHOD USED MAY BE A SEPARATE TRANSIT SERVICE AND NOT CONSIDERED MAINSTREAMING. THIS PROGRAM, HOWEVER, REPRESENTS WHAT MAY BE TERMED "**EFFECTIVE MAINSTREAMING,**" ELIMINATING THOSE ASPECTS OF USING A TRANSIT SYSTEM WHICH PREVENTS ACCESS TO THAT SYSTEM, BUT

PROVIDING THE INDIVIDUAL WITH ACTUAL MOBILITY SO THAT HE OR SHE CAN BE IN THE MAINSTREAM OF SOCIETY.

ALTHOUGH IMPROVEMENTS HAVE BEEN MADE IN BUS LIFT TECHNOLOGY SINCE THE MILWAUKEE EXPERIENCE, THE POINT IS THAT ONLY A RELATIVELY FEW DISABLED PERSONS HAVE EFFECTIVE ACCESS TO ACCESSIBLE TRANSIT VEHICLES.

THE ACCESSIBLE BUS PROVIDES, AT BEST, BUS STOP TO BUS STOP MOBILITY. PERHAPS WITH EXPERIENCE, TECHNOLOGY WILL OVERCOME THE DIFFICULTIES WE HAD WITH THE LIFT AND A MUCH IMPROVED LIFT IS POSSIBLE. HOWEVER, THE UNFORTUNATE TRUTH OF THE MATTER IS THAT HOWEVER PERFECT THE TECHNOLOGY, LIFT-EQUIPPED BUSES CANNOT PROVIDE EFFECTIVE MOBILITY FOR MOST DISABLED PERSONS IN AREAS SUCH AS MILWAUKEE COUNTY. THE BARRIERS FOR THE TYPICAL DISABLED PERSON IN A WHEELCHAIR TO GET TO A BUS STOP ARE OFTENTIMES MUCH MORE SEVERE THAN THE BUS STEPS THEMSELVES. THIS CAN INCLUDE THE LACK OF SIDEWALKS, THE LACK OF CURB CUTS, WIDE STREETS, DISTANCE, HILLS AND, OF COURSE, THE SNOW, ICE AND COLD FOR WHICH MILWAUKEE IS FAMOUS.

AS A SOCIETY, WE MAY BE WILLING AND ABLE TO BUILD SIDEWALKS WITH CURB CUTS THROUGHOUT RURAL AND URBAN COMMUNITIES AND TO REDUCE DISTANCES TO THE BUS STOPS. HOWEVER, IT IS SAFE TO SAY WE WILL NEVER BE ABLE TO CONTROL OR MODIFY THE INCLEMENT WEATHER THAT CREATES A NATURAL BARRIER TO WHEELCHAIR TRAVEL IN LARGE PORTIONS OF THE UNITED STATES. SNOW, ICE AND COLD ARE PART OF LIFE IN MILWAUKEE FROM THE END OF NOVEMBER TO THE BEGINNING OF APRIL. OUR

AVERAGE ANNUAL SNOWFALL IS 40 TO 42 INCHES AND THE MEAN WINTER TEMPERATURE IS ABOUT 28 DEGREES.

ANY WISCONSIN RESIDENT KNOWS AND UNDERSTANDS THE DIFFERENCE BETWEEN A DENVER POWDER SNOWFALL WHICH MELTS OFF IN A DAY OR TWO AND OUR WET, HEAVY ACCUMULATION WHICH COVERS THE GROUND AND PILES HIGHER AND HIGHER INTO THE WINTER. WHEN WE GET A MILD MELT DOWN DURING A RARE ABOVE FREEZING DAY, THE SLUSH MELTS FROM UNDER THE SNOW COVER ONLY TO FREEZE INTO SLICK ICE AS TEMPERATURES DIP DURING THE NIGHT. IF EACH HOUSEHOLD HAS NOT SHOVELED THAT SLUSH ON THE VERY DAY OF THE SNOWFALL, A HAZARDOUS PATH OF ICE BUILDS AND MAY REMAIN UNTIL A TOTAL MELT OCCURS IN APRIL.

IN ADDITION, WHEN THE WIND BLOWS ACROSS THE SNOW SURFACE IT CREATES WHAT WE KNOW AS WINDCHILL. THE ACTUAL TEMPERATURE MAY BE 28 DEGREES. HOWEVER, THE WINDCHILL ON THE SAME DAY MAY BE CLOSER TO 10 DEGREES. TRAVAILING THE SNOW AND ICE TO WAIT 15 OR 20 MINUTES IN 10 DEGREE WINDCHILL FOR A BUS CHALLENGES THE SOUL OF EVEN THE MOST DETERMINED WISCONSINITE.

BASED ON THE MILWAUKEE EXPERIENCE, PERSONS WITH DISABILITIES PREFER, IF NOT REQUIRE, DOOR-TO-DOOR SERVICE. BUT DON'T TAKE MY WORD FOR IT. THE DISABLED OF MILWAUKEE HAVE EXPRESSED THEMSELVES IN THE MOST DRAMATIC FASHION -- NOT BY POLITICAL PRESSURE, NOT BY DEMONSTRATIONS OR LETTERS -- BUT BY ACTUALLY USING PARATRANSIT OVER ACCESSIBLE BUSES WHEN BOTH WERE AVAILABLE. OUR RIDERSHIP COUNT ON ACCESSIBLE BUSES (ATTACHED) SHOWS THE SHARP DECLINE DURING WINTER MONTHS.

I MIGHT ADD THAT MILWAUKEE IS NOT THE ONLY INCLEMENT WEATHER JURISDICTION WITH THIS EXPERIENCE. IT HAS BEEN REPEATED AGAIN AND AGAIN IN OTHER INCLEMENT WEATHER JURISDICTIONS. IF THE SUBCOMMITTEE WOULD LIKE, I WOULD BE GLAD TO PROVIDE A VARIETY OF SURVEYS OF THE DISABLED COMMUNITIES' PREFERENCES AND RIDERSHIP FROM OTHER SUCH JURISDICTIONS.

THE TRANSIT INDUSTRY IS IN GREAT FINANCIAL DIFFICULTIES. THE FAREBOX PROVIDES ONE-THIRD OR LESS OF THE COSTS OF OPERATION. THE FINANCIAL BURDEN OF PROVIDING AN ACCESSIBLE BUS SYSTEM FOR A VERY FEW, AS WELL AS AN EFFECTIVE PARATRANSIT SERVICE MAY PROVE TO BE TOO MUCH TO BEAR WITHOUT SUBSTANTIAL REDUCTIONS IN PARATRANSIT SERVICE AND/OR SERVICE TO THE GENERAL PUBLIC.

THERE IS NO QUESTION THAT THE DISABLED DESERVE TRUE MOBILITY. THERE IS ALSO NO QUESTION THAT THE BUS, AS WE KNOW IT, CAN BE MADE MORE ACCESSIBLE TO MANY DISABLED PEOPLE. WE SHOULD BE EXPENDING OUR EFFORTS TO HAVE LARGER DESTINATION SIGNS AND SIGNALING DEVICES TO AID VISUALLY DISABLED PEOPLE AND VISUAL AIDS TO HELP THE DISABLED WITH HEARING PROBLEMS. INSTEAD, WE ARE SPENDING LARGE AMOUNTS OF MONEY, LARGE AMOUNTS OF TIME AND ENERGY ON LIFTS THAT, IF OPERATED PERFECTLY, COULD SERVE VERY FEW PEOPLE. A LIFT-EQUIPPED BUS, AT BEST, SERVES BUT A SMALL FRACTION OF THE MOBILITY-DISABLED POPULATION. A LIFT CANNOT BE USED BY USERS OF CRUTCHES, WALKERS, THE BLIND, AND MANY OTHER DISABLED PEOPLE WHO ARE NOT DEPENDENT UPON WHEELCHAIRS. AN ALTERNATIVE SERVICE, SUCH AS WE OFFER TODAY IN MILWAUKEE, CAN SERVE ALL DISABLED PEOPLE.

A TRANSIT VEHICLE, BE IT A BUS OR RAIL, IS BUT ONE MEANS OF ACCESSIBILITY TO REACH FACILITIES. IT IS MY BELIEF THAT PERSONS IN MILWAUKEE NEED ACCESSIBILITY TO WORK, TO SCHOOL, TO RECREATION, AND TO ALL THE OTHER RIDING OBJECTIVES OF ANY OTHER PERSON. THE SYMBOLIC MOBILITY PROVIDED BY A BUS LIFT IS A CRUEL JOKE FOR THE DISABLED WHEN IN FACT IT IS UNUSABLE BY THE GREAT MAJORITY OF THESE INDIVIDUALS.

IF THE MILWAUKEE EXPERIENCE IS AT ALL INDICATIVE OF THE PROBLEM OF TRANSPORTATION FOR THE DISABLED, THERE IS NO REAL QUESTION OF CHOOSING ALTERNATIVES. ONE PROGRAM MEETS THE MOBILITY NEEDS OF THE DISABLED, THE OTHER PROGRAM MAKES BUSES, **BUT NOT NECESSARILY THE BUS SYSTEM,** ACCESSIBLE. IN THE 2 3/4 YEARS OF LIFT BUS OPERATION, THE USER-SIDE SUBSIDY PROGRAM PROVIDED IN EXCESS OF 280,000 TRIPS OF WHICH APPROXIMATELY 195,000 WERE WHEELCHAIR USERS. THE LIFT-EQUIPPED BUSES IN THE SAME TIME PERIOD PROVIDED 1,495 TRIPS FOR WHEELCHAIR USERS. DOOR-TO-DOOR SERVICE IS NOT SIMPLY PREFERABLE TO LIFT-EQUIPPED BUSES IN INCREASING THE MOBILITY OF DISABLED PERSONS, BUT IT IS ESSENTIAL IF TRUE MOBILITY, RATHER THAN SYMBOLIC ACCESSIBILITY IS THE DESIRED RESULT. FEW COMMUNITIES CAN AFFORD BOTH. LOCAL OPTION IN COOPERATION WITH THE DISABLED COMMUNITY HAS BEEN WORKING IN MILWAUKEE.

THANK YOU FOR YOUR ATTENTION. I WILL BE PLEASED TO ANSWER ANY QUESTIONS.

TAB A

A Summary of Monthly Ridership Statistics on the Wheelchair Lifts

1979 Month	No. of one-way Trips	Average Delay	
		Board	Alight
April	21	6.5	3.3
May	26	5.2	5.5
June	37	5.1	3.8
July	48	4.9	3.1
August	52	5.5	5.6
September	49	5.6	3.5
October	6	4.8	2.4
November	9	7.3	3.3
December	21	4.9	3.5
Yearly Total	269	5.5	3.8
1980			
January	15	5.3	3.4
February	8	2.3	2.1
March	7	6.7	5.7
April	2	5.0	3.0
May	5	10.6	5.5
June	10	6.2	2.9
July	59	5.8	5.7
August	65	6.1	5.6
September	78	5.6	4.2
October	65	5.4	4.6
November	40	5.0	3.7
December	40	5.7	5.4
Yearly Total	394	5.8	4.3
CUMULATIVE	663	5.7	4.1
1981			
January	21	9.1	3.4
February	17	4.8	3.1
March	23	4.2	3.2
April	43	6.3	5.5
May	90	6.4	4.2
June	112	5.1	3.5
July	152	5.3	3.6
August	147	4.5	3.7
September	75	5.3	3.7
October	56	3.8	2.7
November	64	4.8	3.8
December	32	6.1	2.8
Yearly Total	832	5.4	3.6
1982			
January	2	5.5	5.0
CUMULATIVE	1,497	5.6	3.9

Mr. MINETA. I would now like to call forward a panel made up of Kathleen Parker, Board Member of the Regional Transportation Authority of Chicago; Douglas Donenfeld, Board Member and Chairman of the Finance, Audit and Budget Committee, Chicago Transit Authority; Lou Gambaccini, General Manager of SEPTA and Dick Sandaas, Executive Director of METRO in Seattle.

Ms. Parker, we have your prepared statement. It will be made a part of the record. Ms. Parker, if you will proceed in your own fashion, please.

TESTIMONY OF A PANEL, CONSISTING OF KATHLEEN PARKER, BOARD MEMBER, REGIONAL TRANSPORTATION AUTHORITY, CHICAGO; DOUGLAS DONENFELD, BOARD MEMBER AND CHAIRMAN OF THE FINANCE, AUDIT AND BUDGET COMMITTEE, CHICAGO TRANSIT AUTHORITY; LOUIS GAMBACCINI, GENERAL MANAGER, SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY; AND DICK SANDAAS, EXECUTIVE DIRECTOR, METRO, SEATTLE

Ms. PARKER. Thank you, Mr. Chairman. You do have our statements, so I will summarize it. Mr. Chairman, members of the subcommittee, my name is Kathleen Parker. I serve on the Board of the Northeastern Illinois Regional Transportation Authority which serves a six-county Chicago metropolitan area. The RTA is responsible for overseeing a transportation network which serves approximately 2.5 million riders per day in our area.

That number includes 3,100 daily paratransit riders for the disabled. I have served on the RTA Board since 1983 and have been Chairman of our Committee on the Mobility Limited since 1984. I am here today on behalf of our board and our chairman, Gail Franzen, who was unable to be in Washington today. I am testifying for the RTA, CTA, METRA and PACE.

I appear before you to express support for the broad goals of the ADA. But these broad goals can only be achieved if certain changes are made in the ADA. We applaud the House and Senate sponsors of this legislation for addressing long perpetuated civil wrongs and seeking to replace them with civil rights.

However, in several instances, we would maintain that the legislation before you as it emerged from the Senate will lengthen implementation time and add to the difficulty of achieving its stated objectives. As a local agency, which has sought to comply with a variety of federal regulations in this area, the RTA has some experience to bring to your deliberations.

In particular, I would like to acquaint you, briefly, with the regional plan for the Mobility Limited which we have just developed after a ten-month policy process. This local plan was developed in consultation for our Mobility-Limited Advisory Committee, MLAC, which includes representatives of the key groups representing the disabled in our region.

Further, our plan is consistent with the recommendations of the Illinois Governor's Task Force on Disabled Transportation completed in 1985. The result of these efforts is a realistic and compassionate plan for providing mobility to those who, until now, have felt excluded from the service provided by transit providers.

In summary, the plan calls for the following; full performance mainline accessible service, paratransit service to supplement mainline service at the level which we can afford; region-wide eligibility and certification for the paratransit service; financial perimeters for meeting the goals of the plan within our statutorily-required 50 percent fare box recovery ratio.

Mr. Chairman, we are aware that some parts of our plan may not comply with the final version of the ADA. However, it is important to point out that this plan was developed to comply with existing requirements. The plan is flexible and we will attempt to make whatever changes are necessary to comply with any new ones.

The principal challenge of the ADA to the RTA is reconciling our responsibilities to our disabled consumers with the needs of the $2.5 million daily riders who rely on us to deliver safe, timely and efficient service every day. Unfortunately, the bill approved by the Senate gives us reason to be concerned that, as we meet this challenge, unrealistic federal standards may be substituted for realistic and workable local action.

We are particularly concerned with three aspects of the Senate bill; those are, the requirements for comparable paratransit service, commuter-rail accessibility and key station accessibility. Allow me to discuss each one very briefly.

Concerning the paratransit requirement, the Senate bill requires that a comparable level of service be provided to those who cannot use mainline accessible service. The word comparable can be too easily interpreted to mean duplicative services we simply cannot afford. There is a provision allowing a somewhat reduced level of service to be provided if meeting the full requirement would pose an undue financial burden.

Unfortunately, key questions relating to the definitions of comparable service and undue financial burden, and to the eligibility for paratransit service are left unanswered in the statute. With regard to commuter-rail vehicle accessibility, the Senate bill fails to recognize the operational differences between commuter rail and rapid rail service.

METRA has now determined that it will make each cab car accessible by equipping it with a lift, thereby making each train accessible. However, the requirement to make every rail car accessible to the disabled would be unnecessarily costly.

On key stations, neither the Senate bill nor the committee report defines its terms. This welcomes legislation at the local level over how that term is defined for each system. This issue of key stations is a crucial area of local operational decision making. Mr. Chairman, the well-intentioned efforts of the Senate have resulted in a complicated and ill-defined set of requirements which are likely to result in a long delay in the implementation of the bill and put the implementation in the hands of judges.

We want to see our mobility limited population on our buses and trains, not in court. What we need is a law which relies on local processes like the one we have pursued in our region to make important definitional and operational decisions. Congress should set the broad standards and set the perimeters for a local process to flesh out the details.

In closing, allow me to state that we share with you a desire to enact a bill on transit for the disabled which will work. We will be charged with making it work at the local level, a charge, I might add, which will come from the federal government with no new dollars to help make it work. While we prepare to assume the financial and operational responsibility for compliance with the ADA, we urge Congress to recognize that our system of federalism works best when each level of government is allowed to do what it does best.

The federal government is best suited to develop broad national standards, particularly those designed to help the less fortunate. Local and regional government is best suited to implement such standards in a way which recognizes local conditions.

Mr. Chairman, the ADA will be a triumph if the federal government and local authorities each do what they do best. We hope to celebrate that triumph with you and our disabled community in the coming years.

Mr. **MINETA**. Thank you very much. Mr. Donenfeld.

Mr. **DONENFELD**. I am a board member with the Chicago Transit Authority, better known as the CTA, and Chairman of its Finance Audit and Budget Committee. It is a pleasure to be before the Subcommittee today. I would like to also request that we be given an opportunity, before the record is closed on this legislation, to submit written testimony.

CTA is the second largest operating agency in the United States and is responsible for providing 581 million rides on the bus and rapid transit system along with 800,000 paratransit rides each year. Our paratransit service is the largest in the United States.

In addition, we will shortly be receiving the first order on 791 buses with lifts. I would like to elaborate on a point made in the RTA's testimony. Our concern relates to the operational impacts the legislation will have on older rapid transit systems like the CTA. The rapid transit system is a vital part of our system which provides over 1.9 million rides to people in the Chicago area each weekday.

CTA's rapid transit system is large and very old. The core system dates back to the turn of the century. The system consists of six lines covering 215 miles of track and 142 stations. Two independent engineering studies have found that CTA should spend over $4 billion during the next ten years to bring our infrastructure up to good condition.

While the CTA will be hard-pressed to absorb the Congressional mandate to fund an accelerated accessibility program for rail stations, in addition to maintaining the rail system in a safe and efficient manner, we recognize that the legislation includes a twenty-year compliance period that provides some relief for the extraordinary cost problem.

Ultimately, the extent of such cost burdens, as well as other operational difficulties, will be determined by the number of key stations that must be made accessible. The Senate's Committee report states that key stations will be determined locally with the cooperation of the disabled community.

While the CTA has in place an agreement on accessible bus service with the disabled community, it does not have an agreement similar to those in New York and Philadelphia which accommodates the needs of those older rapid transit systems. Therefore, we are not certain how many key stations we will have to make accessible.

We agree that key stations should be made accessible. However, in setting a timetable for compliance, the Congress should take into account the unique problems associated with older rapid transit systems. Most CTA stations will need extraordinarily expensive structural changes to make them accessible. For elevated stations, it means modifying the structures to install elevators. In subways, it means tunneling elevator shafts.

Operating factors limit the amount of work CTA can perform on a line at one time. Disruptions in service caused by capital projects, accessibility-related or not, result in slow zones or single tracking zones which could mean as much as twenty to thirty minute delays for able-bodied passengers.

Since our main concern is to take people in a timely manner, CTA must carefully plan capital projects to minimize disruptions to service. Otherwise, riders will look forward towards other alternatives like the automobile.

Increased use of the automobile will, in turn, exacerbate the other problems urban areas are facing. Air pollution and compliance with the Clean Air Act and congestion are questions and issues debated and handled by Congress in various forums. We, therefore, recommend that special consideration be given to the serious operational impacts caused by compliance with the rail system accessibility provisions by allowing the Secretary of Transportation the ability to extend the time period longer than twenty years where there is undue operational difficulty.

Thank you very much for the time. I would be very happy to answer any questions the committee might have.

Mr. MINETA. Thank you. Mr. Gambaccini.

Mr. GAMBACCINI. Thank you, Mr. Chairman. Mr. Chairman, my name is Lou Gambaccini. I am Chief Operations Officer and General Manager of the Southeastern Pennsylvania Transportation Authority, more familiarly known to most as SEPTA. I am pleased to be here to have the opportunity to present this testimony with respect to the Americans With Disabilities Act of 1989.

While we support the intention to provide improved service to the disabled, we do have a number of cost and operational concerns with the Senate bill. Mr. Chairman, you have before you a nine-page statement. I will not read the entire thing. I will try to hit the highlights and, perhaps, even elaborate on one or two points.

I do have some passion on the subject. I have been involved in transit for some thirty years and involved in elderly and disabled matters for some twenty, including active participation at the national scene some twenty years ago.

I have been on the SEPTA scene for a little over a year, and I find the SEPTA system magnificent in some respects and awesomely difficult to rehabilitate in others. The system embraces five counties, an area with a population of some 3.5 million. We handle 1.2 million day. The extent and reach of the system is probably without comparison in the country proportionate to the size of the region and in consideration the inadequacy of the highway system and in the face of economic growth and prosperity that has marked the region. Yet we are facing $4 billion to $5 billion, in 1988 dollars, in needed rehabilitation to make up for the neglect over the last several decades, more than half of it in the divested Conrail passenger services.

On the one hand, this is a major asset that offers great potential for the region, for the nation and the future. On the other hand, it is a context in which we have great difficulty facing the financial needs and getting on with the job.

In parallel with that, our operating budgets, federal, state and local, have not kept pace with the combination of both inflation and needed improvements in service. We have overcrowded routes. We can't handle the pressure of growth of people presenting themselves for service. And we simply cannot accommodate the additional service.

So we have a financial crunch. Last year, SEPTA provided service to some 1.2 million passenger trips for disabled persons by accessible bus, accessible rail and paratransit. We were an early, active participant in working with the handicapped community, having set up an advisory committee in 1974 and having commenced paratransit in 1981.

This past summer, the Eastern Paralyzed Veterans Association of the City of Philadelphia and SEPTA entered into an agreement to guarantee the purchase of only accessible buses in the future and to expand the number of key rail stations to 42—I would note that my testimony that you have before you shows 45. That is a typographical error. It should be 42—or approximately 16 percent of the system.

By November of this year, 48 percent of our bus fleet will be lift-equipped. As I indicate, we have committed to the purchase of only lift-equipped buses in the future.

Mr. Chairman, I won't go through point by point. We have several points listed in the remainder of the testimony that go to what we think are serious problems requiring technical correction in the legislation. I will hit them, at least a couple of them, in highlights.

For example, the first point has to do with existing rail vehicles. We agree that, to the extent reasonable, rail vehicles should be made to accommodate the handicapped. We have removed seats. However, there are limits. Indeed, there should be specific language in the legislation precluding the necessity to modify existing rail vehicles when major structural change is required.

It is, in some cases, completely unfeasible or the costs are prohibitive. We do tend to agree, at least in our case, that future bus purchases should be handicapped equipped as should rail cars. To that end, we have purchased our most recent fleet, the Bombardier cars, each with rail accessibility—that is, wheel chair accessibility—and the cars in production for the Norristown High Speed line are similarly being accommodated.

The next point: we have street car operations twice as large as the next largest system in the country. We believe there should be explicit language exempting street cars from accessibility. To do otherwise would be to provide great safety hazards. Most of our streetcar routes are in the middle of streets requiring the handicapped to cross active lanes of traffic, where there is not sufficient room to accommodate both the lift devices intruding into the active lanes of traffic and room for wheel chairs to maneuver to get onto those vehicles.

We think it is utterly unrealistic to require accessibility to our street trolley routes where they exist in concert, or at grade level, with traffic on the streets as well.

We agree with the Senate Committee that it is best to leave the selection of which stations are key to each locality. We are pleased that we reached agreement through negotiation with our handicapped community and we think that that decision about which are key stations must be a local determination.

The criteria that guided us in our discussions with our handicapped community had to do with ridership volumes, major transfer points, balanced regional coverage, some of the physical constraints that involved some of the stations, the costs and funding availability.

I believe that the handicapped community was sensitive to the cost and funding availability problem and, therefore, was realistic about schedule and timing of some of the key station improvements and, indeed, further have actively joined our political coalition to seek additional funding at all levels of Government, Federal, State and local, to help both operating and capital.

The Senate bill creates a requirement requiring full bus and key rail station accessibility plus extensive paratransit service. We would raise a major concern and caveat about what is intended about the parallel and additional paratransit service. As we read the bill, it could also be read to require transit operators to deal with extraneous—that is extraneous to the transit system—commitments such as curb cuts, sidewalks, and to make up for deficiencies and underfunding of human service agency programs.

We think that, certainly, should not be an enlargement of the transit operator's burden.

In the bill, as we read it, it is possible to assume, and indeed it may even be the intent, that comparable response time on paratransit be required. That, in our opinion, is utterly unrealistic. We have routes that are providing intervals of service of five to ten or fifteen minutes. The volumes, under the most extreme projections of potential handicapped demand, simply cannot justify that and, in my opinion, I share Hank Mayer's view that there is no way that that kind of service can be provided in parallel with fully-accessible buses and accessible rail.

So some balancing must be required and the mandate cannot be from the Federal Government with respect to the specifics, thereto.

On Page 7, we cite the overall concern about undue financial burden. It can be said that virtually any requirement of additional service, whatsoever, can be said to be an undue financial burden in the context that I described at the outset, particularly in consideration of the fact that the Federal Government in the last ten years has reduced, on an annual basis, to Philadelphia, operating assistance by more than 50 percent cumulatively, capital assistance in constant dollars by more than 64 percent and has frozen the flow of funds from the Transit Trust Fund.

There is no further capacity from any current or projected funding source to significantly expand service. So, in effect, what we are saying is that if, indeed, the Federal Government presumes to expand mandates of any sort, there must be concomitant funding or, at least, a participation in the solution of how we accommodate the additional requirements.

In conclusion, I think the act can provide for major improvements and, indeed, the thrust to continue to work to improve the lot of the handicapped is a good one. We support it, but the language must be corrected and clarified to prevent lengthy and expensive court battles following the issuance of regulations pursuant to this act. Changes must be made to provide for realistic implementation requirements and schedules, and funding must be included for public-service providers who will be forced to expand and improve such services to the disabled.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much. Mr Sandaas, before we proceed, what were the results of your elections for mayor yesterday?

Mr. SANDAAS. The results, as we have them are, Doug Jewett was one of the two and also Norm Rice. So, Norm Rice and Doug Jewett will be in the final in November.

Mr. MINETA. Norm Rice was the School Board member?

Mr. SANDAAS. Norm Rice is the present City Councilman and Doug Jewett is the present City Attorney.

Mr. MINETA. Dolores came in where?

Mr. SANDAAS. She was kind of tied for third. There were thirteen total people running.

Mr. MINETA. Okay, Dick; go ahead.

Mr. SANDAAS. Good afternoon. I, too, will be brief and summarize. But there are several topics I would like to quickly run over here. Again, I am Richard Sandaas, Executive Director of the Municipality of Metropolitan Seattle in Seattle, Washington.

Our agency operates a fleet of 1091 buses which makes it the ninth largest bus-operating agency in the country. METRO supports passage of the Americans With Disabilities Act. More than eleven years ago, our governing board decided to make our regular fixed-route service fully accessible to persons with disabilities. Since that time, eleven years, all of our new bus purchases and all of our new facilities have been designed to accommodate wheelchair users and individuals with other disabilities.

I am also personally familiar with wheelchair lift technology and can assure you that it works. I was one of two staff members who were involved some eleven years ago in working out the implementation program for our wheelchair lift program.

With proper maintenance, newer lifts should last twelve years or more and have 98 percent in-service reliability. We believe that number is doable. In fact, we are doing that now. But it takes more than just a functioning lift to make accessible bus service a success. A citizen with disabilities must be involved in designing service. Drivers must be trained. Persons with disabilities must also take some initiative in familiarizing themselves with how to use an accessible bus service.

Finally, policy makers and senior management must continue to assist on accessibility as a fundamental given in the design, construction and implementation of all facilities and services.

METRO's positive approach to mainline accessibility has produced continuing increase in use of our services. In 1988, we carried 139,430 wheelchair lift users on a regular fixed-route service. And that was on 130 routes. The average weekday use was 481 per day. The weekend use is less, bringing the total seven-day average to 382 trips.

Our average operating cost per ride was $3.89. Since we have heard a little bit about cost today, let me digress briefly on maintenance costs. We did hear a variety of numbers thrown out, and there is a big range out there. We have a variety of series of lifts in our fleet. We have several bus purchases over time that have incorporated wheelchair lifts.

The annual maintenance cost, per bus, per year, varies from a low in one particular fleet from $155 per year up to as much as $1,149 per year. The average, over the whole entire 773 buses with lifts is $585 a year for maintenance.

The highest number is of the very oldest lifts and the first generation of Lift-U-Lifts were rather crude by today's models. So that is the range of maintenance costs that we experience.

Last year, 1988, METRO was honored to receive the Distinguished Service Award from the President's Committee on Employment of People with Disabilities, for our pioneering efforts in the fixed-route accessibility.

We want to reiterate our support of the Americans With Disabilities Act, but we do have some concerns about the paratransit issue. And you have heard that from others today. METRO, currently, does operate a specialized demand-responsive program for low-income elderly and disabled adults. That program carried some 113,000 riders in 1988 at an average operating cost of $7.43 a trip.

The Senate-passed bill was ambiguous about who should be eligible for this type of special supplemental service. The Senate committee implied everyone who had some difficulty reaching a bus stop should have a legal right to specialized service. This subjective standard may open up a right to costly specialized service to many who simply prefer door-to-door service.

The report language almost guarantees this right to dual service when it makes it clear that eligibility for specialized service cannot be used as grounds for excluding individuals from the very mainline accessible services they are supposedly unable to use.

We recommend that local transit boards be given the responsibility of determining who should be eligible for supplemental service through individualized certification programs. These types of hard service allocation decisions should be made by local transit boards once the basic civil-rights obligation to individuals with disabilities has been satisfied with accessible mainline service.

The Senate version was also somewhat ambiguous as to how to judge the comparability of fixed-route and specialized demand-responsive services. METRO believes fixed-route and demand-responsive services each have inherent advantages. We cannot, for example, design a demand-responsive paratransit system that matches the excellent frequency and travel times of our most heavily used bus routes.

On the other hand, a fixed-route system can never match the waiting comfort of a door-to-door demand responsive system. A local process involving all elements of the disabled community should be used to design services that are comparable with viewed in their entirety.

In closing, we applaud the main thrust of the Americans with Disabilities Act. With the exception of ambiguity in the Supplemental Services Section, we wholeheartedly support this legislation.

Thank you for the opportunity to come before you today.

Mr. MINETA. Thank you very much, Ms. Sandaas. Ms. Parker, in your statement, you indicated that the RTA experience suggests that many disabled riders who can use mainline service still prefer paratransit service. Since the RTA has not provided accessible mainline service for individuals with disabilities, how can you use your experience to determine the preference of the individuals with disabilities?

Ms. PARKER. Mr. Chairman, one of the things that we did as far as the Mobility Limited Committee for the RTA was to do an extensive survey of the people who were using paratransit service at that time, and others in the disabilities community. Ninety-five percent of the people that responded said that they did prefer paratransit over using a lift vehicle.

I think, though, what is important to understand is that with our disabled plan, we have agreed with the disabled community and the transit operators for full performance accessibility for putting lifts now on the buses in the Chicago metropolitan area.

The difference between the full performance accessibility that we are discussing, and your talking of the 100 percent accessibility, is the flexibility of the local transit agency—for instance, the CTA could accommodate the demand because the peak times, the high peak, was 60 percent of their bus system—if that were lift-equipped, instead of going the full 100 percent.

But we have, through our experience and through the riders that we have in our system, a good feeling for what they do prefer. What we are concerned about in this particular bill is the term "comparable paratransit." The reason for that is that we want the people to, when we do when get the lifts on this system to use that system and to be able to have the independence that they have sought to have.

Part of being able to do that is having the flexibility within our region to be able to determine the eligibility and to determine the amount of paratransit that we actually can afford to use and that we can use for the demand in our area.

We have found, now, that we spend $12 million a year just on our paratransit service. If we were to continue to do the paratransit service without any lifts, to try and let the people have the opportunity of using the lifts, we would be spending $50 million a year in five years, and it would just keep escalating.

So what we are looking forward to is being able to have the people use the lifts. But the most important thing is—and this is what the disabled community is very concerned about—letting the people who really need paratransit, making sure that that service is available to them.

Mr. MINETA. Mr. Donenfeld, regarding the rail provisions of the bill, what specific criteria do you think should be used to identify key rail stations to be made accessible there in Chicago?

Mr. DONENFELD. First of all, we do feel that there ought to be some criteria expressed in the bill because, as far as we can tell, in looking at the bill, the only thing we have got to look to now are the 1979 regulations promulgated pursuant to Section 504.

If we are looking at that, we are looking at, perhaps, a number of stations. I think you have to look at the total system and, with respect to our system, you have to determine what routes are being adequately served by our existing bus service. There are many stations which, for example, are part of our mainline service which are paralleled with the bus system.

One thing you would want to be careful about, I would think, is not to duplicate your efforts. If you have got a fully-viable bus system, servicing the people of a particular community, there would be no necessity for making certain that you had an accessible key station because it may not be necessary, since you have got the parallel system.

We would want to make sure that the demographics were carefully studied, that you didn't overdo the system, and that you looked at the costs attendant to that. Some of our structures, as you can imagine with a hundred-year-old system, are extraordinarily old. When it comes to retrofitting those for accessibility, it becomes quite expensive.

We would, though, agree with others who have spoken today that there ought to be some objective criteria in determining what key stations there ought to exist in our system for purposes of retrofitting for accessibility. Certainly demographics, usage, location; all of these are important criteria in determining whether or not you have got key stations.

We have on our system, 145 stations. Certainly, all of these would not be viewed as key.

Mr. MINETA. Currently, what are those costs per ride in providing paratransit services?

Mr. DONENFELD. We are, currently, costing out at about $15.50 per ride on paratransit. Our budget is $12.5 million.

Mr. MINETA. Capital and operating?

Mr. DONENFELD. With respect to paratransit, we are employing a contracting service. We do not own our own special service equipment. We are contracting out with special transit carriers. That is what it is costing us, per ride, pursuant to our contracts.

Mr. MINETA. Would it be less expensive to provide as many of these paratransit rides as possible on our fixed-route system or use your paratransit vehicles to feed riders to the fixed-route——

Mr. DONENFELD. To compare lifting bus costs with special service paratransit costs, one would have to look at the usage that would be made of the lifting of buses. If you have a very sparse use of your lift, then you are probably talking about a very high per-ride cost. One reason we are anticipating and excited about our pilot project is that we will be able, with the lifting of 791 buses, to establish some hard data as to what usage of a very effective, fixed-route lifted system will be vis-a-vis the cost of paratransit in order to get a better handle on how we compare those costs.

But, of course, it would really depend on the usage. And we don't have that data, currently.

With respect to having buses feeding into the system, again we would need some more data to see how the lifted bus would be effective with respect to feeding into mainline rail service. And we will have that data over the five-year period.

Mr. MINETA. In that key station program, how long a period of time do you have to make the stations accessible?

Mr. DONENFELD. We are currently making stations accessible to the extend we are doing a certain level of rehabilitation of those stations. We anticipate that in the next twenty-year period, without the legislation being passed, we probably will make accessible 14 to 15 stations without the legislation.

Whether or not those would, necessarily, meet the criteria of key stations, we are unable to determine because we don't have the statute before us nor do we have the regulations pursuant to the statute.

Mr. MINETA. You have a total of how many stations?

Mr. DONENFELD. One hundred forty-five stations. Currently, I would say, 10 percent of our stations are accessible to the disabled.

Mr. MINETA. Mr. Gambaccini, with approximately 48 percent of your bus fleets lift-equipped, how soon will SEPTA have a fully-accessible bus fleet?

Mr. GAMBACCINI. 1999, sir.

Mr. MINETA. I wanted to make reference to the safety problems that you referred to that could result from mandating lifts on trolleys which are boarded in mixed traffic. Could you elaborate on why you think this poses a threat to the safety of riders?

Mr. GAMBACCINI. We have trolleys in the centers of streets, some of which are three lanes wide; that is, one lane on each side of the trolley. In some ways, that is easier because the lane would be blocked, although you would have to trust to the judgment of drivers, in fact, not to try to get by the attempt of a handicapped person to approach a trolley, assuming a lift device on the trolley.

I think it is even a worse condition to contemplate in cases where we have trolley routes in the middle of larger streets where you may have two or three active lanes.

But if you can visualize a lift device that would intrude beyond the vehicle into an active lane and then the jockeying of a wheel chair to approach that lift device, it does not add up to a very safe environment for access to vehicles, particularly in peak periods of heavy traffic congestion as well as heavy demand on trolley routes.

Mr. MINETA. In the Senate Committee Report, it makes reference to the existing agreement that you have with the Eastern Paralyzed Veterans Association, and it says that that is, in effect, compliance with the ADA. Do you consider that a good model to be followed, then?

Mr. GAMBACCINI. I guess I have, generally, been of the view that national government should set broad goals and, to the extent that the unique situation in each region obtains. I think our situation is different than any other city. I think it is a model, and I feel very good about it.

In fact, it was one of the first things that I tried to move on when I first took office, to try to come to some kind of accommodation and cooperative agreement with the handicapped community rather than constantly meeting in court, beating up on each other, costing large sums in litigation and, typically, reaching conclusions that were more driven by legal judgments than, let's say, the significant improvement of transportation mobility.

Many of the stations, for example, that were directed to be accommodated were, probably, not key stations in measuring them against the criteria that I mentioned before.

So, in short, I think it was, indeed, a model given the reality of our situation, and, happily, it represents a negotiated result, as I said earlier, wherein the handicapped community, I think, believed that we were genuine in our purpose, moving in the right direction and, yet, saddled with some very severe, unique financing problems.

Mr. **MINETA**. Mr. Sandaas, I agree with you that the best means of meeting the transportation needs of almost all persons with disabilities is through mainline accessible bus service. However, as you also note in your statement, there is a need for supplemental paratransit service for individuals who cannot use mainline service.

From your experience of operating paratransit services, what percentage of individuals with disabilities would be unable to use wheel chair-accessible mainline service?

Mr. **SANDAAS**. That is difficult to answer because the paratransit service that we have now is designed for low-income, elderly and disabled people. Perhaps if I answered it in a slightly different way. I think that, if one were to look at two aspects of it, one being, does our system ever exist in an area where these people would live or are there some significant infrastructure barriers that would prevent them from getting to our bus system. That would be one way to establish the number of those people.

The other way would be to also have, where there was actual bus service available, were they particularly severely disabled or have some other condition that would prevent them from using our mainline service. I can't give you a percentage or a number of what those customers might be. I really don't know that.

Mr. **MINETA**. All right. Let me thank—oh, I'm sorry; Ms. Parker?

Ms. **PARKER**. May I just add a couple of answers to the question you gave Mr. Donenfeld as far as METRA and PACE go, because they also do have paratransit service.

METRA's cost of their service is $60 a trip compared to $3.60 that they normally subsidize to a person who rides on the train. So, in addition, that would be a concern to us if we were to have to go with comparable paratransit service. What we are asking for is supplemental service for paratransit. We recognize a need for paratransit.

In PACE, their rides can go from $15.00 to $20.00 a trip. So we, really, need that flexibility. It is extremely important because that would be $120 a trip for METRA, round trip. And it doesn't, really, even get the person where they want to go. It only gets them to the train station, downtown. In addition, over all, we have 400 key stations which include METRA, also. They have gone ahead. Every new station that they build, now, is accessible. But we feel it is important, particularly with their commitment to accessibility on their trains that we have the opportunity to work with our disabled community in figuring out which key stations they should be going to and how we should best put forward our capital dollars so they would work for them.

METRA's system is extremely different than any other system in the country because they are the only one that has the low-entrance to the high car. We have commissioned a $500,000 rail accessibility study that has designed an accessible for METRA. They have agreed that they will go ahead and have one cab car per train because the cab car is always on the train. So that train would be accessible.

Our disabled community has agreed with that. They agreed with that in 1985. And we have their agreement now that that would be sufficient for the demand that they see. Later on, we would have the flexibility if we were to see that demand increase where we could add on other cars that had the lifts.

But it is important for us to have that local decision so that nothing is a burden, so that we can really serve our people well.

Thank you.

Mr. Mineta. Thank you very much, to the panel for your endurance, I guess I might say.

[Ms. Parker's, Mr. Gambaccini's, and Mr. Sandaas' prepared statements follow:]

STATEMENT OF KATHLEEN PARKER, DIRECTOR
NORTHEASTERN ILLINOIS REGIONAL TRANSPORTATION AUTHORITY

REGARDING THE

AMERICANS WITH DISABILITIES ACT, H.R. 2273

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1989

Mr. Chairman and members of the Committee, my name is Kathleen Parker. I am a member of the Board of Directors of the Northeastern Illinois Regional Transportation Authority (RTA). I have represented Cook County on the RTA Board since 1983. I have been Chairman of the authority's mobility limited committee. For the past ten months, that committee has worked to produce a regional policy for transportation for the disabled. I have also served on the Governor's task force on this topic.

The RTA is responsible for overseeing a transportation network serving approximately 2.5 million riders daily in the Chicago metropolitan area. Service in our region is provided by three service boards: The Chicago Transit Authority (CTA) which operates city and nearby suburban buses and rapid rail service, the Suburban Bus Division (PACE), which operates bus service throughout our service area, and the Commuter Rail Division (METRA), which operates our suburban commuter rail network throughout the six-county metropolitan region.

I appear here today in support of the broad goals of H.R. 2273, to rid American society of discriminatory practices toward the disabled in employment, transportation, public accommodations and communications. The RTA applauds the sponsors of the ADA for addressing long perpetuated civil wrongs, replacing them with vitally important civil rights. However, we believe these broad goals can only be achieved if certain changes are made to the ADA.

Almost since the enactment in 1984 of state legislation which gave the RTA planning and financial responsibility for public transit in the Chicago region, we have been working with the service boards and the mobility limited community to improve transit service for disabled citizens in our region. Under the leadership of our former Chairman, Sam Skinner and our current Chairman Gayle Franzen, I have, as I mentioned earlier, had the honor of chairing the RTA's Committee on the Mobility Limited.

RTA has every confidence that this plan will provide a framework under which the goals of the ADA can be achieved by affording the mobility limited population in the six-county region with mainline access to public transportation services.

The Plan calls for the following key policies to be provided by each of our service boards, the Chicago Transit Authority, Metra, and Pace:

- There will be regional coordination and eligibility so that the disabled can travel throughout the region with coordinated connecting services.

- Each service board will provide a full performance accessible mainline service as the foundation of an accessible regional system.

- Special services will supplement accessible mainline services at levels that are determined by policy and would be offered only in areas that are served by fixed route transit.

- Use of the lowest marginal subsidy service will be encouraged using eligibility criteria. This will promote lift usage and enable paratransit to be available for those who really need it.

- A convenient regionwide certification process will be initiated.

- The RTA and service boards will foster competition between providers of special service and encourage other groups, companies and organizations to become involved in the marketplace.

- Finally, the Plan provides financial parameters. The minimum funding level by each service board is set at the cost of providing full performance accessibility and the maximum level for all modes of transportation of the disabled is set at locally determined cost limits.

I should note that this plan was devised to comply with existing laws and regulations. In those cases in which our plan does not conform to the provisions of the bill before you, RTA will attempt to comply with the intent of the Americans With Disabilities Act. However, in several instances, we would maintain that the legislation before you, as it emerged from the

Senate, will lengthen implementation time and add to the difficulty of achieving its stated objectives, objectives we embrace.

Mr. Chairman, the Americans With Disabilities Act poses a challenge to American society generally and to providers of public transportation specifically. RTA accepts that challenge. The ADA confers new rights upon disabled Americans and new responsibilities upon employers, places of public accommodation and providers of public transportation services. The principal challenge of the ADA for the RTA is reconciling our responsibilities to our disabled consumers with the needs of the 2.5 million riders who rely on us to deliver safe, timely and efficient service every day.

Mr. Chairman, there are three areas of this bill with which we have particular concerns: the requirement for comparable paratransit service to accompany mainline accessibility, the 100% accessibility requirement for diesel commuter rail trains and the mandate to retrofit key transit stations.

It should be stressed, Mr. Chairman, that public transit authorities do not come to this debate over the rights of the disabled without experience. In fact, we have had ample experience with the vagueness of Section 504 of the Rehabilitation Act of 1973. The ADA legislation should provide a new and clear definition of the rights and responsibilities contained in this bill. We should not substitute the vagueness of Section 504 with the vagueness of the ADA bill as it emerged from the Senate.

Paratransit Service

Mainline accessible public transit service is a goal which we share with the authors of the ADA legislation. We believe in Chicago that the goal of accessibility could be satisfied by our commitment to 50% or more accessibility on our bus fleet. The ADA requires without exception 100% bus accessibility. We have the flexibility to meet that standard under our plan.

But the ADA also requires the provision of paratransit service comparable to the service provided on fixed routes. The RTA believes that those portions of the ADA which address the relationship of mainline service to paratransit are seriously flawed and must be addressed by this committee.

The RTA fully understands and accepts the present and future role of paratransit in serving the needs of the disabled. In fact, Chicago area providers currently service 3,100 disabled riders daily with paratransit service. In serving these riders we've seen the cost of the service increase from $500,000 to $12 million, or 2300%, over the past ten years. We understand that there will always be some individuals so seriously disabled that mainline service is not an option for them. It is implied in the

Senate report that as mainline accessibility grows, the need for paratransit services will decline. However, our experience suggests that many disabled riders who can use mainline service still prefer paratransit for a variety of reasons.

While indicating that "comparable" paratransit service is required, the Senate bill does provide for some relief from that requirement if meeting it would impose an "undue financial burden" on the transit operator. This represents some recognition of reality, but the Senate bill leaves several important questions unanswered. Here are a few of the questions for which we still seek answers:

- What is "comparable" service? Does the Senate intend "comparable" service or "supplemental" service?
- Who is eligible to receive paratransit service?
- What constitutes "undue financial burden?"

By leaving these questions unanswered, the Senate bill insures the transition from special services for the disabled to mainline accessibility will be painful. The vagueness of the language will guarantee lengthy litigation. We want to see our disabled customers on our trains and buses. We do not want to see them in court.

In the absence of further clarification and flexibility, we feel the requirement for "comparable" paratransit service will, in practice, become a requirement for duplicative service. We do not think that our 2.5 million riders will accept the cost of a service which in large part will be intended as an insurance policy against lawsuits.

Mr. Chairman, if Congress intends that we provide "comparable" service, as outlined in the Senate ADA bill, it would need to accept the responsibility of defining in precise terms who is eligible for the service, how much service should be supplied, and how much transit operators should be expected to spend. Our view is that this cannot be effectively accomplished on a national level. Alternatively - and preferably- Congress should give substantial flexibility to local authorities to resolve these issues.

Commuter Rail Vehicles

The RTA through its METRA commuter rail operations provides extensive commuter rail services on diesel trains. The ADA requires that within 5 years one car per train be accessible to the disabled and that ultimately all cars be accessible. RTA can appreciate the requirement for full accessibility on light rail, rapid rail and high platform electric commuter rail vehicles. By incorporating accessibility into the design of those vehicles, operational problems currently effecting accessibility will be addressed and solved.

Extending the 100% accessibility requirement to diesel commuter trains ignores the difference between high-platform operations and diesel operations. Because diesel commuter trains do not operate off high platforms, they do not have the same problems associated with closing the gaps between trains and platforms as do high-platform trains. Therefore, RTA's plan for accessibility would require that the cab car of each diesel commuter be accessible. Because every train must have a cab car, one car per diesel commuter train would be accessible. We believe that this approach to accessibility on our suburban commuter rail trains will meet the needs of our disabled customers while posing little or no operational difficulties. The alternative - putting a lift on each car would require significant and unnecessary costs to be borne at the local level.

I should re-emphasize, Mr. Chairman, that our plan, which calls for one-car-per-train accessibility is consistent with the Illinois Governor's Task Force on transportation for the disabled a representative group of handicapped organizations. It represents a realistic solution to the difficult problems presented by the need to make commuter rail operations accessible.

Key Stations

The RTA's first priority has been and will remain to maintain, rehabilitate and preserve the mass transit infrastructure throughout the metropolitan Chicago region. Like many older mass transit systems around the country, the Chicago area faces a massive deficit in resources devoted to infrastructure improvements. It is absolutely imperative that we spend our scarce infrastructure dollars in the most strategic, cost effective manner possible.

We are concerned with the language in H.R. 2273 as regards the retrofitting of key transit stations. Once again, the Senate bill lacks a precise definition of "key stations". Such a lack of precision in the bill's language welcomes litigation to determine just what the Congress meant by "key" station. The RTA believes that the determination of which stations will most facilitate the use of the system by the disabled is a decision best left to the local service areas to resolve in consultation with their local mobility limited community.

In closing, I want to point out that we at the RTA feel that as public officials we and the members of the sub-committee share a responsibility to help pass a bill on transit for the disabled which will work. For our part Mr. Chairman, we will comply with the Americans with Disabilities Act even though Congress is providing no new funds whatsoever to help us meet this mandate. While we prepare to assume the financial and operations responsibility for compliance, we urge Congress to give local transit operators the ability to make important definitional and operational determinations within the parameters of the ADA.

We at the RTA have demonstrated our ability and willingness to serve our disabled riders through the development of the regional policy I discussed earlier. The policy complies with existing federal and state laws and was developed to be consitent with the Governor's Task Force. We believe it is a realistic, compassionate plan.

When the Americans with Disabilities Act becomes law, we hope the final product of your efforts will allow us to play the role for which we are best suited - continuing our new plan for meeting the financial and operational challenges posed by the act. It is our hope Congress will not produce a bill which creates ill-defined standards and iron-clad requirements to comply with them.

Local decision-making works best when it is allowed to address local issues. Federal policy making works best when it addresses broad national goals - particularly in the area of redressing wrongs done to the less fortunate.

Mr. Chairman, the ADA will be a triumph if both the federal government and local authorities do what they do best. We hope to celebrate that triumph with you and our disabled community in the coming years.

Thank you, Mr. Chairman. I would be pleased to answer any questions you might have.

U.S. HOUSE OF REPRESENTATIVES

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

The Subcommittee on Surface Transportation

TESTIMONY ON

THE AMERICANS WITH DISABILITIES ACT, H.R. 2273

Presented By

LOUIS J. GAMBACCINI
CHIEF OPERATIONS OFFICER/GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

SEPTEMBER 20, 1989

Good morning, Mr. Chairman and members of the Subcommittee on Surface Transportation, I am Louis J. Gambaccini, Chief Operations Officer and General Manager of the Southeastern Pennsylvania Transportation Authority, or SEPTA. I am pleased to have the opportunity to present testimony before you today on the Americans with Disabilities Act of 1989. While we support the intention to provide improved services to the disabled, we do have a number of cost and operational concerns with the Senate bill.

SEPTA operates the fourth largest public transportation system in the United States. SEPTA provides over 1.1 million passenger trips each weekday by commuter, light and rapid rail, bus and trackless trolley in metropolitan Philadelphia. In addition, we contract for the provision of paratransit service in Philadelphia, primarily for disabled people.

Last year SEPTA provided approximately 1.2 million passenger trips for disabled persons by accessible bus, accessible rail and paratransit. The Authority set up an elderly and handicap advisory committee in 1974, and began working with the disabled community to improve services for them. We have been meeting many of the transportation needs of the disabled in Southeastern Pennsylvania with accessible bus and rail service since 1980. The Authority began contracting paratransit service in 1981. In 1988, accessibility was extended to all of SEPTA's Suburban Transit Division bus routes through the implementation of our Suburban On-Call service, which allows a disabled person to call one day in advance to request an accessible bus to be assigned to any route. By November of this year, 48% of our bus fleet will be lift equipped.

This past summer, the Eastern Paralyzed Veterans Association, the City of Philadelphia and SEPTA entered into an agreement to guarantee the purchase of only accessible buses in the future and to expand the number of key rail stations to 45, or approximately 16% of the system.

As a result of our own experience and the broad impact of this legislation on SEPTA, I would like to provide the following specific comments on the Senate bill:

1. Section 203(b)(3) should specifically state that structural modifications to existing rail vehicles are not required. We agree that only accessible buses and rail cars should be obtained in the future when purchasing or leasing new vehicles. Furthermore, we concur with the idea of making rail vehicles accessible "to the maximum extent possible" for disabled persons, including wheelchair users, within three years. SEPTA has already removed seats in all its commuter rail trains to make space for wheelchairs, and our rapid rail cars are wheelchair accessible. SEPTA has on order replacement

cars for its Norristown High Speed Line, which include wheelchair securements.

While our commuter rail fleet is generally accessible, these cars do not precisely meet Uniform Federal Accessibility Standards regarding doorway width and turning radius. It would be very expensive to undertake the major structural modifications necessary to change these dimensions because of limited space in the car entry area; such modifications could affect the structural integrity of the cars. We also agree with the Senate Labor and Human Resources Committee report language which indicates that accessibility modifications must only be made to remanufactured vehicles when the remanufacturing effort involves stripping the vehicle to frame prior to rebuilding.

An additional concern relating to rail accessibility relates to streetcar operations in mixed traffic. Philadelphia has an extensive surface streetcar network, which features trolley operations in the middle of several major city streets. Lift deployment and wheelchair boarding in the middle of a busy street present a serious safety hazard; therefore, streetcar operations in mixed traffic should be specifically from accessibility requirements.

Since many areas, particularly older cities, have unique or unusual aspects of transit operations, the final legislation should contain waiver provisions for safety considerations.

2. Key stations are not defined in the Section 203(i)(1) of the Senate legislation. We agree with the Senate Committee that it is best to leave the selection of which stations are key to each locality. While our own negotiations with the disabled community generally involved such criteria as high ridership, major transfer points, and balanced regional coverage, they also considered physical constraints, cost and funding availability. We believe that the relative importance of such criteria should be locally determined, and that specific key station criteria are unnecessary and would be difficult to administer.

3. Section 203(c) of the Senate bill creates a requirement for full bus and key rail station accessibility plus extensive paratransit service. This will be very expensive to provide, and no funding is available for additional services.

The Senate Labor and Human Resources Committee Report interprets this provision of the act to require supplemental paratransit service to meet extensive service criteria.

The Senate Committee report effectively provides that public transportation operators are responsible for overcoming all mobility barriers faced by the disabled. Public transportation operators would be required to compensate for lack of adequate municipal facilities such as curb cuts and sidewalks; and ineffective or underfunded human service agency transportation programs.

Eligibility for supplemental paratransit service is not well defined in the Senate bill. The phrase "unable to use mainline transportation" can be broadly or narrowly interpreted. Our experience has been that people often prefer to use paratransit because it is difficult, but not impossible, for them to use accessible fixed-route service.

Congress should avoid mandating a broad eligibility criteria for supplemental paratransit because it will perpetuate costly dual services for the disabled. We believe the majority of the disabled would opt for the convenience of door-to-door services and the expenditure to retrofit our nation's public transit systems will only serve a small segment of the disabled population.

4. The Senate Committee report calls for developing programs to provide mobility training for people with diverse disabilities, such as visual and hearing impairments and mental retardation. Transportation of large numbers of people is the business of public transit operators. The industry does not have the expertise to understand the needs and provide mobility training for people with such a variety of special needs.

5. Short response time requirements for paratransit service can create expensive vehicle requirements and scheduling inefficiencies. The Senate report language raises questions as to what is intended as a comparable response time. It is totally unrealistic to require that paratransit response times be equivalent to fixed route headways, and the committee report language should be revised to clearly reflect this. SEPTA operates many bus routes with headways between five and fifteen minutes. Such a response time requirement is clearly impossible to meet; similar response times are not even available with taxi service. If paratransit service is intended to be truly supplemental, we recommend a response time

no shorter than twenty four hours, to permit efficient scheduling and routing of vehicles, in many cases utilizing existing computerized systems which have been developed at considerable expense.

6. While supplemental paratransit services are only required to the extent that they do not "impose an undue financial burden," the term "undue financial burden" is not clearly defined. We are greatly concerned about the increased cost of compliance with this bill at a time when the federal government is continuing to reduce assistance to public transit. For example, in the last ten years

   o Operating assistance has been reduced by 50%.

   o Capital assistance is down by 64% in terms of real buying power.

   o The transit trust fund is frozen.

   In this context, public transit authorities must resist any mandates which are unfunded, especially in the face of demands for expanded service of all types.

   For many transit authorities, any additional expense for which new funding is not provided constitutes an undue financial burden, insofar as fares must be raised or other services cut in order to provide new services. We would point out that fare increases and service reductions cause serious hardship to other low and fixed income riders, many of whom have no alternative means of transportation. Therefore, we strongly urge the Congress to fund the increased cost of compliance with the Americans with Disabilities Act.

7. Finally, we endorse the employment provisions of the Senate bill, with one minor exception. SEPTA has employed the disabled for many years, some of whom are employees who were injured on the job. The Authority has already made "reasonable accommodations" at a number of work locations for its employees.

   However, we take exception to the requirement to hire qualified readers for the blind and interpreters for deaf employees. Such a requirement makes it necessary to hire two individuals in order to obtain the production of one person. In a public service expense environment which is constrained by diminishing subsidy and pressure to improve productivity, such a rule would be exceedingly burdensome.

In conclusion, I believe that this Act can provide for major improvements to the lives of many disabled Americans. However, the language of the proposed legislation must be revised and clarified to prevent lengthy and expensive court battles following the issuance of regulations pursuant to the act. Changes must be made to provide for realistic implementation requirements and schedules, and funding must be included for public service providers who will be expanding and improving their services to the disabled.

Thank you for the opportunity to testify before you today.

TESTIMONY OF RICHARD K. SANDAAS
EXECUTIVE DIRECTOR, MUNICIPALITY OF METROPOLITAN SEATTLE
CONCERNING THE AMERICANS WITH DISABILITIES ACT
PRESENTED TO THE HOUSE PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

SEPTEMBER 20, 1989

Good afternoon, Chairman Mineta and members of the Surface Transportation Subcommittee. I am Richard K. Sandaas, Executive Director of the Municipality of Metropolitan Seattle (METRO). Metro operates bus and other public transportation services throughout the 2,128 square miles of King County in the state of Washington. Our active fleet of 1,091 buses makes us the ninth largest bus operating agency in the United States.

Metro supports passage of the Americans with Disabilities Act. More than eleven years ago, our governing board decided to make our regular fixed route service fully accessible to persons with disabilities. Since that time, all our new bus purchases have included wheelchair lifts and all of our new facilities including our $425 million downtown transit tunnel, have been designed to accommodate wheelchair users and individuals with other disabilities.

We have found mainline accessible bus service to be the best means of meeting the transportation needs of almost all persons with disabilities.

I am personally familiar with wheelchair lift technology and can assure you that it works. One of our own mechanics helped design the initial Lift-U company wheelchair back in the late 1970's. Those initial lifts were the best available at the time and lasted from eight to eleven years in active service before they were replaced due to excessive wear-related malfunctions.

Wheelchair lift mechanisms have been improved considerably since then. With proper maintenance, newer lifts should last twelve years or more. We also expect to maintain our current level of 98% in-service reliability with the latest generation of lift technology.

But it takes much more than a functioning lift to make accessible bus service a success. Citizens with disabilities must be involved in designing service. Passenger shelters must be installed with curb cuts and sufficient setbacks. Drivers must be trained to be sensitive to the special needs of individuals with disabilities so that they feel welcome. For example, our drivers call out bus stops for blind persons and we give blind persons large route number signs so drivers can help direct them to the proper bus at crowded downtown stops. While Metro also offers some individualized training, persons with disabilities must also take initiative in familiarizing themselves with how to use an accessible bus service. Finally, policy makers and senior management must continue to insist on accessibility as a fundamental given in the design, construction and implementation of all facilities and services.

Metro's positive approach to mainline accessibility has produced continually increasing use of our services by individuals with disabilities. In 1988, we carried 139,430 wheelchair lift users on our regular fixed route service. Average weekday use was 481 per day. Our average operating cost per ride was $3.89. Our average operating and capital cost per ride was $5.88. That same year, Metro was honored to receive a Distinguished Service Award from the President's Committee on Employment of People with Disabilities for our pioneering efforts on fixed route bus accessibility.

Mr. Chairman, let me reiterate Metro's support of the Americans with Disabilities Act. Persons with disabilities should have a legal right to ride the same buses, planes and trains and enter the same buildings as their fellow citizens. I must share with you, however, our serious concern with the supplemental paratransit service provisions of the Senate-passed bill.

While mainline accessibility can be viewed appropriately as a civil rights issue, only that very small percentage of individuals with disabilities so severe that they can not use a wheelchair lift-equipped bus should be vested with a legal right to special supplemental service. Currently, many communities provide specialized demand responsive services to meet their legal obligations under Section 504 of the Rehabilitation Act of 1973. Metro currently operates a specialized, demand responsive program for low income elderly and disabled adults even though we are not required to by Section 504. That program carried 113,000 riders in 1988 at an average operating cost of $7.43 per trip. People who could use our accessible fixed route service often call first to see if a demand-responsive van is available, because they prefer the comforts of door-to-door service.

The Senate-passed bill was ambiguous about who should be eligible for this type of special, supplemental service. The Senate Committee Report implied everyone who had some difficulty reaching a bus stop should have a legal right to specialized service. This subjective standard may open up a right to costly specialized service to many who simply prefer door-to-door service. The report language almost guarantees this right to dual service when it makes clear that eligibility for specialized service can not be used as grounds for excluding individuals from the very mainline accessible services that they are supposedly unable to use.

We recommend that local transit boards be given the responsibility of determining who should be eligible for supplemental service through individualized certification programs. If Metro is forced to meet demands from individuals with disabilities for door-to-door service, utilization of wheelchair lifts on our mainline service may decrease while the cost of our current specialized program could increase tenfold. Trips for low income seniors may be limited to make room for the service preferences of individuals with disabilities. These types of hard service allocation decisions should be made by local transit boards once the basic civil rights obligation to individuals with disabilities has been satisfied with accessible mainline service.

The Senate version was also somewhat ambiguous about how to judge the comparability of fixed route and specialized demand responsive service. Metro believes fixed route and demand responsive services each have inherent advantages. The following table lists some of those comparative advantages:

Comparative Advantages of Fixed Route and Demand Responsive Service

Fixed Route	Demand Responsive Paratransit
--Regular, predictable schedule, allowing spontaneous tripmaking and no phone call for reservation	--Door-to-door service eliminates travel to bus stops
--Superior response and travel time for trips with origins and destinations near a fixed route	--Superior waiting environment in terms of climate, security and familiarity
--Greater capacity	--Drivers often can provide more help with boarding and packages
--No segration from individuals disabilities	--Goes to any without destination, even those not well-served by fixed route transit
--Better service on long trips	--Best for short trips
--Lower operating costs	

Metro believes that these comparative advantages should be considered when judging the comparability of fixed-route and demand-responsive service. We can not, for example, design a demand-responsive paratransit system that matches the excellent frequency and travel times of our most heavily used bus routes. On the other hand, a fixed route system can never match the waiting comfort of a door-to-door demand responsive system. A local process involving all elements of the disabled community should be used to design services that are comparable when viewed in their entirety.

If Congress wishes to encourage the provision of supplemental services to give elderly and disabled individuals more mobility choices, we recommend you do so by providing financial incentives. As you know, the transportation component of federal assistance for human services has been cut sharply over the past decade. Federal assistance for public transportation has been cut by 50% in real dollar terms during the decade. Increases in programs like the Section 16 (b)(2) program, which provides $35 million in capital assistance to private, non-profits nationwide would be a very effective means of encouraging the provision of supplemental partransit service.

In closing, we applaud the main thrust of the Americans with Disabilities Act. With the expection of ambiguity in the supplemental services section, we wholeheartedly support this legislation. Thank you for the opportunity to come become your subcommittee today.

Mr. **Mineta**. I would like to now call on Ms. Pat Piras from San Lorenzo, California. Ms. Piras, we have your statement. It will be made a part of the record. If you will proceed in your own fashion in a summary of the statement.

TESTIMONY OF PAT PIRAS, CONSULTANT, SAN LORENZO, CA

Ms. **Piras**. Thank you, Mr. Mineta. I appreciate the opportunity to speak on behalf of the ADA and, in particular, I would like to concentrate on the fact that, in general, this legislation will be quite reasonable to implement in rural areas.

As way of introduction, I have been involved in the public transit field for about eighteen years, now. I have run paratransit systems, both on the East Coast and on the West Coast, both general public paratransit and specialized paratransit systems.

I was on the staff of the Metropolitan Transportation Commission in the San Francisco Bay Area for seven years and was responsible for funding and liaison for all paratransit and accessible fixed-route services within the Bay Area. I would point out for those of you who think that San Francisco is big—it is, indeed, a very large metropolitan area, but the Bay Area contains 10 percent of the rural population of the state of California. So we have a wide variety of terrains that are experienced there.

Since 1986, I have been a consultant, working on my own, primarily in the fields of both rural specialized transportation and have dealt with a number of public and private-non-profit agencies, both on the East Coast and the West Coast.

First of all, I guess, I would like to reiterate a couple of comments that have been made before, because there seems to be a great amount of concern about this comparable paratransit issue. As a paratransit provider, and having dealt with paratransit systems throughout the country, the concept that comparable does not necessarily mean equal is important.

The operation of a paratransit system is very different from the operation of a fixed-route system. The scheduling, operations, dispatching concerns, are very different and they are handled on a more immediate day-to-day kind of basis. One concern that comes up in many cases is the advanced reservation requirement for paratransit is, in many cases, for the convenience and, perhaps, the sanity of the people operating the system.

An immediate response is, the paratransit program is very difficult to operate and, theoretically, an advance-reservation system is more productive because you can preschedule all the trips, you will group rides. That way, you will be able to transport more people with a limited number of vehicles.

What happens, in practice, is that somebody cancels, somebody no shows. You have the vehicle scheduled to be out in one corner of the service area, possibly coming back in to drop off a passenger. On a fairly regular basis, several times a day, that ends up being a non-trip. So there is a fair amount of vehicle-wasted utilization that results from an advanced reservation system.

Because of some of these issues, this is one of the things as to why a fixed-route accessible service can be so much more cost-effective in the long run. It is not as labor-intensive and you can get a much higher utilization of your capacity by having accessible fixed-routes.

In rural areas, many systems are providing both fixed-route and paratransit, some of each. Sometimes both are done directly by the transit property, sometimes in coordination with a non-profit or another public agency. Demand-responsive tends to work fairly well in low-density areas, and so for many rural properties, the paratransit side of the ADA is relatively moot. They are already meeting those requirements.

There has been, throughout the county and over a long period of time, a fair amount of concern about the costs and the resulting ridership of fixed-route accessibility. As Mr. Mineta is well aware, California has had a requirement under state law since 1971 that all fixed-route buses be bought accessible. It took a while for that to be actually enforced and even with this very long-standing commitment, there is still a relatively low number of 100 percent accessible systems throughout California, just because of the time lags involved in buying and replacing fixed-route vehicles.

One example that I have cited in my testimony is the city of Santa Rosa. They became fully accessible in FY '88-89 and, that year, were carrying about 160 trips a month, actually relatively comparable to Milwaukee, which is a much larger system.

By Fiscal Year '88-89, Santa Rosa was carrying 910 trips a month. Over that whole period, total ridership on the bus system increased about 34 percent; lift usage increased by 450 percent. This is with a very good paratransit program in the area. So if a system is allowed to be developed, to remain in place over time, to be marketed, to be maintained, to have a good public information system, to have training of both users and drivers, you can have a system that works.

But to put into effect an accessible fixed-route system and then to pull it back, you are not going to have time to develop ridership. Another reason for this is because, in many cases, you can only make a few routes accessible at any one time. Often it would involve a transfer.

If you can only make half the trip, you are not going to make the first half of the trip. So ridership needs time to be able to be developed.

The issue of cost of accessibility has come up with a number of other speakers. It is the belief of many of the systems, perhaps in California—and we are, sometimes, perceived as an alien nation by the rest of the country—because the market for accessible equipment on transit buses has fluctuated so irregularly over time because of flip-flops in national policies, this has an impact on the cost of the equipment.

The manufacturers don't know how many to make from year to year. They don't know what they are going to be designing for a market that is going to be there three years from now because they don't know what the regulations are going to be, who is going to be buying buses.

One of the members, earlier, asked about how many lift manufacturers there are. There are only about three or four right now. When the prior regulations were in effect, that required full accessibility, there were seven or eight manufacturers, and several of them, actually, went out of business when the regulations were withdrawn because the market dried up.

So, in effect, part of the reason that the cost of accessible fixed-route has been relatively high in the past is because a small group of transit operators who have been committed to fixed-route accessible are paying for the profits that are not being derived from the other systems.

I would also like to note that is it important, in a way, to have a mandate for accessibility because left on their own, most transit operators have not voluntarily assumed the burdens of responsibility.

I believe it was Mr. Lipinski who asked about reactions to APTA's testimony. Part of why APTA may be—and this is speculation on my part—but part of why they may be, now, not being quite so adamant against the ADA is that their own membership has been trying to make the point to APTA that many systems want to be accessible. They are trying to. They are tired of explaining to their own constituencies that they are not in the same position as a national organization that alleges to represent them.

APTA has about 400 members, nationwide. Of the rural transit systems in the country who receive Section 18 from UMTA which is non-urbanized areas under 50,000 population, there are about 1100 systems of that size in the country. They are not represented by APTA.

There was a study, recently done in North Carolina, that looked into the UMTA Section 15 reports which was where all the transit operators report how much they are spending, what kind of service they are delivering, what is happening. The 1983 report of transit operations across the country which, actually, referred back to about two years prior so it was right at the point where the 1979 regulations, which required full accessibility, were really just coming into plan.

Operators were planning full accessible systems and, at that point, there were only about 112 UMTA receipients who were delivering demand-responsive service. By the time the regulations had been relaxed in the mid-1980's, and the report was compiled for a few years later, the number of demand-responsive systems had grown to 250 with a flexible regulatory process.

So it is incumbent upon this body, if accessible services are to be delivered throughout the country, to have a national mandate.

Cost reports where, in many cases, the cost per ride comparisons that you may be given throughout a variety of systems which show very low cost per trip for paratransit, relatively higher trips for fixed-route, are not comparable because they are not looking at the same kinds of systems.

Most paratransit services have a very large elderly, non-disabled ridership, and that skews the cost per trip. You are adding in a lot more trips that are not subject to the calculation when that is applied to fixed-route accessible services.

As far back as 1982, when I was on the MTC staff, we tried to really look at, what were the costs of only those trips relating to persons with mobility disabilities, such as wheel chair users. At that point, when lifts were being very badly designed, there were horrible maintenance problems—they have improved significantly since then—but, at that point, we estimated that the capital costs of fixed-route accessible were about 6 percent of capital costs and about 1/10 of 1 percent of operating costs.

The situation has improved significantly since then.

A couple of other comments I was requested to refer to: Inter-city bussing is an issue that comes up in rural areas. I was not able to find it in my copy of the record so far, but the Department of Agriculture held a series of symposiums that have led to Congresswoman Virginia Smith's bill, and the issue of non-accessibility of common carrier intercity buses came up several times.

As somebody else pointed out, Greyhound is running vans as well as large buses. In fact, many of them are, to use a brand name, the El Dorado Falcon. The exact same bus that is being run as a small-city or rural local community public transit system is what Greyhound is running in some rural areas. They have gone to small buses because they are not using all the seats in some of these areas.

Tracking down complaints regarding this is difficult because there is no central place to send complaints. If people have complaints, most of the time, they send them to Greyhound so they are not readily available. There is no central repository for concerns on intercity bus problems in rural areas.

One anecdote I might bring in; in Southern California, I have been working with a system that is working to improve both—primarily, it is paratransit programs. The public transit system is 100 percent accessible, but it doesn't reach all areas of the county. The paratransit has a severely constrained capacity. There is an individual with developmental and physical disabilities who is going to a workshop that is twelve miles from his house.

The coordinating agency for developmental disabilities is spending $150 a day to transport this individual because they can't get on to the paratransit program.

Finally, in conclusion, in support of the ADA which does require both fixed-route accessible and paratransit as a supplement and complement to those services, the experiences that we have found throughout California and other parts of the country is that, indeed, both are needed. When they work together, you can provide a much higher level of service for all persons in the area.

Thank you. I would be glad to answer any questions.

Mr. **Mineta**. Thank you very much. There are going to be some things that we are going to have to consider. Let me ask you, what kind of criteria do you think we ought to look at in order to define comparable paratransit service? What kind of criteria should we be looking at to determine who in the disabled community is eligible to use paratransit services? Thirdly, what kind of criteria should we be looking at to determine what constitutes an undue financial burden to a public-transit entity?

Ms. **Piras**. I might try and cop out of that, somewhat, by saying I think that the legislation leaves a lot of that to a regulatory process. But that can be dangerous, too. Part of the problem we have had so far is, perhaps, leaving too much to a regulatory process.

I believe the gentleman from Seattle made some very good points. Although one would have to be cautious, I guess, a truly committed public transit agency—Mr. Jenkins made the comment, the individual from Seattle made the comment—a transit property that is really working with its local community, rather than telling its local community what the community wants, can develop a process and a resulting level of service that is probably far more likely to meet needs than an imposed kind of approach.

One of the interesting things, in the North Carolina study I mentioned, one of the other questions that was asked was, "What is your local handicapped population; what is your local wheel-chair user population? What percentage of those people are you serving?"

Of the 200-some demand-responsive systems that reported, something like 70 percent of them, the answer was, "We don't know." Well, how can they be having a collaborative working relationship with the local community if they don't know who those people are?

So, the public participation involvement of it is critical. I think, in terms of criteria, the so-called service criteria that were attempted to be used in the current DOT regulations provides some guidelines. Time of response, fare, service area are concerns that most users do seem to want to have some input into.

I missed your second question, by now.

Mr. **Mineta**. Who would be eligible for paratransportation?

Ms. **Piras**. Again, a lot of that is familiarity with the transit system. It is hard to learn to use public transit. Most people, anywhere, don't use it. A transit mentality to understand that you might have to transfer, that you have to be at a bus stop before the bus gets there or you are probably not going to make it—it takes time to learn that.

User training; with adequate user training, the number of people who really can use public transit would be higher. A lot of people can't use transit because they think they can't use transit. Medical certifications have been a mode of convenience in a number of areas because that, also, puts the burden on a doctor who says, "Okay, this person has qualified under some medical basis."

Again, in many cases, the doctor just says, "I want this person out of my office. Let them ride transit and get them out of here. Let it be the transit system's problem." I think the disabled community, in many cases, is very able to police themselves and, again, working with a good collaborative process can impose some of those restrictions on themselves.

In terms of undue financial burden, I believe the provision that is on the Senate side which allows for a credit, so to speak, for a paratransit program that is in existence that may be getting funding not only from the public transit side but from a variety of human services fundings can help to ease that burden.

While it is not directly the subject of either this Committee's deliberations in general, or the ADA, specifically, the whole issue of coordination of funding for transportation purposes throughout Federal and state governments is one that is probably going to have to be addressed over the next few years as resources continue to tighten.

Mr. **Mineta**. Thank you very much, Ms. Piras. I appreciate your testimony and your being here to help us deliberate on this issue.

Ms. **Piras**. Thank you.

[Ms. Piras' prepared statement follows:]

INITIAL TESTIMONY TO

HOUSE COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION

REGARDING
AMERICANS WITH DISABILITIES
ACT OF 1989

Submitted By:
PAT PIRAS
San Lorenzo, California

September 20, 1989

AMERICANS WITH DISABILITIES ACT OF 1989
Testimony by Pat Piras

These comments are submitted with a focus on transit systems in rural and small city areas. Additional written testimony will be forthcoming.

Public transportation is a crucial service in rural areas, providing lifeline as well as socialization and community connections. For persons with disabilities, this may be doubly important.

Public transit is provided through a variety of modes, and many systems utilize multiple service delivery methods. There are currently approximately 1,100 agencies which are recipients of UMTA Section 18 funding. The most recent information available, for FY 1984-85, indicates that 68.5% provide demand-responsive (paratransit) service, 54.5% provide fixed-route service, and 32.9% provide some variation of fixed-route service. Funding is often also provided from various human services and state and local sources.

It should be recognized that, given a choice between fixed-route and demand-responsive service, virtually everyone would prefer the conveniences that the latter can provide. In a low-density area, demand-responsive is often the preferred service due to the spread-out distribution of the population. However, by comparison to fixed-route, paratransit is generally more labor-intensive and therefore can incur relatively higher costs. Further, the efficiency and productivity of the service is more dependent on human factors on the supply side. In particular, advance reservation paratransit services often do not experience the increased productivities that theory would suppose, due to the inflexibility that such scheduling incurs (e.g., an unexpected cancellation or "no-show" by a passenger often results in a now-empty vehicle deadheading along a pre-determined route, rather than re-arranging planned stop assignments as would occur in an "on-call" or "immediate response" mode.

In many rural areas and small cities, fixed-route transit is generally more efficient and cost-effective than specialized services. However, to be truly usable by persons with disabilities, considerations in addition to lift or ramp accessibility must be taken into the transit system's planning and funding -- including routing, scheduling, bus stop access, training, maintenance, and marketing/information services. If a transfer is required to complete a trip, and only one of two or three route segments is accessible, the trip is not likely to be taken at all. This is seldom taken into account in ridership projections or reports.

In California, new bus purchases have been required to be accessible to wheelchair users under the provisions of Government Code Section 4500, enacted in 1971. Even with this long-standing commitment, only a relatively small number of systems have reached 100% accessibility, due to the long life-span of transit vehicles. As one example, Santa Rosa CityBus became fully accessible in FY 1983-84. That year, wheelchair ridership was 1,966 trips, or about .2% of total. By FY 1988-89, wheelchair ridership had grown steadily to 10,920 trips, or .8% of total. Over that time period, total transit ridership increased 34%, while lift usage increased by 456%.

If accessibility were a standard feature on transit buses, manufacturers would be more able to predict market levels, and it is likely that unit costs could be lower. The "flip-flop" policy at the national level has negatively impacted the pricing, selection, and reliability of lift equipment. Frankly, many California transit properties are tired of the attitudes shown by other systems. Studies in Seattle and Oakland have indicated that the attitude of management and policy Board members has a significant effect on how well accessible services are delivered and used. Over time, and given a fair chance, accessibility does work! The attached letter from the Fresno County Rural Transit Agency exemplifies this perspective.

In contrast, the lack of a strong and consistent national mandate for accessibility has affected transit operators' choices on how service is delivered to persons with disabilities. A recent study from North Carolina A&T University surveyed transit properties submitting UMTA Section 15 reports for demand-responsive services. In the 1983 Section 15 Report, under USDOT's original (1979) "full accessibility" regulations, there were 112 systems reporting demand-responsive services; by the 1988 Section 15 Report, which (due to compilation and publication lags) covers operations under the more lenient "special efforts" interim rules, the number had grown to 250 such systems.

Cost reports which compare fixed-route and paratransit services for persons with disabilities are also often misleading. Most specialized services are available to "E&H" riders, and thus transport a significant number of elders, with eligibility based on age rather than difficulty or inability to use other public transit. This skews reported ridership levels and results in a lower cost per trip than if only disabled riders were calculated. A 1982 study by staff of the Metropolitan Transportation Commission (San Francisco Bay Area) concentrated only on trips made by wheelchair users and concluded that "the total cost of accessibility is relatively modest compared to the total cost of all transit and paratransit services." Based on this methodology, it was estimated that the incremental cost of fixed-route accessibility was no more than 6% of capital costs and .1% of operating costs.

In order to effectively implement the intent of the Americans With Disabilities Act of 1989, two additional concerns are raised for the Committee's consideration:

a) In many communities, particularly in rural areas, existing paratransit services receive a significant level of funding support from human services and categorical programs. In order to sustain the levels of available transportation services, these non-UMTA funding sources should be required to be maintained, and coordinated with the public transit services.

b) The wide variety of wheelchairs and powered "scooter"-type mobility aids has created a legitimate safety concern for many transit operators. Although critical for individual mobility, research shows that most "scooter"-type wheelchairs are not designed, and are often unsuitable, for use on a moving transit vehicle. However, the purchaser is seldom informed of this usage constraint. USDOT coordination with the Department of Health and Human Services, which often funds such equipment purchases, is urged.

In conclusion, the denial to persons with disabilities of opportunities for full availability of transit services cannot be allowed to continue. Experience has shown that the combination of fixed-route accessibility, with supplemental paratransit, can meet the widest variety of personal needs and local conditions. Both types of service are needed. The enactment of the Americans With Disabilities Act of 1989, coupled with the appropriation of adequate mass transit funding, can ensure the delivery of these services.

FCRTA

FRESNO COUNTY RURAL TRANSIT AGENCY
2100 Tulare Street, Suite 619 Fresno, CA 93721 209-233-6789

September 18, 1989

MEMORANDUM

TO: Pat Piras Consulting

FROM: Jeffrey D. Webster, General Manager

SUBJECT: Rural Transit Response to Americans with Disabilities Act of 1989 - Congressional Testimony

Since its formation ten (10) years ago this month, the Fresno County Rural Transit Agency (FCRTA) has been committed to providing accessible general public transit services to the rural population within Fresno County that lives beyond the urbanized Fresno-Clovis Metropolitan Area (FCMA).

Our emphasis has focused on the needs of the transportation disadvantaged, specifically: elderly, handicapped and low-income residents within thirteen (13) rural incorporated cities that range in population from 2,000 to 15,000 residents and another dozen unincorporated communities as small as 100 residents. These individuals rely on our ninety percent (90%) subsidized services to travel within their communities and to and from the urbanized FCMA.

Our services are provided as sixteen (16) coordinated transit subsystems. Our service area encompasses 6,000 square miles. We operated single and multiple vehicles in both fixed route, with route deviation to pick up the handicapped, and demand response modes. Inter-city transportation is available through a number of cities by non-wheelchair accessible common carrier busses (Greyhound and Orange Belt Stage Lines). We provide accessible back-up services that duplicate their routes to facilitate frail elderly and handicapped individuals that may not be able to negotiate the steps of a common carrier coach bus. Our service routes are up to sixty-five (65) miles in each direction. Once in the urbanized area, our patrons may transfer to urban transit operators, the air terminal, or Amtrak service. Unfortunately, their services are not fully accessible.

From our initial goals and policies development, we have felt that there is no excuse for not planning and budgeting for a fleet of wheelchair accessible vehicles. Our fleet has included a half dozen different makes, models, and sizes. In each case, we found that installation of suitable wheelchair lifts could be accommodated for between $2,500 to $7,000 including any structural engineering modification that may have been necessary. Currently, we operate twenty-nine (29) vehicles consisting of twenty-seven (27), fifteen (15) passenger type domestic vans and two (2), thirty (30) passenger coach busses.

Maintenance of the equipment has not posed any particular problems. We are fortunate to have authorized dealers within the metropolitan area; two of which are qualified Disadvantaged Business Enterprises (DBE) that were founded by handicapped individuals.

Our annual ridership has grown to approximately 250,000 trips. Frail, elderly and handicapped patrons account for forty percent (40%) of our services, and the figures continued to grow in this category by at least three percent (3%) annually. Our handicapped patrons comprise representatives of every disability that can access public services. Alternative social service transportation is also available within our County. A majority of such services are provided, or coordinated, by the Fresno County Economic Opportunities Commission (FCEOC), as the designated Consolidated Transportation Service Agency (CTSA). They are responsible for another 260,000 such trips annually.

In summary, I should emphasize that we are the only alternative for many of our patrons who may wish to travel within and between communities. To be anything but one hundred percent (100%) accessible, would be irresponsible. To contend with such responsibility, is in our opinion, more expensive than the cost associated with full accessibility.

Mr. MINETA. Let me, at this point, call on Mr. Oral O. Miller, national representative, American Council of the Blind.

Mr. Miller, your statement will be made a part of the record. If you will go ahead and summarize in your own fashion, sir.

TESTIMONY OF ORAL O. MILLER, NATIONAL REPRESENTATIVE, AMERICAN COUNCIL OF THE BLIND

Mr. MILLER. Thank you, Mr. Chairman, especially at this late hour. My name is Oral Miller. I am the National Representative of the American Council of the Blind, which is the largest membership organization of blind people in the United States.

The American Council is made up of 50 state or regional affiliates or chapters, as well as 21 national special interest organizations, which are established along professional, vocational or some other common interest line. In short, our members come from throughout the United States, from all age brackets and from all walks of life.

My remarks today are going to focus on three areas; the fixed-route service, special service, and facilities that are to be accessible in connection with transportation.

First, regarding fixed-route service; Title II of the Americans With Disabilities Act considers as discrimination the purchase or lease of fixed-route vehicles if such are not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Although we certainly do not, and I emphasize—we do not object to any requirements in this act that will make vehicles accessible to people using wheelchairs—we do continue to have some concern about the use throughout the bill of the term, "accessible to and usable by persons with disabilities" including individuals who use wheel chairs simply because we believe that many of those references might, some day, tend to create the impression, when this bill is being construed, that the main purpose of the bill was to remove architectural or similar physical barriers.

We all know here, of course, that that absolutely is not the intent of this bill.

There are, perhaps, no physical modifications that are absolutely necessary in transportation vehicles to enable blind people to use them. However, there are a few simple and extremely inexpensive modifications or accommodations that would immensely improve the usefulness of vehicles for blind people.

Some of these would include such items as loud speakers; that is a loud speaker outside a vehicle that would enable an operator to provide information about route destinations and so forth to a waiting blind passenger or perhaps a loud speaker inside the vehicle in order to enable the operator to inform a blind passenger, or other passengers as well, concerning information they might want.

Another example could be larger and more legible outside signage on the vehicle in order to help visually-impaired people, as well as the general public, in identifying the route destination, et cetera, of that vehicle.

In recent years, we have made a number of recommendations to the Department of Transportation concerning these and other inexpensive accommodations and even simple changes in operating procedures that would make fixed-route service much more accessible and helpful to blind people. But, to date, we have not seen any regulations to achieve these ends.

In order to make it clear that the Americans With Disabilities Act is intended to protect all disabled people, regardless of the nature of the disability, and in order to eliminate the temptation in the future to provide what I am going to call one-size-fits-all service to disabled people, regardless of the nature of the disability; we recommend that clarifying language should be included, preferably in the bill, or if not in the bill, at least in the report, to the effect that the Americans With Disabilities Act is to be construed so as to bar discrimination faced by all disabled people and that nothing in the bill is to be construed to require disabled people to accept any accommodation or service that is inappropriate or which they don't want.

Regarding the second topic, which is the special service, Title II of the ADA would also require a public transit entity to provide special or paratransit service to disabled people who can't use fixed-route service. We have heard a lot of discussion on that today.

The senate report on this subject is very clear in saying that this service should be made available to all disabled people who are not able to use fixed-route service and that local transportation authorities should get meaningful input from all sectors of the disabled community in establishing service eligibility criteria.

Because of some unfortunate wording in the Department of Transportation regulations a few years ago, a number of local transportation authorities, including at least one who testified here earlier today, ruled that blind people, as a class, are automatically not eligible for special service because they are physically able to walk to bus stops or to train stations and then physically able to get on and get off of the bus or the train.

This position ignores the reality, as pointed out, I believe, by the gentleman from Milwaukee, earlier, that there are other factors that may make it difficult, and in some cases almost impossible, and, perhaps, dangerous for some blind people to get to fixed-route stations.

In referring to the difficulty encountered by many mobility-impaired people to get to fixed-route service, it is interesting that the Senate Report on this subject referred to the lack of curb cuts as one of those barriers.

Some of the conditions which could be at least serious obstacles for blind people could include such things as the need to cross, perhaps, a very busy, wide highway having no traffic controls. It could involve something as apparently simple as the unexpected unavailability of a guide dog which the traveler has been accustomed to using, especially if his other travel skills are not as good as they should be. Or it could include such as thing as the existence of a secondary handicap, though maybe a temporary one, such as reduced hearing, that could impair a blind person's mobility skills.

We believe that blind people should be encouraged to live as independent lives as possible. And we also believe they should be given appropriate orientation and mobility training to enable them to do that.

In my written statement, I have given the name and citations of a couple of these studies, and I am sure there are more.

However, since the selection of inappropriate materials and the improper placement of markers could make those markers useless, or even worse, make them dangerous, and since there is a widespread belief among, if not most, certainly of a very high percentage of blind people in the United States that such markers could be helpful, we believe that, pursuant to Title V of the bill, the Architectural and Transportation Barriers Compliance Board should be asked to study this matter thoroughly, carefully, and objectively before issuing minimum guidelines and requirements for accessibility design for the purposes of Titles II and III.

Thank you for the opportunity to speak to you today. If you have any questions, I will be pleased to answer them.

Mr. Mineta. Thank you very much, Mr. Miller, for your very complete and thorough submission. Let me ask whether or not, based on your experience with public mass transit and inter-city transportation services, as to whether the enactment of the ADA bill will provide for the elimination of existing barriers or discrimination for individuals who are blind?

Mr. Miller. Concerning transportation, as I indicated, there are not the enormous obstacles facing blind people that there are, perhaps, facing our mobility-impaired colleagues. Most of the changes, the modifications, accommodations or whatever that I have referred to—and there are many others—would, certainly, make transportation easier. I think they would probably attract more blind people, encourage them, urge them to use, public transit facilities.

In terms of ending all discrimination, all discriminatory acts, and so forth, that is a wonderful ideal. Some of the regulations that are on the book now are not being followed very well, so I guess some of it would depend on how well the law is complied with.

Mr. Mineta. Mr. Miller, do you think there is any chance that there might be any unintended practices that might come from the adoption of ADA that may create more discriminatory practices?

Mr. Miller. That is difficult to say. I can't think of any right off. I referred to the one-size-fits-all approach, earlier, which is a way of saying the providers may think that if they do one thing, then that takes care of their complete obligation toward all disabled people.

I don't think of anything else right off.

Mr. Mineta. Very well. Counsel, any questions? Mr. Miller, thank you very, very much for your very complete testimony but, more importantly, your patience at this late hour of the day.

Mr. Miller. Tenacity pays off.

Mr. Mineta. Thank you very much for being here.

Mr. Miller. Thank you.

[Mr. Miller's prepared statement follows:]

Unfortunately, though, the reality is that there may be some unique features in the community that make independent mobility for even the better-trained and the more mobile blind people difficult. The reality is that there are differences in the levels of independent mobility among blind people.

The reality is that, in some cases—for example, in the case of people who lose their eyesight at an older age—in some cases, such people do not attain the degree of confidence or skill which is attained by other blind people. And, in general, there will always be some cases where special service will, probably, be appropriate.

For these reasons, we believe that the report should make it clear that blind people are either eligible or, at least, that they are not to be automatically considered ineligible, for special service if they choose to use it and if they meet other service requirements.

Regarding my third topic, the question of accessible facilities, Title II of the Americans With Disabilities Act provides that new transportation facilities shall be accessible and, generally speaking, that the transportation activities conducted in connection with them will also be accessible.

There are a number of inexpensive and very useful accommodations that can be made to transportation facilities that will make them far more useful and accessible to blind people. Among these are such things as, much better lighting for the use of visually-impaired people and the general public; clearer and more legible signage for the use of visually-impaired people and the general public; appropriately-placed brain instructions, for example on fare-card machines or other devices in stations; tactile route maps and destination information.

Another example would be appropriately-placed tactile markers in clear, contrasting colors and made of a suitable material in order to give directional or locational information to blind travelers such as along platform edges or, perhaps, near escalators or fare gates or at other appropriate places.

Another simple modification or improvement or accommodation would be greatly-improved information systems, by telephone and by loudspeaker. Such systems, of course, would be extremely helpful to the general public, also.

We recognize that some people believe that tactile markers for orientation and mobility purposes should not be used for a variety of reasons. Again, that reality is that not all blind people have the same degree of mobility skills. Also, there may be temporary conditions such as construction, very loud noises, et cetera, that may temporarily impair a blind person's mobility skills.

And, also, although we wish it were not true, some blind people may not always be 100 percent attentive—this is the same as with all other travelers—may not be 100 percent attentive as to conditions around them, especially when they are in a hurry.

In some cities, in recent years, such as in San Francisco, Washington, New York and Boston, there have been a number of accidents involving an apparently high percentage of blind people falling off subway platforms. Both in connection with this and, perhaps, unrelated to this, too, a number of studies have been undertaken to determine whether appropriate tactile markers would reduce the risk of such accidents.

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STATEMENT OF THE
AMERICAN COUNCIL OF THE BLIND
BY ORAL MILLER, NATIONAL REPRESENTATIVE
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 20, 1989
REGARDING
THE AMERICANS WITH DISABILITIES ACT OF 1989
(H.R. 2273)

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Introduction

I am Oral O. Miller and I am the National Representative (Executive Director) of the American Council of the Blind, the largest membership organization of blind and visually impaired people in the United States. The American Council of the Blind is made up of 50 state/regional chapters or affiliates as well as 21 national special interest affiliated organizations established along professional, vocational or some other common interest. Among these national special interest affiliated organizations are the American Blind Lawyers Association, National Association of Blind Teachers, Randolph Sheppard Vendors of America, Visually Impaired Data Processors International, Visually Impaired Piano Tuners and Council of Citizens with Low Vision. In short, our members come from all parts of the United States, all age categories and all walks of life. The primary objective of the American Council of the Blind is the advancement of the well-being of blind people and the betterment of our total community.

It has been our pleasure to support the Americans with Disabilities Act since its introduction and we appreciate this opportunity to present our testimony to you today regarding the transportation and related needs of blind people and people with severe visual impairments. My remarks will focus primarily on public transportation provided by public entities--fixed route service, special service and facilities that are to be used to provide public transportation service.

Fixed Route Service

Title II of the proposed Americans with Disabilities Act considers as "discrimination" the purchase or lease of a new fixed route bus, intercity rail vehicle, commuter rail vehicle, etc. if it is not readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs. The objective of providing transportation with accessible vehicles is also sought in connection with used vehicles and remanufactured vehicles. Although we certainly do not oppose any of the requirements that will make vehicles accessible to people using wheelchairs, we continue to be concerned about the use throughout the bill of the phrase "accessible to and useable by persons with disabilities, including

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individuals who use wheelchairs" because such references, among others, tend to create the impression that the bill may be intended primarily to remove architectural barriers and we know, of course, that absolutely is not the intent. There are probably no physical modifications that are absolutely necessary in such vehicles to enable a blind person to use them. However, there are a few simple and extremely inexpensive modifications or accommodations that would immensely increase the usefulness of such vehicles--simple things such as a loud speaker outside a vehicle that would enable its operator to identify its route or destination to a waiting blind passenger, a loud speaker inside a vehicle that would enable its operator to give information easily to blind or other passengers needing it or larger and more legible signage outside a vehicle to aid visually impaired and elderly passengers, among others, in identifying its route or destination. In recent years we have made recommendations to the Department of Transportation concerning these and many other inexpensive accommodations or simple changes in operating procedures that would make fixed route service much more accessible to blind passengers, but to date we have not seen regulations issued that would accomplish these ends

In order to make it clear that the ADA is intended to protect all disabled people regardless of the nature of their disabilities and in order to eliminate the temptation to provide "one size fits all" service to all disabled people, regardless of the nature of their disabilities, we recommend clarifying language be included in the Act or at worst in the record to the effect that the Act is to be construed so as to eliminate discrimination faced by all people with disabilities regardless of disability category or type and that nothing in the act shall be construed to require a disabled person to accept an accommodation, service, opportunity or benefit which is not appropriate to or desired by that person.

Special Service

Title II of the Act would require a public transit entity that provides public transportation to provide paratransit or special transportation service for disabled people who can not otherwise use fixed route public transportation and to other individuals associated with such disabled people in accordance with service criteria established under regulations promulgated by the Secretary

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of Transportation--unless such special service would impose an undue financial burden on the public transit entity. The Senate report on this subject was very specific in stating that such service should be available to all disabled people not able to use fixed route service and that local transportation authorities should obtain meaningful input from all sectors of the disability community in establishing service eligibility criteria. Because of unfortunate wording in regulations issued by the Department of Transportation a few years ago many local transportation authorities have ruled that blind people are not eligible for special service because they are physically able to walk to a bus stop or subway station and then get on and off the bus or train. This position ignores the reality that other factors may make it very difficult, virtually impossible or dangerous for some blind people to get to fixed route stations. In referring to the inability of mobility impaired people to get to fixed route service the Senate report referred to the lack of curb cuts as a barrier. Conditions which could be serious obstacles for blind people could include the need to cross a very busy highway having no traffic controls, the illness of a guide dog that is customarily relied upon or the existence of a secondary handicap, such as impaired hearing, that could reduce a blind persons mobility. We believe that blind people should be encouraged to live as independently as possible and that they should be given proper orientation and mobility training to enable them to do so. However, the reality is that there may be unique features in a community that make independent mobility for even the best trained blind people difficult; that there are significant differences in the level of independent mobility performance among blind persons; that some blind people, especially those who lose their sight in their older years, never attain the confidence or level of independent performance attained by other blind people and that on balance there will always be many cases in which special service is more appropriate for some blind people. For these reasons we believe the record should make it clear that blind people are eligible for special service if they choose to use it and meet appropriate service standards.

Accessible Facilities

Title II provides also that it shall be considered discrimination for a public entity to build a new public transportation facility that is not readily accessible to and useable by individuals with disabilities, including

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individuals who use wheelchairs; that alterations of existing facilities shall be made in a manner to make the altered portions readily accessible to and useable by individuals with disabilities and that it shall be considered discrimination for a public entity to fail to operate such transportation program or activity in such facilities so that, when viewed in the entirety, it is readily accessible to or usable by individuals with disabilities. There are many inexpensive yet very useful modifications or accommodations that would make transportation facilities such as terminals and stations more "accessible to and useable by" blind people. Among these are better lighting for the use of visually impaired people (as well as members of the general public), clearer and more legible signage for the use of visually impaired people, appropriately placed braille instructions for the use of braille readers (such as on farecard machines and other devices), tactile route maps, appropriately placed tactile markers in clear, contrasting colors and of a suitable material to give directional or location assistance to blind travelers (such as along platform edges, escalators or near fare gates) and greatly improved information systems (by telephone and/or loud speaker). We recognize that some people argue that tactile orientation and mobility markers should not be used for a variety of reasons, but again the reality is that not all blind people have the same degree of mobility skill; that temporary conditions such as construction may temporarily impair a person's mobility skills and that, though we wish it were not true, blind people, the same as sighted people, are sometimes less than one hundred percent attentive to conditions around them. In some cities there have been serious accidents involving an unusually high percentage of blind people in rapid rail facilities and studies have been undertaken to determine whether appropriate tactile markers would reduce the risk of such accidents. (See "Solutions for Problems of Visually Impaired Users of Rapid Rail Transit" by U.S. Department of Transportation, Urban Mass Transportation Administration, Report #UMTA-MA-0036-81-1 and "Tactile Warnings to Promote Safety in the Vicinity of Transit Platform Edges" by U.S. Department of Transportation, Urban Mass Transportation Administration, Report #UMTA-MA-06-0121-87-1, December 1987, Final Report.) Since the selection of inappropriate materials and the improper placement of such markers could make such markers useless or perhaps dangerous and since there is the widespread belief by most blind people that such markers would be helpful, we believe that, pursuant to Title V of the ADA, the Architectural and Transportation Barriers Compliance Board should study this matter carefully and

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objectively before issuing minimum guidelines and requirements for accessible design for purposes of Title II and III.

* * *

We shall be pleased to consult with members of this subcommittee and members of its staff concerning any of the matters discussed herein. Thank you again for this opportunity to present our testimony.

Mr. **Mineta**. I would now like to call forward Mr. James Gashel, Director of Governmental Affairs, National Federation of the Blind. Mr. Gashel, your statement will be made a part of the record, so go ahead and summarize your testimony, if you would do so. Thank you.

TESTIMONY OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND

Mr. **Gashel**. Thank you, Mr. Chairman. You can be sure of a summary at this hour. Let me say that with regard to patience, I think we should all commend you for yours, not that it is not your responsibility, because it is. But I think that this hearing has given all of us an opportunity both to learn more about the Americans With Disabilities Act and learn more about the reality of some of the issues that have to be confronted in this bill.

I really want to commend you for having such a full-blown hearing on this. Thank you very much for that.

Let me just say, concerning something that you can't do anything about, but I need to correct the record on this; Mr. Miller referred to the fact that he represents the largest organization of blind people, I guess, in the U.S. or the world or something like that. I am not sure which. But, anyway, as he knows and my colleagues who are with me here at this hearing know, that simply is not the truth. Mr. Miller will just have to allow his views on it to—let's put it this way, to deal with his own conscience on the subject.

The National Federation of the Blind, in fact, has a membership of over 50,000 blind persons in this country and is the largest organized group of blind transit consumers. For fifty years, the federation has had a history of dealing with civil rights laws and civil rights issues in the area of disability. Jacobus Tenbroek, a distinguished blind law professor at the University of California was the founder of the National Federation of the Blind and the first leader of the organized blind movement in this country.

He authored a model state law—California was one of the first states to enact it—and that law is on the statute books now almost everywhere. It declares forthrightly the following: the blind, the visually-impaired, and the otherwise physically-disabled shall have the right to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort and other places to which the general public is invited subject only to the conditions and limitations established by law and applicable, alike, to all persons.

That sets, I think, a very clear standard. It is a standard that is working very well for us. The non-discrimination standard in this model state statute calls for equal access and equal rights, regardless of blindness or of disability.

The Americans With Disabilities Act, on the other hand, calls for a standard which would comply with the regulations issued under Section 504 of the Rehabilitation Act. The non-discrimination under Section 504 is, really, quite a bit different from the Model White Cane Law standard.

The Model White Cane Law talks about equal participation. Section 504 talks about accommodated participation. There is a significant difference in ways that I will describe. First, this background. Paternalism is the most common form of discrimination against blind people. People presume that we cannot do things because we can't see to do them. Accommodation, or in other words creating ways for us to participate, then becomes the reflex response.

But accommodation may be discriminatory. In my written statement, I have some examples. It goes to the question which you were just putting to Mr. Miller. One example is offering a wheelchair to a blind person when the person is traveling through a public facility. It happens to us a lot at airports. I know you used to be chairman of the Aviation Subcommittee, so I had to mention that.

You know, if a blind person rejects the offered wheeichair, the rejection is, often, then, very much resented and the blind person is seen as ungrateful for refusing the offer. Situations such as this inevitably lead to confrontations with the expressed expectation that the blind ought to be happy if someone does something for them.

What starts as an accommodation can soon become discrimination, especially when the accommodation is then required. That happens.

Another example is insistence that a blind person be seated at the front of a public bus because the seats at the front of the bus are supposed to be designated for the elderly and handicapped, another federal regulation. In either example, the blind person who can walk and move as well as anyone else is made to appear as limited, more limited than the person really is. The person may have access to the building or the bus, but the access is certainly on discriminatory terms for that blind individual or for blind individuals as a class, for that matter.

In the example of the bus, Section 504 already prohibits denying service to the blind person, and so does the Model White Cane Law. But it does not clearly prohibit the bus driver from insisting that the blind person sit in one of the front seats on the bus which are designated for the elderly and handicapped. This is an ambiguity.

Some may regard seating disputes as quibbling, but let me tell you that the entire civil rights movement was brought to a national focus in this country because of exactly this type of dispute. By the way, I have a friend who died a few years ago, but he was black and blind and he said he fought his way in the 1960's from the back of the bus to the front of the bus and he would be darned—actually, he didn't say darned—but he would have problems if he now had to turn around and fight his way to the back of the bus.

The Americans With Disabilities Act will require disabled persons to be accommodated on the bus. If blind persons who are capable of sitting anywhere they want to on the bus are forced to accept the accommodation of using the seats designated for the elderly and handicapped, they will be subjected to arbitrary and unreasonable restrictions, restrictions which should not be applied.

Language is needed in the Americans With Disabilities Act to prevent the use of unintended restrictions based on disability in the name of compliance with the act.

This is a lesson which we should have learned from enactment of the Air Carrier Access Act, not to bring up a sore subject or anything. But, you know, this experience tells us that unintended restrictions, things that we never thought would have come about, based on disability, can easily and unexpectedly evolve from a law which you had a lot to do with. That law was forthrightly aimed at prohibiting discrimination. But it hasn't worked that way.

The audible traffic signal is another example of how an accommodation can become discriminatory. The sound made by the signal is a beeping or an electronic chirping noise which is intended to imitate a bird call. That is one of the common forms of the signal. The accommodation has been promoted by persons who assume that blind people will not know when or where to cross the street if they are not given some special audible cue.

But rather than being a form of assistance to blind people, this adaptation falsely presumes that blindness is an impairment to street crossing. It is not, I assure you. The fact is that blind people cross streets by themselves every day. We have been doing so without audible traffic signals and we have been doing it since cars, street crossings, blind people, and traffic lights were invented.

The sound of the traffic and the direction of its flow give us plenty of information. An audible traffic signal adds nothing, and many blind people say that it only confuses them to have the additional sounds.

Most significantly, this modification implies that blind people cannot cross ordinary streets. In this respect, it is a damaging and false public statement that the blind are disabled in ways that we are not.

So-called accommodations such as these come before us in an almost endless stream. Some of the cities in California—and you may have seen this, Mr. Chairman—have the big idea, now, of placing surface coverings called pathfinder tiles at some street intersections. They are doing it quite a bit in Sacramento and some of the other cities out there. Some of these pathfinder tiles even run across the street. The idea is that they are supposed to guide the blind across the street—never mind, you may not want to cross the street, by the way, and then there isn't a guide that just goes somewhere else.

Along a similar line, a college professor in New Mexico thought up the idea and got a federal grant to develop this—to create a cane which would follow an electronic field, provided, of course, that all of the very highly expensive and technical equipment is installed and that it is operating correctly.

Can you imagine the cost to the taxpayers if modifications such as beeping traffic lights, pathfinder tiles and electronic fields become in vogue as the result of the Americans With Disabilities Act? This could happen.

Beyond the needless expense involved in doing this, it is harmful when accommodations are made that falsely imply limitations caused by blindness. Opportunities necessarily depend on public understanding and public and social acceptance. This will be the case with or without the Americans With Disabilities Act

The best accommodation for a blind person in moving about is a long white cane and the training to use it. Both are available in abundance.

Mr. Chairman, from the moment the Americans With Disabilities Act is signed into law, that act will affect blind persons and millions of others in almost every activity of our lives. Think about that. If that act sets accommodation as the standard for using transportation facilities and services, as it currently does, then many thousands of us will be forced to travel and move about even, perhaps, on the public streets under discriminatory conditions.

Accommodation for persons with disabilities is, no doubt, a very necessary standard to provide equal rights for some persons in some instances. However, the right to access for some should not also become the basis for discrimination against those of us who already have access.

If access, under the accommodated terms of the Americans with Disabilities Act is our only choice, then we would have no choice but to oppose that Act. I hope that would not be our choice, however. The law must strike a balance. We are prepared to offer language in the form of an amendment to the act to achieve just exactly this kind of balance.

We are prepared both to be flexible and reasonable about this language. But I can tell you one thing. We are not prepared to endure what could become the practices of legalized discrimination. We are already experiencing that kind of incident in respect to the airlines. It is not real pleasant for us.

Mr. Chairman, discrimination against persons with disabilities is absolutely wrong. The Americans With Disabilities Act should, emphatically, and forthrightly prohibit it in any form. The right of individual choice to participate with or without accommodation is a central, unresolved ambiguity in the act, but it is a principle that the act should uphold. I gather that Mr. Miller agrees with that.

If that ambiguity is not resolved by specific, statutory language, then the act could become a civil rights fiasco. We have a chance to prevent that from happening. I think that with your help, we can do it.

Thanks a lot.

Mr. MINETA. Thank you very much, Mr. Gashel, for a very fine statement. The National Federation of the Blind supports the principle of the right of the individual to choose to use surface transportation services with or without special accommodations. From the testimony that we have heard today from other representatives of the community of people with disabilities, including the American Council of the Blind, there are, obvious disagreement on whether or not special accommodations are needed to achieve accessibility.

How would you propose to balance the individual's desire or need for special accommodations against another individual's desire or need to not be specifically accommodated?

Mr. GASHEL. I think we have to balance that by what the Americans With Disabilities Act is seeking to do. The Americans With Disabilities Act is seeking to end discrimination. The kinds of things that we are talking about in respect to blind people using transportation are—that is, the accommodation items that may be discussed—are really not discrimination issues.

For example, let's take not a bus example but a street-crossing. I use the beeping traffic light. It is a plain fact that a street crossing is not discriminatory against a blind person if it doesn't have a beeping traffic light. You can cross the street without it. As a matter of fact, it is a different situation than what you have if you are in a wheel chair.

You see, if you have got a street crossing that doesn't have a curb cut and you are in a wheel chair, you can't make that street crossing. You have got a barrier, and that barrier should be removed. And that is the social policy that would be set by the Americans With Disabilities Act, and very appropriately so.

It is a different situation for us. We don't really face that kind of barrier in crossing the street. As Mr. Miller said, it is really not that kind of issue. You can still cross the street or ride the bus or do any of the things without those things being done.

So those are things, Mr. Chairman, which might fall in the category—even if we agreed that they should be done—they might fall in the category of things that are nice to do. Quite frankly, we happen to think that some of those things should not be done, that they are not nice to do and, in fact, to install them is discriminatory rather than the other way around.

In the case of the beeping traffic light, it is discriminatory because it conveys a false public message to the public about blind people. It says that we can't cross the street, God forbid, if it wasn't for the beeping traffic light. That limits me. If somebody believes that I depend upon some device that, all of a sudden Congress in 1989 decided to order somebody to install, they leave out the whole rest of my life, the ability that I have shown to do things.

Our ability comes from the training we have and the tools we can use. So I don't think that we are dealing with the same situation. I think the focus of the Americans With Disabilities Act has to be on ending discrimination in all forms, attitudinally as well as otherwise.

If these special beepers and so forth discriminate attitudinally, we ought to outlaw them.

Mr. **Mineta**. Again, Mr. Gashel, thank you very, very much for your fine testimony. I look forward to working with you on resolving this issue and making sure that we don't have any unintended results.

Mr. **Gashel**. We just don't want to replay the airlines.

Mr. **Mineta**. That is for sure. Thank you very, very much.

Mr. **Gashel**. Thank you.

Mr. **Mineta**. Thanks to everyone who has so patiently listened or been participating up to this point. Again, there being no further business before the Subcommittee, we stand adjourned until the 26th when these hearings will continue.

Thank you very much

[Whereupon, at 8:18 p.m., the subcommittee recessed.]

[The prepared statement of Mr. Gashel follows:]

BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
STATEMENT OF THE
THE NATIONAL FEDERATION OF THE BLIND
JAMES GASHEL
DIRECTOR OF GOVERNMENTAL AFFAIRS
SEPTEMBER 20, 1989

Mr. Chairman, I am James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone: (301) 659-9314. Thank you for giving me the opportunity to participate in this hearing today.

In this hearing you are examining the proposed Americans with Disabilities Act and its effects on programs within the jurisdiction of the Surface Transportation subcommittee. This is a vital subject to blind people. We are transit consumers. Our lives will be greatly affected every day in the future by what you decide to do with respect to the provisions of the Americans with Disabilities Act. We have some specific advice to offer and lots of experience (the experience of our own lives) to support our recommendations.

The Federation's national membership exceeds 50,000. We have an affiliate in each state and the District of Columbia. There are local NFB chapters in most sizable population areas in the United States. All of our officers and the vast majority of our members are blind. The Federation is not an organization speaking for the blind; it is the blind speaking for themselves. The members of the National Federation of the Blind represent the largest single organized group of blind transit consumers in the United States. We depend heavily on public mass transit and inter-city transit. Most of these services are currently provided without discrimination against the blind. Even so, the Americans with Disabilities Act will have an inevitable impact on the provision of transit services and the relationship between transit providers and blind consumers.

The National Federation of the Blind was organized in 1940. Since that time we have worked hard to insure (by law and otherwise) that blind persons will not be the victims of discrimination when they use public streets, public buildings, public accommodations, and public transportation facilities. Jacobus tenBroek, the principal founder and first president of the Federation, authored a law designed for use by states. We call it the Model White Cane Law. Most states have enacted it in one form or another. California, Mr. Chairman, was one of the first states to enact the Model White Cane Law. For most of his academic career Dr. tenBroek was a distinguished professor of law at the University of California at Berkeley.

The standard for nondiscrimination is stated succinctly in the Model White Cane Law: "The blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons." This standard is clear, and it works well for us. It is now the law of the land almost everywhere in the United States. The Model White Cane Law was placed on the statute books in California five years before Congress enacted section 504 of the Rehabilitation Act to prohibit discrimination against handicapped individuals in federally assisted programs.

Mr. Chairman, you are going to receive a great deal of information about the need for a comprehensive nondiscrimination law. I plan in this statement to do more than simply add the weight of another major group. We are affected, as I have said, and we do believe that there is a need for a comprehensive nondiscrimination law. However, we do have some specific concerns that we would like you to consider. We believe that, at least in the case of people who are blind, the Americans with Disabilities Act could result in practices that are discriminatory even though intended to comply with the law. Our greatest fear is that the Americans with Disabilities Act will become the basis for more discrimination against us than now exists.

This may be a surprising statement. How could a nondiscrimination law have the unintended effect of causing more discrimination? Our experience indicates that this does happen. Let me explain. I am going to discuss this problem in terms of the condition of blindness since I am blind, and I represent the collective views of the blind in this matter. It may be that blind persons uniquely face the form of discrimination that I am about to describe.

Discrimination against the blind comes from the false assumption that sight is essential for successful performance of most tasks. Blindness is the inability to see, but it is not generally disabling. Alternative techniques used by blind persons work as well, and as efficiently, as visual techniques used by sighted persons in most instances. Some blind techniques work better than sighted techniques, and some sighted techniques work better than some blind techniques. Unwanted accommodations for the blind discriminate by falsely portraying us as limited in ways that we are not.

Increased attention to civil rights for the disabled has actually led to required accommodations that are unwanted and even detrimental to full integration. One example is offering a wheelchair to assist a blind person through a facility. If the offer is rejected, use of the wheelchair may be required. What started as an accommodation is now discrimination. Another example is insisting that all blind people must sit at the front of public buses because those seats are designated for the elderly and handicapped. In either example, the blind person who can walk and move as well as anyone else is made to appear as limited. The person may have access to the building or the bus, but the access is certainly on discriminatory terms for that blind individual or for the blind as a class.

The experience of the blind with section 504 should be instructive. Programs are now established to "take care of" our needs. The folks who establish these programs are often so overwhelmed or uncertain of what to do that they even want to "take care of" needs that we do not have. In the bus example, section 504 clearly prohibits denying service to the blind. It does not clearly prohibit the bus driver from insisting that a blind person sit in one of the front seats designated for the elderly and handicapped. Some may regard seating disputes as quibbling, but the entire civil rights movement was brought to a national focus by exactly this type of issue. Section 504 requires that disabled persons be accommodated on the bus. If blind persons (who are capable of sitting anywhere) are forced to accept seating accommodations and use the seats designated for the elderly and handicapped, they are being subjected to arbitrary and unreasonable restrictions.

It is exactly this type of situation, resulting from intended compliance with section 504, that the blind find objectionable. We are expected to be disabled in ways that we are not. Participation without restriction (other than the conditions applicable alike to everyone) is the proper policy of nondiscrimination. Conversely, it is discriminatory to assume that participation for the blind is made possible only by means of accommodation. I cannot emphasize this point too much--required, unwanted accommodations are acts of discrimination, even if they are kindly meant. Discrimination against the disabled is hardly ever intentional. It is more often the result of human kindness, but the effect is the same as if the motives were ill-intended.

Language is needed in the Americans with Disabilities Act to prevent the use of unintended restrictions based on disability in the name of compliance with the Act. This is a lesson that we should have learned from the experience we are having with the Air Carrier Access Act. This experience tells us that unintended restrictions based on disability can easily evolve from a law that is forthrightly aimed at prohibiting discrimination.

The advent of federal civil rights laws for handicapped individuals brought pressure on commercial airlines to serve persons with disabilities. Physical barriers of aircraft and equipment had prevented service in some instances. This was never a problem for the blind. In our case, air transportation was almost always provided on essentially nondiscriminatory terms. Certainly (in contrast to the situation for some disabled persons) there were no policies to deny or restrict service to the blind. Blindness was not regarded as a disability for purposes of air transportation.

The pressure brought on commercial airlines by persons with disabilities was necessary, but the effect it has had on blind persons has been a civil rights disaster. When the airlines and the Federal Aviation Administration began to plan ways of accommodating the handicapped in order to serve them, they included the blind in the general category. All of a sudden it became unacceptable to think of the blind as not disabled in air travel. So the blind have been regarded as disabled, and restrictions thought to be appropriate for the disabled have been wrongfully imposed on the blind ever since. This policy has now been pursued aggressively by the airlines over the objection of the blind. Ironically, the net effect of the civil rights laws for the disabled has been to place new and unwarranted restrictions on the blind in air travel.

Backed by federal law, the airlines are attempting to make us disabled in ways that we are not. Could the same sort of thing happen in surface transportation? The answer is unmistakably "yes." The Americans with Disabilities Act (as introduced in the House and as passed by the Senate) presumes that disability implies the need for an accommodated form of participation. Covered entities will want to comply with the Act by making accommodations, especially those of minimal cost. As with the airline example, the blind will be expected to accept policies which apply to the generic "disability" class, including accommodated participation and the restrictions that necessarily accompany it.

The accommodated participation standard is no doubt very appropriate for many persons with disabilities. This standard should help to make their participation possible. For blind persons, however, the accommodation standard incorrectly assumes a degree of inability and directs unwanted and even harmful changes. The individual's true abilities are overshadowed by accommodated participation, and the changes made become the focus of everyone's attention. It is assumed that the individual could not participate were it not for the accommodation.

To use another example, some people now assume that blind people cannot cross street intersections without special signaling devices. The devices are audible traffic signals which emit a sound cue to indicate the changing of the traffic lights. The cue is a beeping or electronic chirping noise intended to imitate a bird-call. The modification has been promoted by persons who assume that blind people will not know when or where to cross the street if they are not given a special audible cue. But rather than being a form of assistance to the blind, this adaptation falsely presumes that blindness is an impairment to street crossing. The fact is that blind people cross streets by themselves every day without audible traffic signals. We have been doing so ever since cars, street crossings, and traffic lights were invented. The sound of the traffic and the direction of its flow give plenty of information. An audible traffic signal adds nothing, and many blind people say that the additional sounds only confuse them. Most significantly, this modification implies that the blind cannot cross ordinary streets. In this respect, it is a damaging and false public statement that the blind are disabled in ways that they are not.

It is harmful to us when accommodations are made that falsely imply limitations caused by blindness. Opportunities necessarily depend on public understanding and social acceptance. This will be the case with or without the Americans with Disabilities Act. Blind people want to be accepted on terms of equality with the sighted. This is a proper and realistically achievable objective. Our equality will be blocked, however, if we are faced with a federal law that implies a degree of permanent inequality.

In the area of surface transportation the Americans with Disabilities Act should emphatically prohibit discriminatory physical and social barriers. The standard to use to identify discrimination should be that the individual cannot receive a service because a barrier exists. The Act should not be used to order physical or programmatic modifications in cases where participation is not blocked by barriers. Blind persons can provably cross streets without beeping or chirping traffic lights, so installation of these devices should not be required. If a modification falsely identifies a class of persons with disabilities as more disabled than they are (as in the case of the beeping traffic lights), the modification should be prohibited. The modification itself can become a social barrier if not a physical one.

The language of the Act should also prohibit the formation of new restrictions that may be developed, even if the intent of the restrictions is to comply with the Act. This policy should ward off the tendency for optional accommodations to become mandatory. If this is not the policy of the Act, there is a great danger that we will be forced to accept and use special, accommodated programs and services, whether we like it or not. Blind people are far too familiar with the resentment that occurs when we ask not to be accommodated. We are expected to be grateful for the modifications that are made, even if we do not need or want them. The Act should specifically provide for the right to participate without accommodation. The choice of methods to be used for participation should be a matter of individual discretion.

Mr. Chairman, from the moment it is signed into law, the Americans with Disabilities Act will affect blind persons and millions of others in almost every activity of our lives. If the Act sets accommodation as the standard for using transportation facilities and services, many thousands of us will be forced to travel and move about (perhaps even on the public streets) under discriminatory conditions. The right of access should not also be the right to cause discrimination against those of us who already have access. There must be a balance. We are prepared to offer language in the form of an amendment to achieve that balance. We are prepared to be flexible and reasonable about this language, but we are not prepared to endure what could become the practices of legalized discrimination. We are already having that experience with the airlines.

The right of individual choice to participate with or without accommodation is a central principle that remains unclear in the Americans with Disabilities Act. If that ambiguity is not resolved by specific language in the bill, we are dangerously at risk of having a replay of the civil rights fiasco in commercial aviation. Mr. Chairman, I don't want that, the National Federation of the Blind does not want that, and I am sure that you do not want that. Let us work together to be sure that it does not happen. This is our chance. We will not have another opportunity such as this. On behalf of the National Federation of the Blind, I thank you.

AMERICANS WITH DISABILITIES ACT

TUESDAY, SEPTEMBER 26, 1989

House of Representatives,
Subcommittee on Surface Transportation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Norman Mineta (Chairman of the Subcommittee) presiding.

Mr. Mineta. The Subcommittee on Surface Transportation will please come to order.

This is a continuation of a hearing relative to the subject of the Americans with Disabilities Act, and before we begin with our scheduled witnesses, I would like to insert into the record a statement from our colleague from West Virginia, Mr. Nick Rahall.

[The statement of the Hon. Nick J. Rahall, II follows:]

STATEMENT OF HON. NICK J. RAHALL, A REPRESENTATIVE IN CONGRESS FROM WEST VIRGINIA

OPENING STATEMENT
HONORABLE NICK J. RAHALL, II (D-WV)

HEARING, SUBCOMMITTEE ON SURFACE TRANSPORTATION
TUESDAY, SEPTEMBER 26TH, 1989
RE: AMERICANS WITH DISABILITIES ACT

Mr. Chairman I am a cosponsor of H.R. 2273, the Americans With Disabilities Act. I agree wholeheartedly with what many of my colleagues in the House and the Senate have said - that if the American dream is the dream of opportunity for all, then the abililty and the right to realize the dream belongs to the 43 million disabled men, women and children in this country as surely as it belongs to the rest of us.

Without question the ADA is a most critical bill, one which has the power to change the lives of persons with disabilities for all time to come, extending to them the right to employment opportunities in the private sector, public accommodations, activities of state and local governments, public and private transportation, and telecommunications for persons with hearing impairments and other communications disorders.

Obviously, current federal and state laws do not adequately cover the discrimination faced by disabled people in these critical areas, or we wouldn't be here 25 years after passage of the historic Civil Rights Act of 1964. I have finally come to understand what the term "reinventing the wheel" means in terms of civil rights. H.R. 2273 will start us on the road -- finally to the guarantee of civil rights for all people not just those without disabilities.

Needless to say, misleading statements have appeared in both the print and broadcast media concerning the various provisions in H.R. 2273, and many are totally inaccurate. Perhaps through this hearing today and others scheduled by other committees with jurisdiction over the bill, will disspell such notions and help us learn what, if anything, is broke and needs fixing.

Speaking for myself, I have been visited by various concerned groups who have the responsibility to provide transportation throughout the country, including for the disabled. During our subcommittee hearing on the 20th, we heard concerns expressed that certain provisions contained in the Senate bill would, if enacted, threaten the availability of adeqaute rural bus service between cities.

We have heard that the cost of fitting buses with chair lifts and restrooms will cause great financial hardship, particularly on the private intercity bus system.

We have heard that the definitions of terms are not adequate enough to assure transportation providers that they can rest comfortably in the knowledge that "undue financial hardship" means just that, and will be recognized for what it is. Some have said that "demand responsive" has not been defined at all.

Others claim that we are asking far more of bus and train service providers than we are now, or ever have, demanded of the airlines. And they ask why?

The respected and widely-read Wall Street Journal printed an editorial about the contents of the ADA bill that was rife with inaccuracies. The National Federation of Independent Businesses also made statements that were, I am certain misleading only because the bill is complex and comprehensive and therefore subject to misinterpretation and misstatement by well-meaning people such as the Membership in the NFIB.

Those are just a sampling of the claims and charges of unfairness I have heard described to me. Yet every person who met with me began and ended their remarks with assurances that "we support the bill."

I believe they do. Raising questions and making inquiries that are intended to bring everyone to a better understanding of what is expected of transportation services is part of the normal legislative process. I know that I have had some concerns of my own with regard to the transportation provisions. I associate myself with the questions raised by my colleagues during the hearing on the 20th, and will do so yet again today I am sure. And those problems that have been outlined are, for the most part, directed at learning what the impact will be on all transportation providers whether they are intercity rural lines, privately owned and operated, or large urban mass transit areas partly supported by public subsidies.

But lest my last remarks be misconstrued, let me say again that I intend to work with my colleagues on this Committee, and on the Education and Labor Committee, to get this legislation passed. That in no way means that I think this bill is perfect, and where there is room to make it even better, I want to be involved also.

Mr. Chairman I have questions of two of the witnesses, Mr. Picknelly and Mr. Henry.

(Questions attached)

Mr. **Mineta**. I would like to call forward at this time a panel consisting of our very fine colleague from Pennsylvania, a Member of the Banking, Finance and Urban Affairs Committee as well as Post Office and Civil Service Committee. I would like to call forward a panel made up of Mr. Frank M. Henry, Chairman of the Board, American Bus Association and President, Martz Trailways, Wilkes-Barre, Pennsylvania; Mr. C.D. Busskohl, Director, United Bus Owners of America, Washington, DC, and President, Arrow State Lines, Inc., Sioux City, Iowa; Mr. Dan Dipert, President, National Tour Association, Inc, Alexandria, Virginia, and Owner and President, Dan Dipert's Travel Service, Inc., Arlington, Texas; Mr. Peter L. Picknelly, Sr., Chairman of the Board, Peter Pan Bus Lines, Springfield, Massachusetts; and Mr. Fred G. Currey, Chairman and CEO, Greyhound Lines, Inc., Dallas, Texas.

Congressman Kanjorski is a very active and fine Member of our Banking, Finance and Urban Affairs Committee as well as Post Office Civil Service. I would like you to go ahead and introduce your fine guest.

TESTIMONY OF HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

Mr. **Kanjorski**. Thank you, Mr. Chairman.

This is unusual for a Member of Congress to come down and introduce a friend and constituent particularly when that friend and constituent happens to be of another party. I wanted to make it a point today because Frank Henry represents the essence of the free enterprise system and the success of that system not only in Pennsylvania but nationally.

His credits are so long that I won't burden this committee with them. Suffice it to say that he is president of many companies but that is not his call to fame. His real call to fame in Pennsylvania, particularly northeastern Pennsylvania, is his participation on so many charitable organizations and trusteeships one of which I share, Board of Trustees on Wilkes-Barre College. He is a free enterprise individual who also has sympathy and common sense of what this nation needs.

I recommend him to the committee today and ask the committee to pay great heed to his statement, not that I endorse it nor anticipate what it will be, but I know what he says will come from his heart and will be rationed and reasoned and will represent the best thinking for the industry and a good part of the traveling public of this country.

With that, I am very pleased to introduce to the committee Frank M. Henry, one of the leading citizens of Pennsylvania.

Mr. **Mineta**. Thank you. Let me yield to my fine colleague, Mr. Shuster, in Pennsylvania.

Mr. **Shuster**. I want to join in welcoming my fellow Pennsylvanian and the entire panel.

Mr. **Mineta**. Mr. Henry, your statement will be made a part of the record. You may proceed in your own fashion.

TESTIMONY OF FRANK M. HENRY, CHAIRMAN OF THE BOARD, AMERICAN BUS ASSOCIATION AND PRESIDENT, MARTZ TRAILWAYS, WILKES-BARRE, PA; C.D. BUSSKOHL, DIRECTOR, UNITED BUS OWNERS OF AMERICA, WASHINGTON, DC, AND PRESIDENT, ARROW STATE LINES, INC., SIOUX CITY, IA; DAN DIPERT, PRESIDENT, NATIONAL TOUR ASSOCIATION, INC., ALEXANDRIA, VA, AND OWNER AND PRESIDENT, DAN DIPERT'S TRAVEL SERVICE, INC., ARLINGTON, TX; PETER L. PICKNELLY, SR., CHAIRMAN OF THE BOARD, PETER PAN BUS LINES, SPRINGFIELD, MA; AND FRED G. CURREY, CHAIRMAN AND CEO, GREYHOUND LINES, INC., DALLAS, TX

Mr. HENRY. Thank you very much. Thank you, Congressman Kanjorski. For the record my name is Frank Henry, President of the Frank Martz Motor Coach Company in Wilkes-Barre, Pennsylvania and I am Chairman of the American Bus Association representing approximately 700 bus companies in the United States, made up of small companies of two to three buses to the huge bus operations of Greyhound. A few members of ABA provide only scheduled, regular-route service; several hundred members, like three of my own companies, provide both regular-route service and tour services; and the remaining 500 or so members are engaged exclusively in charter and tour operations.

My companies, Frank Martz Coach Company in Wilkes-Barre, Pennsylvania, Gray Line of Washington, DC, and Gulf Coast Gray Line in St. Petersburg, Florida rely heavily on scheduled service and tour operations. Any service that depends on individual fares, such as regular route and special operations tours, price their trips so that they are divided among the number of seats available on the bus. The costs are based on the seats available and therefore we divide the cost of service by the seats available to come up with what would be the pricing to the customers.

This is true also in our tour service. It is obvious that when we lose these seats, we increase quite dramatically the prices of these services and in some cases we would lose enough seats that we would probably have to diminish or do without that service in certain areas.

All members of the bus association and all of us in the industry feel very strongly that our services are provided for all Americans. We feel very strongly the handicapped should have equal access and should be part of America as they are in other areas.

We want that and we welcome that. Our concern is not what we would like to see but how we would like to see it happen. There have been, as you know, some trials where they have tried various types of lift and lift operations and uses of that have been watched closely. We as an industry feel that with the present state of the bus industry and with the costs that appear to be included with this new type of operation, that with the estimated cost of $10,000 to $35,000 per unit to install these lifts on a bus, that if every bus had to be installed, we are talking approximately $20 million per year. This is based on a bus staying in a fleet 10 years and being replaced at 10 percent of the fleet per year.

This could be as a low of $20 million a year up to a high of $70 million. At this time we don't know the exact amount we will be faced with on the capital cost of conversion. When you take this figure, although in some areas this may seem like a small amount, $20 to $70 million but our entire industry, net operating profit for the last five years average was only about $40 million. So you can see it becomes economically unfeasible on a capital outlay alone.

The operating costs of this equipment when put in place is still an issue that has to be decided. It is estimated that the maintenance of this equipment could run from a minimum of $1000 to $2000 per bus. Add this to the capital cost and multiply it by 20,000 buses in our industry and you can see what we as a very small industry are faced with to continue in operation.

As you know, the accessibility has played a large part in other industries. These other industries have been given the mandate to provide the service. But the difference in our particular situation is that we have been told to provide the service, we have even been told how to provide that service. We are asking that we should invest and see how this should be provided.

However, as the bill was presented, there will be a study period but it is mandated that at the end of that study period wheelchair lifts will be installed. This does not indicate to us that it is a free study because the results seem to be concluded before the study has begun.

Our industry wants a solution to this problem. There are other solutions to the problem other than providing each bus with a lift. We run, as I said, scheduled service. Part of the problem with scheduled service is for the general public to rely on that service they want it to be on time, clean and efficient.

Taking it one step further, if we are to make equal accessibility, which we would like to, that would mean equal accessibility to the entire bus including equal accessibility to the restrooms. Then we are into an operating problem here because I don't believe technology has gotten to that point.

We could be losing 15 or 20 percent of the seats on that bus depending on what technology produces. Technology has not caught up with the intent of what we would like to do. There are solutions which have taken place in other states. I know in Massachusetts where there are a certain number of buses that are provided rather than having every bus provided. We can look for that solution. For us as an industry to take on the massive capital outlays that are necessary would be impossible.

In order for us to do this job, if it is to be as presented, it would have to be, I am afraid, a very large subsidization program let alone the operating subsidization to carry out what is mandated. We are open to suggestions. We are here because we want to see what suggestions can come out of it. We want the equal access.

On our own lines we have carried handicapped whenever asked to do so. I appreciate the opportunity to be here. I know the other panel members will speak likewise. At the end of the discussions of any members, we will be open to questions.

Mr. **Mineta**. Thank you, Mr. Henry.

Mr. Busskohl.

Mr. **Busskohl**. My name is Chuck Busskohl with Arrow Stage Lines and a director of the United Bus Owners of America. I ask my written testimony be submitted as written into the record and I will give a condensation of the remarks.

Mr. Mineta. Without objection, the statement will be made part of the record.

Mr. Busskohl. This bill, by requiring full accessibility on all buses would weaken, if not kill, the bus industry. Jeopardizing the industry's economic survival threatens to leave as many as 10,000 communities without any intercity transportation service.

Estimates of lift costs are dangerous to offer. Two seem to be available. MCI lifts in Massachusetts cost about $35,000 and consume one-third of the package express area as well as two to four seats. The Hubmatic lift from Denver costs about $200,000 to $300,000 but has never been used on a coach with a bath area.

There are two seats needed, two for restroom expansion, regulators and that could lead to three across seating rather than four across seating, costing that many more seats.

This bill demands an unnecessarily stringent remedy to achieve full accessibility. The bill requires that every bus must be accessible, every bus, when a simple advance notice principle would be sufficient to meet the needs.

The nature of intercity charter and tour travel states that advance notice does not place an undue and unusual burden on those requiring lift services.

The bill allows virtually every other affected business to escape compliance in a finding of undue burden. Even municipal systems which pay only 20 percent have no concern for profit but the bill declares it discriminatory to purchase a non-accessible bus. So we are discriminated against in the very passage of this act.

The Senate-passed version of ADA, S. 933, contains study language. The three-year study by the OTA as an advisory board will look into the means of achieving full accessibility.

The Senate bill requires mandatory accessibility by two years but is not linked to the study results. It would take another act of Congress to overturn the mandatory compliance even if the study shows 100 percent accessibility to be needed. UBUA and myself urge that Senate ADA study language be adopted and the compliance mandate be dropped from both bills. It should be linked to regulatory action to meet the need and maintain this industry's economic viability.

Thank you very much.

Mr. Mineta. Thank you.

Mr. Dipert.

Mr. Dipert. Mr. Chairman and distinguished Members of the committee, I am Dan Dipert. I am president and owner of Dan Dipert Tours, the largest independent motor coach tour operator in Texas. In addition, I am a bus owner. This year I serve as President of National Tour Association, NTA. This association represents the group travel industry in America with more than 3,500 members. Equal access to all disabled Americans is a goal that has long been embraced and practiced by NTA members for many years.

Today I reaffirm NTA's commitment to this goal as embodied in H.R. 2273. Further, I will state some basic questions and concerns for the mandate of S. 933 as passed by the Senate. Before I do, however, let me provide you with an outlined insight into our association. NTA's backbone is 550 tour operators who develop, package and sell group tours to destinations in the United States, Canada and other locations around the world.

NTA also represents 2,500 tour suppliers, hotels, restaurants, motor coach companies and airlines. We also represent destination marketing organizations whose members represent local, regional, state and provincial travel promotion offices. Because our unique structure covers every facet of group travel, NTA has certainly in part been a spokesman for the entire tour and travel industry.

This summer the National Tourist Association Board of Directors reaffirmed our traditional support for the right of every American to equal access to all forms of public transportation. H.R. 2273 implements the integration of America's disabled into the mainstream of American life and society and we support that.

However, our association would be remiss if we did not have some basic questions and concerns about some transportation provisions in the legislation that could provide extreme financial hardship and possibly could lead to the termination of service of thousands of rural travelers and hundreds of travelers in those communities.

Tour operators and coach operators have made substantial efforts to accommodate the needs of the disabled when asked to travel by motor coach—often far above the demonstrated need. We, however, know from experience that for our organization to survive in the marketplace we must be very efficient managers to be able to use the resources that are available to us.

This legislation, if implemented, will place an unfair burden of economic compliance upon the obviously limited capital of the nation's private bus owners that supply the motor coaches for our association's operators. Only one third of our operators own their own equipment.

You have been told that "There should not be a price tag consideration when instituting a basic civil right." In principle this is desirable. In fact, there is no free lunch. Is the price of compliance reasonable?

Industry estimates show that it will take between $30,000 and $50,000 to install a lift and restructure the seats and restrooms on board the motor coach. These figures are higher than those reported by the Denver official who said the amount was closer to $8,000.

Don't compare apples with oranges. While city buses have no restrooms and no baggage space under the aisles, with seats facing the center aisle on city buses, the motor coaches we use as tour operators have full luggage bins, fully equipped restrooms and forward facing seats.

In the motor coach that tour operators use, a passenger must be risen as much as five feet to clear the level for the luggage compartment.

All these things will take away the seating capacity that the motor coach tour operator uses with a loss of 15 to 17 seats per motor coach, lowering our revenues by one-third and raising cost by at least that much.

This spring a study was released by a long-time Washington, D.C. based firm, Robert Nathan. They found the transportation buses were the least supported mode of transportation by the Federal Government. Airlines average 70 cents per passenger trip. Amtrak has $33.45 per passenger trip, while the intercity bus system received a pittance of eight cents of federal subsidies per passenger trip.

The tour industry in the form of tours offered to the public is a low margin peak period business that does not operate on fixed routes.

The average return on investment is 9 percent. The slim margin of profit would be lost when the bus owners pass on the cost of mandated lifts to the leasing tour operators. This and the competition of our operators when we face non-profit organizations in our communities who offer discounted tour and travel opportunities means that each month some tour operators will be virtually forced out of business.

The tour industry has always been responsive to the needs of the disabled traveler. We will continue in this effort. I am absolutely confident that all the national tour operators are capable of providing the same demand-response tour for the disabled persons that we have provided for the able bodied.

In most cases, it takes six months to a year to plan, organize and conduct a tour. That time frame will give every operator the ability to lease a lift-equipped coach to accommodate the request of the disabled travelers. Our operators are willing and able to meet the equal access mandate of H.R. 2273 and S. 933.

In my 17 years in the motor coach industry I have packaged and promoted thousands of tours all over North America and beyond. In all those years I have had only approximately 15 requests for service for disabled customers. If I had been required to completely re-equip all the motor coaches I use with expensive and unused lifts and other requirements that may yet be determined by this bill, resulting in fewer seats to sell to my customers, then I may not have been able to remain in business long enough to testify today.

I would like to thank you for the opportunity to be with you today and express the concerns of our industry.

Mr. MINETA. Thank you, Mr. Dipert.

I will now call on Mr. Picknelly. Your statement will be made a part of the record. You may proceed in your own fashion.

Mr. PICKNELLY. Thank you.

My name is Peter Picknelly, chairman of the Peter Pan Bus Lines and a member of the Board of Directors of the American Bus Association. Peter Pan is a class I motor carrier headquartered in Springfield, MA. We provide regularly scheduled inter-city bus service over routes in Massachusetts, New York, New Hampshire and Connecticut.

We have a coach service originated in New England to various points in the United States in our tour service. We have 146 coaches with a seating capacity of between 47 and 49 passengers.

Peter Pan is one of the few privately owned motor coach companies in the country that has experience in lift equipped buses. We installed a lift in a bus we used in the charter service.

The availability of the wheelchair-accessible bus was widely advertised by our company and we received favorable public relations for the installation of the lift. Unfortunately, there was really no demand for the bus as a wheelchair-accessible bus. After about three years we removed the bus from service and converted it back to a conventional bus.

In 1985 the Commonwealth of Massachusetts initiated a program to purchase buses for private carriers operating regular route bus service within the state for the purpose of upgrading regular route service within the commonwealth.

They originally purchased 25 buses and six had wheelchair lifts, two of which were leased to Peter Pan. In this year, 1989, Massachusetts expanded its program to include somewhere around 25 additional buses, all of which have wheelchair lifts.

At the present time there are probably somewhere around 30 to 35 intercity buses in Massachusetts that are wheelchair accessible of which Peter Pan operates seven. The lifts were developed by Motor Coach Industries and installed at MCI at the cost of approximately $35,000 per bus. About half the cargo space was sacrificed for the installation of the lift. The transportation of one passenger in a wheelchair results in the loss of four revenue seats depending on the interior configuration of the bus.

When the bus is leased to Peter Pan the wheelchair passengers have no accessibility to the restroom. The ridership on these buses has been negligible. During the period of time we had two buses like this, each bus was used less than once every two months.

Except for the support of the Commonwealth of Massachusetts, we could not have afforded to own the buses. Peter Pan pays the Commonwealth of Massachusetts $675 per bus per month which is designed to recover the cost of the bus less the cost of the wheelchair installation. The disabled person must give 24 hours notice of his or her intent to use the bus. The purpose of that restriction is to enable the bus operator to position the limited number of accessible buses and have them available.

No such restriction would be available in the Senate bill.

Peter Pan derives approximately 50 percent of its operating revenue from charter and tour services. Even if the arguments advanced for installing lifts on all buses were sound, they would not apply to buses used exclusively on charter and special operations.

These bus charters are planned far enough in advance to allow accessible buses to be available. We are required to guarantee that an accessible bus will be available for all who request one. To require Peter Pan to install lifts on its entire bus fleet would not benefit any disabled person but would cripple Peter Pan.

Thank you.

Mr. **Mineta**. Thank you.

Now I would like to call on Mr. Fred G. Currey, chairman and CEO, Greyhound Lines. Your statement will be made a part of the record. You may proceed in your own fashion.

Mr. **Currey**. Thank you.

It is an honor to be invited to comment on the most important piece of legislation that has impacted the intercity bus business in a large number of years. I appreciate your accepting the written statement for the record.

I wish to make three points in summary of that statement. First, the bill as proposed by the Senate discriminates against inter-city bus companies. I know that is not a very popular thing to say, nevertheless, it is true as my statement shows.

Why it is true is the real question. The Senate bill is a mass of compromises; airlines are excluded, two-story buildings are excluded, movie houses must make only some seats, not all, accessible. Every private entity except the inter-city bus industry gets to take into account good faith, technology, cost, and undue hardship.

For some reason that we cannot determine, the sponsors of this bill seem to believe the entire movement turns on what happens in the inter-city industry. If we are required to be 100 percent accessible, even if it ruins the industry and makes bus transportation no longer available for the poor, somehow the program succeeds.

Considering the fact that the intercity industry carries only 1.5 percent of all intercity passengers, that makes it a real puzzle.

A second major summary point: This bill will initiate and conclude with the collapse of our rural service at Greyhound. Now first I understand the forum that we are in and I understand that business people have a problem in this forum with respect to the credibility of their numbers.

Frankly, there is a very severe penalty for submitting false numbers to the Securities and Exchange Commission. Here are the numbers we have submitted to the Securities and Exchange Commission contained in these documents submitted to the committee.

I am not about to come before Congress this morning, and our bond holders this afternoon that I will appear before, with a different set of numbers. We cannot stay in business as long as we have and do things like that.

Third, I would like to say to those who challenge our numbers to submit theirs and let you decide.

Now in the issue of the collapse of rural service we are not talking about theory. In the last 15 years this industry was cut in half by a retrenchment that touched every single state. The study by Nathan Associates using DOT information found that 20,000 locations were served by intercity buses in 1976 and today we are down to 10,000.

We have been down, at Greyhound and Trailways, this road of cutbacks and lay offs before. We know what happens when the system begins to unravel. Today 32 percent of the miles we operate are operated at a loss.

In the parlance of regulated days, that means that we cross-subsidize 32 percent of our route miles with revenue from positive route miles. Under ADA, as a result of the increased costs, 51 percent of our route miles would become unprofitable. That is a 60 percent increase in the percentage of route miles that become unprofitable.

Obviously, no company can exist with more than half of its routes in the red. We also know from bitter experience and from a lot of non-bitter experience over the past two and a half years of lowering prices, we also know that we cannot raise prices. The poor, old, urban and rural disadvantaged are our core customers.

Fifty percent of our customers are below the average poverty level of $15,000. So to raise prices to pay for the system is not in the public interest. That leaves us with no alternative except to cut unprofitable service, mainly in rural areas. Today we serve 10,000 locations. Under ADA, we will eliminate service to 5,000 of those locations. Today we employ 12,500 employees plus 8,000 working for contractors in terminals.

Under ADA, the retrenchment will bring that down so we will need to eliminate approximately 10,000 of those 20,000 jobs. This is not theory. This has already happened once in this industry.

This first map shows routes that will lose money under ADA. It is very important for you to focus on that map because from West to East it shows the result.

For instance, it shows clearly that in the route between LA and San Francisco, there are three ways to make it, the coast route and the valley routes. Those routes are profitable under ADA. However, go north of San Francisco up the coast and the route is unprofitable. With the elimination of the route, the only method to go from San Francisco to Seattle will be by Route 50, leaving the coastal route without service.

Take another example in my home state of Texas. Fort Worth to Dallas would be profitable under ADA but for those customers who wish to go to El Paso to Del Rio to Brownsville, a low income area, that route will need to be eliminated along with the small towns along that route.

Those are very key facts. Take the route between Memphis and Kansas City. Rather than going directly through Springfield, one would have to go through St. Louis to Kansas City, taking approximately one and one-half the amount of time the direct route takes. This shows the restructure after ADA. The blue area is where our route structure is most dense today. We will continue to have a substantial amount of feed service restructured in this segment of the map.

However, the yellow segment of the map shows the area of the country where the structure is only weakened. We have over the past two and one-half years begun to strengthen this but most feed in this area will be non-existent. The pink area shows the area which we feel today is already the weakest. In some places in this area you could put a point on the map in Nebraska and draw a 300-mile radius and there would be no form of public transportation, bus, subsidized air feeder or truck. All feeder service would get eliminated here.

This is more meaningful when you look at it on a state by state area. What you see here is an example of my home state of Texas. The blue routes are the trunk routes that maintain profitability after ADA. The pink routes are the routes that fall into the unprofitable category as a result of ADA. The yellow routes are not operated by us. They are operated by third party carriers that feed us and feed mostly these pink routes.

Each of the pink and yellow routes would be under massive pressure for discontinuance. Even today many of them are. When we meet to plan our budget for 1990, today our operating executives are saying to me; say, Fred, why are we running this route from Del Rio to Laredo. They will tell me, take a look at the revenue. I tell them look at the difference between the 68 percent positive and the 32 percent negative because the network is what makes Greyhound work overall.

This map shows you how that network will be changed. It is a very, very important concept to understand.

Now the third and final major point is that the rural scenario that I have outlined and this I personally know and understand quite well does not have to happen to provide accessibility. It does not have to happen to provide accessibility. In conjunction with the disabled community we at Greyhound have come up with a five-point program to provide accessibility to Americans with disabilities.

We have listened very carefully to the comments of the disabled community. I myself in hours and hours of conference, both with individuals with disabilities riding our buses—I was riding the bus routes very recently out on the West Coast, two trips interviewing all the customers including Americans with disabilities—we have listened very, very carefully and we have come up with a five-point program.

What we propose is system accessibility as opposed to individual vehicle accessibility. System accessibility is precisely what the ADA Senate bill requires for, for instance, public school bus operators.

System accessibility is the requirement put upon them. That is the requirement we would like to have upon us, system accessibility as opposed to vehicle accessibility. We have a five-point program:

One, extension of our already existing helping hand program, called a transportation assistance program, where we will permit disabled people to travel alone as opposed to having to have a companion accompany them.

Second, we intend to establish an 800 number, an 800 number manned by disabled Americans because we employ them in our telephone answering centers in Charlotte and Omaha. There they can get specific information with respect to their particular and peculiar needs from other disabled Americans. That is one heck of an idea that came out of our conference with disabled Americans.

Third, we would be able to design a new wheelchair lift to make the lift on the bust itself safer and accomplished with a greater sense of dignity. We think that is very important.

I myself have looked at the various chairs. We have visited with a vendor of a chair that has been recommended to us by the members of the disabled community. We have shown them the chair. They like it. We like it. We think it can be redesigned and made to work for us.

Furthermore, we believe that within two years, if this committee will give us the latitude to do so, we can have those chairs available at our 200 major terminals across the country where 85 percent of our boardings occur.

Finally, we will join the technical assistance program advocated in the draft form by the National Council on Disability and we will contribute $100,000 to the advertising campaign that legislation proposes.

The last point of the five-point program: We believe that there should be further tests like the one Mr. Picknelly has done between Boston and Springfield. We believe we should look very carefully at wheelchair accessible buses to see what the frequency of use is and cost of operation to see how it works out before we mandate accessibility on the basis of the vehicle as opposed to the system.

In conclusion, I believe we at Greyhound have a choice and I believe we share in that choice with this committee. Under ADA as passed by the Senate we will be in a situation of needing to spend the next six years scaling back our operations so that it can accommodate a new method and system of operation, so that we can indeed survive in that blue sector, yellow sector and pink sector with a different type of service than we have today but still survive.

That is one choice. The other choice we have is to implement our five-point program where we can spend our time, money, energy, effort at making our entire system accessible to, say, in the same fashion that airlines are accessible, school bus companies are accessible, in the same manner within the context of non-undue hardship. We believe that is the right program to work under because that is relying on the positives, not the negatives.

Thank you very much.

Mr. **Mineta**. Let me start this morning's questioning with our junior members first. Mr. Laughlin, would you like to start the questions from a fellow Texan?

Mr. **Laughlin**. I was not expecting the honor and distinction of going first, Mr. Chairman, but I thank you.

Mr. Currey, I just have one area of questions. I am concerned about the discussion of abandoning rural service. My home town is a town now of about 8,000 people. It does not have any rail track there, it never has. The nearest airport is in Houston, about 75 miles away. The second airport is about 90 miles away, and the only public transportation the people in my home town have is bus service.

When I was a child, Continental Trailways, and I want to call it the Missouri Pacific—is that the other bus? I have been gone so long, I am not sure. They both serviced that town. Your company currently does on what is probably an infrequent basis two times a day. As I think about this congressional district I represent, which is larger than nine of our States, there is no rail service in this district, and there is no commercial air service.

So I am intrigued by your proposal, your five-point proposal. Is that something that you are here committed to implement in your company, and are you satisfied that if it were implemented that you would be able to serve all these pink lines? I noticed one of the pink lines went through West Columbia, Texas. Are you satisfied, are you prepared to commit that if this five-point program were implemented that you would be able to serve the West Columbias and the other communities of much smaller size on those pink lines throughout America?

Mr. **Currey**. Sir, the West Columbias of America are very important to Greyhound Lines and the lines that we acquired from Trailways, Inc. a couple of years ago. They are critical to our continued existence. We wish to continue to serve them. We believe not only should we continue to serve them, but we believe that it is quite important that we extend that service in every way possible.

And I would like to note that we have extended the service through our Greyhound Rural Connection Program in the State of

Texas by connecting up with ten rural providers—I hope soon we are connected up with one in West Columbia—rural providers that are subsidized under section 18 of the Urban Mass Transit Act.

The five-point program that has us providing accessibility to our system through our telephone answering centers, through a chair especially designed to lift the person onto the bus with dignity and with comfort, we believe that that program can be put in place at our 200 major terminals within the next two years and that it will prevent the loss of service to West Columbia and the West Columbias of America. We believe that is in our mutual interest, sir.

Mr. LAUGHLIN. Well, I would like to see more information on your point three about the boarding chair and particularly input from the disabled community on that because, as I think about the Greyhound buses I have been on over the years, the way they are designed, the front entry—and I am no engineer—I find it very difficult to imagine how a person with disabilities in a wheelchair, confined, would be able to make the sharp lift angle after going up the narrow steps.

Mr. CURREY. I understand. I understand.

Mr. LAUGHLIN. I would appreciate you or your company or your staff furnishing me and perhaps this committee the input from the disabled community as you progress with that design and your testing and implementation of that chair.

Mr. CURREY. I understand, sir, and within the past week I sat in such a chair because it troubled me also, and——

Mr. LAUGHLIN. I think that is admirable, but I still think input from the disabled community would have more validity.

Mr. CURREY. The chair we are working with to redesign was recommended to us by the disabled community, specifically by Ken Waltrip there in Dallas that we have had extensive visits with on this problem. He thinks it is the best chair in operation today.

Mr. LAUGHLIN. He is a very eloquent spokesman. He is a former TCU football player.

Mr. CURREY. He is a former TCU football player, he is an eloquent spokesman and a strong-willed man. He has been extremely constructive in working with us to show us the type of equipment that Americans with disability can use with grace and dignity.

Mr. LAUGHLIN. Your point two, I think, would be interesting to have more input about the program at Greyhound using the disabled and how—and input from the disabled community on the implementation of the use of the disabled persons to man the 800 number, that is input as you get it. I would appreciate having that, too.

Mr. CURREY. We would be more than pleased to provide you with that. We have a considerable number of Americans with disabilities that work in our Charlotte telephone answering center. One picture of one man particularly comes to my mind because he doesn't live on a wheelchair, he lives on a cot that is wheeled in every morning when he comes to work, and what work is done for him is to give him dignity and respect, and he is one of our outstanding employees, and it is he who came up with the idea that disabled people be utilized to answer the telephone to distribute information to other disabled people, because they would clearly have the empathy for their need.

Mr. LAUGHLIN. Mr. Chairman, as one last side note, I would like to inquire almost on a personal nature, Mr. Waltrip sustained a broken neck in a game against the University of Alabama, made national news when he went to the Soviet Union for some type of innovative therapy on his spinal cord. Can you describe his mobility for us now?

Mr. CURREY. He is in a wheelchair, and he is able to live a very full and active life. He has taken a very interesting approach. He looked me in the eye and said, "Rather than $40 million a year for wheelchair lifts, I sure wish you would put the $40 million"—I assured Ken I didn't have the $40 million—but he said "Anyway, I would like for you to put the $40 million behind basic research for nerve regeneration", and he was able to inform me in our two meetings that there has been some very major breakthrough in that basic research for nerve regeneration because that man intends to be more mobile in the future rather than less.

Mr. LAUGHLIN. Please pass along my best regards to Ken. He is from my home county, Mr. Chairman. I also served with Continental Trailways and the old Missouri Pacific Lines. Thank you, Mr. Currey.

Mr. CURREY. We look forward to serving new West Columbia for many years to come.

Mr. MINETA. Thank you very much, Mr. Laughlin.

Let me call on our colleague from Idaho, Mr. Craig.

Mr. CRAIG. Thank you very much, Mr. Chairman.

Gentlemen, I appreciate your testimony and the forthrightness and frankness with which you have approached this issue.

Mr. Chairman, let me say at the outset, and I have several questions that I would like to pursue, that those from the disabled community that are present here this morning, I would hope that you would not view this as being opposed to or seeking to be opposed to the kind of legislation that is before us. Several people who have questioned with some degree of criticalness the provisions within this bill get immediately telephoned back to their district that they are now serving as a major obstacle in the movement of this legislation through the United States Congress, and I would suggest that that is not the case.

What is important at this point, I think, for this committee, Mr. Chairman, is that we don't put a business out of business that is currently serving handicapped Americans; that we try to find a way in which they can better serve the handicapped and the disabled community so that there is a service at all. The line of questioning I would like to pursue with you gentlemen this morning, because I have watched this issue very very closely and am extremely concerned that rural districts and rural states like my State of Idaho, that have limited service now for all people, including handicapped people, might in some instances, because of the economic hardships brought about by some of the proposals here, be eliminated from service altogether.

What I would like to talk to you gentlemen about and question you about is a question of equal access, and the whole of the system instead of individual units, as I think many of you have referred to. Certainly, Mr. Chairman, along with the good-faith provisions and undue hardship provisions that are important to all of us and certainly important to the handicapped community, I think the first question that concerns me, Mr. Currey, there are some that are saying—well, it is just another couple of bucks on a ticket, and all you have to do is add a couple dollars more to a ticket and that solves the problem of the kinds of costs we are talking about because we are talking about real costs, and none of us dispute that.

What happens to the nature of the service you provide and the type of person you are providing it to if, in fact, that is the end result of this bill, just another couple of dollars on the average bus ticket? Does that dramatically change the nature of the industry as we know it and the service the industry can provide?

Mr. CURREY. Sir, our service and the use of our service is incredibly price sensitive. The inter-city bus industry, or let me just say Greyhound and Trailways, that is one passenger traveling one mile, the index of real volume in the industry lost real volume every year for 10 years in a row. Those 10 years were interrupted by our purchase of Greyhound Lines and subsequent purchase of some of the Trailways, Inc. assets in July of 1987.

We did two very direct things that have caused usage of inter-city buses to go back, to come back. The first thing we did was we lowered fares 20 percent. The second thing we did is exert every conceivable effort to make terminals clean, safe places. I suppose the third thing we did was put in a lot of technology so we could answer the telephone on time.

But this industry had ratcheted down as a result of airline deregulation and discount air fares and use of automobiles for inter-city travel every year for 10 years, and fares were hiked every year for 10 years in an effort to retain the profitability. We dropped fares, ridership went up.

Further, we have discovered that we can't price generally in our business, that we have to price specifically from point to point, and, for instance, just recently, over the past three weeks, we have seen a diminution in short haul travel. I can tell you exactly why, because we tried to get 50 cents, 75 cents more on a $10 to $12 ticket, and we are reversing those price moves.

So every study we have done, backed up by actual marketplace action, tells us that inter-city bus travel is incredibly price sensitive. Now that also ties to the demographics, because let's look at who our passengers are. They are predominantly passengers whose travel needs are time and sensitive, price needs are very sensitive. Fifty percent of them are people who have incomes below $15,000 a year, many of them rural based, so while another 10 or 15 cents or another 50 cents or $1 on an item might not mean anything to you or to me, it means a great deal to them.

Furthermore, I interview our customers every time I ride the bus, and I try to ride the bus extensively once a quarter, once every three months, and they always mention price as one of the two top items as to why they are riding the bus, and they also are aware of our price changes, no matter how modest, so we are an incredibly price sensitive business, sir.

Mr. CRAIG. Thank you very much.

Mr. Dipert.

Mr. DIPERT. Yes, sir.

Mr. **Craig**. Assuming that this bill's provisions for full accessibility do not drive private bus companies out of business, every bus company does the kind of investment that it would have to make to comply with this proposed legislation; what do you anticipate would be the result on travel and tourism as it relates to price increases that would likely have to result to accommodate the provisions of this legislation? Have you looked at that, estimated, made any consideration?

Mr. **Dipert**. Our business is basically, in fact about 80-90 percent of our business is done with retired Americans who are on limited income. Although they have much time available to them, they have limited income, and the increased cost, as I spoke to earlier, the increased cost on the tour operators where only a third of our members in the National Tour Association own their own bus, the others, the price would be passed on to them and eventually to the customer.

And although no hard data has—we don't have any hard data that we have come up with since this bill has been introduced—it is the feeling of our operators that the cost that would have to be passed, on compared with the cost of cheaper air fares, cheaper destinations that are available through air travel and ground arrangements, would make it impossible for some of our members who are in small rural areas, small communities to package tours for people in those areas that would like to see part of America, and most of our operators do bus tours to two, three days away to other areas that their customers are wanting to visit in the U.S.

Mr. **Craig**. The reason I asked that question, Mr. Chairman, one of the new economies of my State is the growth of the bus tour industry. We see a good many tours coming through rural Idaho today because a good many urban people are wanting to visit Rural America and see if Rural America is still out there, I suspect, along with the beauty that is involved there, and there is, you know, if there is an additional cost at a time when this industry apparently is beginning to flourish and seek new avenues of providing for their customer, I think it would be tremendously damaging to a broad economy of this country, not to a narrow economy.

Mr. Chairman, one last question. I would like to ask this of you, Mr. Busskohl. Is the demand for 100 percent fleet accessibility the only way to meet the needs of handicapped riders? Because we are gaining and appreciating the sensitivity of the handicapped industry that that seems to be the argument today, almost as if they were not currently being served.

Mr. **Busskohl**. No, that is not correct. For example, we do operate also two schedules in the Midwest, mostly in Nebraska, and any time that we have ever been asked to serve a handicapped person, we have. So we do have the ability to serve handicapped persons that can be separated from their chair. If somebody has a chair as part of their life support system, we cannot do that, but that is in place today, and there are other programs on a national basis that are in place today, and they are being served.

I also believe that given a little more time and with the study, we can come up with other means to serve other than fully equipped lifts.

Mr. Craig. In other words, only in unique situations are you having to turn away the handicapped person?

Mr. Busskohl. That is correct.

Mr. Craig. Thank you all. Thank you very much, Mr. Chairman.

Mr. Mineta. Thank you, Mr. Craig. Mr. Parker.

Mr. Parker. Thank you, Mr. Chairman.

To my colleague from Idaho; when I left the house this morning, Rural America was still there.

Mr. Craig. Thank you.

Mr. Parker. In the testimony that we have gotten from this panel, it is interesting that four of you gave testimony that was basically reactive in nature, basically a study of the case that if the bill goes through as proposed, it will destroy your industry or curtail services that can be provided.

Now, being reactive in nature is not something that we as Members of Congress, that we can blame you with because we tend to be very reactive in everything that we do also. The one statement that has been given that is proactive in nature comes from Mr. Currey. Now that is interesting in that everything that he has said basically says there is a problem. And his company is addressing that problem, I think in a realistic fashion.

I would like to know what your comments are as far as the five-point plan that Greyhound has come up with, because I think there is a problem, you know. There is a problem out there as far as getting people where they want to go, total access. There is some type of a problem. If there is not a problem, then the entire program that Mr. Currey is talking about, he is being reactive. It is a situation where he is reacting to something that doesn't need to be addressed.

I would like to have your comments as far as the program that is being initiated by Greyhound. Mr. Dipert.

Mr. Dipert. Mr. Parker, my company can't come up with $100,000 to make a donation to disabled Americans. It would bankrupt my company. I only have 14 buses. So where Greyhound can come up with, because of their size, can put in 800 lines and do many very interesting, creative things, and they are definitely a leader in the industry, leader creatively, leader in the marketing, and very helpful to the rest of the bus inter-city industry. It is hard to conceive there are a lot of "Mom and Pop" small businesses out there that are running two, three, four buses as their livelihood, and it is very hard for them to come up with creative resources to do something in their community.

That is not to say that our members aren't involved in the community and in the human needs of their community. I serve on the Board of Directors for the Salvation Army, I am very active in the human needs in our community. It is very important to me, and what the disabled are asking for. I as an individual am very sympathetic to it, and will do everything in my power in my little area of the world to help accomplish.

But I hope the committee doesn't forget that there are a lot of small businesses out there struggling for their livelihood, and although this may not seem like a big thing in the big picture, in a lot of small areas, it would, for them to get their equipment ready, it would impact them so much that they would have to go out of business.

Mr. HENRY. Yes. I would just like to say one or two things about that. All companies are different and have different methods of operation. As Mr. Currey said, his 200 terminals, he can do those kind of things. We operate a much smaller company. It is a company over 80 years old. I guess you might say we have operated on almost a home-spun philosophy more so than a highly categorized business. We never realized. It was brought to our attention that we had a problem taking care of the handicapped. Maybe it is our fault or maybe it wasn't brought to our attention. We have been carrying the handicapped ever since we started the interstate bus business. The blind are handicapped. We have reduced rates.

We have had people call us, call our terminals, we have met the people at the terminal, we have carried people onto the bus, drivers have called ahead and we have called ahead, we have two-way radios to make sure that a supervisor person was at the other end of the line to help. We are trying to do actively what we can do with what we have, so I think we have been trying to meet the needs, and apparently we have not had someone call us and say we aren't. We are trying to do the best we can with what we have.

As we have seen the problem from a small company, we have faced that problem and tried to help those people that needed help. There are two different styles of operation.

Mr. PICKNELLY. Mr. Parker, my company, Peter Pan, based in Massachusetts, is probably unique to the Massachusetts hologram that leases buses to companies primarily for service within the Commonwealth. We have 146 buses, of which now seven are wheelchair accessible, which is about five percent.

Clearly those buses are being under-utilized at the present time. Maybe the answer is that some percentage of buses should be wheelchair accessible. One of the things I think we are suggesting is that the entire matter be studied. Maybe the results of the study would show that perhaps a certain percentage should be wheelchair accessible. I think that is the reason for the study, sir.

Mr. BUSSKOHL. I don't know whether I can give you a direct answer, but on our schedules, specifically a run between Omaha, Nebraska and Rapid City, South Dakota; in a year's time we operate 300 days out of the year whether it is snowing or not, and we have had approximately 12 requests to handle people that were handicapped, and not a one of those people has been turned down, not a one of those people was not able to take that trip unless, as I stated before, they could not be separated from the chair.

So, once again, this has been going on ever since we have been in business, which is 62 years, and we believe that the handicapped community has been served, and, once again, if there is a perceived need, I believe with a little time and a little study there can be even better methods designed to do this.

If you want to get into just for a minute the tour end of the program, there are tours designed specifically for handicapped. I know of one in Owatonna, Minnesota, and if we have requests of the people, say we have to have handicapped accessible throughout the whole tour, we can recommend that, and I am sure that there is at least one other operator that I know of in the State of Washington.

So even that kind of a statistic, I think, might tell you a little bit about the real requirements of the handicapped when they have only got two that I know of. There may be several others, but there aren't very many that specifically are designed for the handicapped.

Mr. PARKER. Thank you very much.

Mr. Currey, I propose that one of the reasons you are one of the leaders in your industry is because you do come up with innovative ideas like you are doing, and I commend you for that. Thank you very much, gentlemen. Thank you, Mr. Chairman.

Mr. MINETA. Thank you, Mr. Parker. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Gentlemen, last week I made the comment that I thought that this legislation might affect small businesses more than the very large businesses, and Mr. Guard was testifying at that time, and he seemed to indicate that he didn't think that was so, that he thought even very small bus companies could comply with this ADA Act.

I take it from your testimony that most of you would question that. I think that much of what we do here in Washington, it ends up helping big business, and we are running small business out of existence at an alarming rate in this country, and I am concerned about that. In the "National Journal" just a few days ago—that is a very nonpartisan magazine—they have an article about this act, and they say, the column says it sounds great, but what does it mean, and it says, "Congress is writing bills that few people, least of all its Members, understand or can explain.

"The latest example is a 1989 Americans With Disabilities Act which the Senate passed by a 76-8 vote on September 7th and which the House is expected to approve before law-makers complete business this year. The bill is well intended, addresses a legitimate and serious national problem and sets goals with which few people could disagree. But its broad prescriptions are so ambiguous and potentially over-reaching that Federal Judges quite likely will struggle for years to define what the law means and how to enforce it."

Do you gentlemen think there has been enough study or enough investigation on this law? Mr. Henry.

Mr. HENRY. No, I do not, and that is one reason, as we said, we welcome a study, but what we don't welcome is a study that has a foregone conclusion. Yes, I would like to have someone help us find ways to better serve those who apparently we are not serving as well as we could. But as the small business, and I think I represent small business, the costs to us, the capital costs would be devastating to us.

Mr. DUNCAN. Mr. Currey made I think one of the finest witnesses I have ever heard before one of these committees. But, Mr. Currey, you seemed to think, of course, from your maps and so forth, that this would have a tremendously harmful effect to the Greyhound Company, is that correct?

Mr. CURREY. Yes, sir, Mr. Duncan, it will. It will indeed, but we see the Greyhound Company with three constituents, and we believe it harms each of the three constituents: our customers, our employees, and our capital providers. But in our customer list I would emphasize that there are thousands and thousands of handicapped people.

Just three weeks ago in the chairman's district I rode the bus and saw an example of what my colleagues here were pointing out. There was a woman who was totally deaf on the bus, and by some mishap of life she didn't have any knowledge of lip reading, and I, of course, attempted to interview her and our driver, Bill Burroughs. Bill says to me, "She is sitting the second row back right next to the seat," Bill says to me, "Don't worry, Fred, we have got her covered, we know who she is. She gets off at Portland, and we have already called her contact to have her met. We take care of her on this trip about eight or 10 times a year."

So, see, people that aren't in the bus business don't understand—people who are not in the bus business don't understand the extent to which we in the business; drivers, commissioned agents, people on driveways, the customers themselves, help one another. Because when you embark upon a bus trip, going from Knoxville to Nashville to Memphis to Texarkana, Arkansas; when you embark upon that bus trip, that is a journey, and you are joining with other people in the journey, and everybody helps one another on that journey, and the driver is sort of the captain of the ship, as it were, on that journey.

So we are out there doing all of that today, but it is important to recognize that people in the disabled community believe that we could service their needs giving them a greater sense of grace and dignity, and so we are going to work very hard to do that if you enable us to do it. If you put us out of business with this legislation, we will have to work on a different problem.

Mr. DUNCAN. Last week, Mr. Shuster, the Ranking Member of this subcommittee, quoted President Bush, I think, when he had lunch with our Ranking Member, Mr. Hammerschmidt. Apparently the President seemed to think that this legislation might not apply to the very small "Mom and Pop" bus operations. Is it your understanding that this legislation would apply to even the "Mom and Pop" operators, the very small private bus companies?

Mr. HENRY. That is my understanding. One thing, Mr. Duncan, I think we might add here; when you talk about large Greyhound and the small "Mom and Pops", many of us, and I am one of them, the small "Mom and Pops" feed into the large Greyhound corporation. If we didn't have that feed both ways from this large corporation, we would be in jeopardy for two reasons. We rely on them to help us and vice-versa, so we are a large part of that. We are a small company, but we rely on that big company, like Mother Nature, to take care of us.

Mr. DUNCAN. None of us want to appear unsympathetic to the disabled, and all of us want to be helpful to them as much as possible. I think that is one reason why this legislation passed the Senate by such a large—76-8, I believe—vote, but I have always found that the severely disabled are very sympathetic people themselves, probably because of what they have been through in life and very recently in their demands, for the most part.

And I am wondering, have your groups, the American Bus Association and the United Bus Owners of America and some of these other groups, have you met with—now, Mr. Currey testified that

Greyhound has met with some of the disabled groups. Have your groups met with the handicapped and some of the main disabled groups that are supporting this legislation, and have you tried to work some of these things out?

Mr. **Busskohl**. I personally have not met with a specific group, but I have met with an individual in Sioux City. His name is Burt Welch, Jr. He is confined to a wheelchair. If this committee had not met on a Tuesday when he has to have a medical appointment, he would have been here and glad to testify and telling you how he believes that this legislation would impact him very negatively. Because being in the Frost Belt, even with this kind of accessibility, with the weather that he has got to contend with, he couldn't get to the bus anyhow.

So there are a lot of things that are not considered in this bill. A study needs to be done to address those sorts of things.

Mr. **Duncan**. Yes, Mr. Henry.

Mr. **Henry**. I was just going to say, the American Bus Association, we have had a number of direct meetings, both at our call and their call. I might also add that our industry is a very small industry. For example, Mr. Currey is also Vice Chairman of the American Bus Association, so his input, as he picks up things, comes directly to the whole industry. We hear those things as his company hears them. So we're involved in two ways, as an association and through the individual members.

Mr. **Duncan**. Just one more question. Some of the legislation we pass here has an exclusion for small business, exclusions for businesses that employ less than 20 people or fewer than 50 people or exclusions like that. Do you gentlemen think that this legislation should include an exclusion for small business of some type; and if so, what? Or have you discussed that?

Mr. **Busskohl**. Well, in my opinion, small business, large business is still using the same piece of equipment. So I don't know that in this industry whether excluding a small business would have the impact that it might in some other type of industry.

For example, small business would be purchasing a used coach from myself or from some other company, and it doesn't make any difference whether it came from a small company or a large company, they are still dealing with that same piece of basic equipment. So small business I don't believe would have that kind of—in this industry—wouldn't need that sort of an exclusion. I mean, if that is the only way to do it, I suppose so, but it would not have the same impact.

Mr. **Henry**. I just have to back that up. The handicapped person, when he gets on a bus at point A, really doesn't care if it is a small business or a large business. If there is an exclusion, there is no bus for him, he doesn't have the wherewithal, so I think it has to be one or all.

Mr. **Duncan**. Thank you very much.

Mr. **Mineta**. Thank you, Mr. Duncan. I would like to call on our colleague, Mr. Skaggs, from Colorado. However, let me just at least recognize the presence of the Ranking Republican on the Full Committee on Public Works and Transportation, our very fine colleague from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Mr. Chairman, I have a statement for the record.

[The statement of Hon. John Paul Hammerschmidt follows:]

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM ARKANSAS

Thank you, Mr. Chairman.

First of all, I would like to commend you, Mr. Chairman, and Congressman Shuster for scheduling these two days of hearings on the Americans With Disabilities Act.

This proposed legislation is designed to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life. These are certainly goals which I personally support.

Throughout my career I have had the pleasure of working very closely with fine organizations such as the Paralyzed Veterans of America on many issues. My work with these groups has given me a first hand understanding and appreciation of the many barriers facing the disability community.

Nowhere are these goals more important than in transportation, for it is often the key which enables the disabled to become part of the mainstream and take advantage of education, employment and recreational activities. Mobility for the disabled American is our upmost consideration. Testimony from our broad collection of knowledgeable witnesses will help us to determine how best to achieve that mobility.

The proposed legislation offers solutions to the transportation problems of the disabled which are complex and wide ranging in their potential impact. We must be sure that we understand exactly what the legislation would require of the transportation providers. We must understand the variety of ways in which our disabled friends are presently aided in the many communities across our Nation and what effect these requirements would have on current services. We must remember the needs of not only wheelchair bound individuals, but the mentally impaired, the growing population of elderly Americans, and others who benefit from special transportation services. Concerns have been raised as to whether or not the requirements of the proposed bill, as applied to all situations, will result in greater mobility. Until we know the facts, we cannot be assured that our common goal of improved service to the disabled will in fact be achieved.

I look forward to hearing from all our distinguished witnesses and working with the subcommittee on this important legislation.

Mr. HAMMERSCHMIDT. But may I ask unanimous consent to insert a very comprehensive letter from the operator of a small bus line in Arkansas. He makes his point very well, and I would like to make it part of the record.

Mr. MINETA. Without objection, so ordered.

[The letter referred to by Mr. Hammerschmidt follows:]

MOUNTAIN HOME BUS DEPOT
701-D E. Village Center
Mountain Home, Arkansas 72653
(501) 425-2811

Mountain Home Bus Agency, Inc. **Twin Lakes Bus Lines**

September 20, 1989

Honorable John Paul Hammerschmidt
2110 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Hammerschmidt,

As President of Twin Lakes Bus Lines, Inc., I am writing to you with concerns about H.R.2273, the Americans with Disabilities Act (ADA). Both the Senate and House versions of the ADA appear to mandate wheelchair lift, multiple wheelchair tie-downs and fully accessible restrooms on all new intercity buses.

As you know, my company provides rural bus service to the North Central Arkansas area between Mountain Home, Harrison and Little Rock. We also provide weekly service from Mountain Home to St. Louis and Chicago along with a bus charter and tour business. We started in the transportation business in 1983 with a dedication to provide rural bus service to our area where no bus service existed. We quickly discovered that daily rural bus service was an expensive service to provide and that it had to be subsidized from profits of our charter business. We have been successful in keeping our service going and plan on providing more needed transportation for our area as we are able.

I don't feel that ADA will have a direct impact on our service for the following reasons:

1. Rural regular route service will probably never support the burden of purchasing new buses and supplying insurance for them, therefor, we are resigned to buying used buses to keep the cost of the service as low as possible. Used buses with wheelchair lifts will not be available to us, the small independent companies for many years even if ADA is passed.
2. Most of our passengers are elderly because our area is a retirement community and yes some of them have handicaps and disabilities, some are even in wheelchairs, but we have delivered all of them to their destination with safety and dignity without wheelchair lifts.

I feel that the future of rural bus service is in the hands of us, the small independent regional bus lines, however, we have a great dependency on the larger bus lines such as Greyhound and this is why I am concerned.

My bus service is completely dependent upon passenger feed to and from the Greyhound Depot in Little Rock and hopefully other locations as we are able to add to our service. I think Greyhound realizes the importance of the small bus companies and have introduced a plan called "Rural Connection" to help us integrate our service into their terminals, a plan beneficial to both.

My concern relates to the bills impact on Greyhound, which estimates a minimum cost of $40 million per year. If that tremendous burden forces a reduction in Greyhound services, it could have a devastating effect on my business and on other small bus lines attempting to restore rural bus service.

In closing, I would like to impress on you that I am not ignoring the plight of our disabled. I understand their problems, but I do think that before you mandate such drastic measures on an already fragile industry, that other less costly options should be more closely studied.

I appreciate your help in the past and with this issue. If you have any questions or if I can be of service in any way, please let me know.

Sincerely,

Robert L. Alexander
President
Twin Lakes Bus Lines, Inc.

Mr. MINETA. Mr. Skaggs.

Mr. SKAGGS. Thank you very much, Mr. Chairman.

I want to thank our witnesses for their time and interest this morning. I think we are all intending to be productive and not counterproductive in addressing this issue. One thing I would like to ask you, and I am not sure who among you would like to comment, it is whether we should attempt to make some distinction between essentially scheduled common carrier type operations and charter type operations and charter/tour operations.

Perhaps the gentleman from Peter Pan involved in both those kinds of activities on a medium-sized scale could speak to it, as well as Mr. Dipert, or if there is an industry position, I am interested in that.

Mr. PICKNELLY. Under the Massachusetts program, buses that we have in our fleet are restricted to service on a regular route and are only allowed to be used in charter service within the Commonwealth on weekends so that we really haven't had the experience, but again our experience basically has been very limited call for the wheelchair accessible vehicle.

Again, I think our main position is that the entire matter should be studied. I think that that should be part of the study; whether or not the accessible vehicle should be confined to regular route or charter.

I guess my first reaction is that the handicapped community would also want to participate in charter as well as tours, so I think the answer——

Mr. SKAGGS. I am sure you are correct in that. It is just whether the cost/benefit considerations are different depending on the kind of service you are talking about in a compelling enough way to make that public policy distinction.

Mr. PICKNELLY. Yes, sir.

Mr. SKAGGS. Mr. Dipert?

Mr. DIPERT. I don't have a regular scheduled route, so to be selfish, certainly I would want you to do it for charters whether you do it for the regular routes or not, but from an industry standpoint and representing our industry, which mainly deals with charters, we feel the biggest problem would be the amount of cost that it would require the senior citizens who are on fixed income to have, and there is no question that would have to be passed on to the customer. And we have, as Mr. Currey mentioned, a 50-cent cost in ticket. You would not think that would make a difference, but there is a perceived benefit. On a charter operation you are dealing with people who want to go to another community and see the beauty, et cetera, of that other State or community, and there is a certain perceived benefit, and we feel that if it goes beyond the benefit to them, they will choose other means of recreation and eventually kill our business.

Mr. SKAGGS. Let me ask if the ABA, could provide some information for us or maybe you have it available. It seems to me if the demographics of your customer group have been correctly described, that one of the effects of this proposed legislation with the cost passthrough would be essentially a regressive tax. I would be interested in how we quantify that and the impacts by income group if that data could be developed and made available.

Mr. HAMMERSCHMIDT. Will the gentleman yield?

Mr. SKAGGS. I would be pleased to yield.

Mr. HAMMERSCHMIDT. I wanted to mention as an aside, I was listening to Mr. Dipert's response to you, and just to say I can personally attest to Mr. Dipert's credibility as a witness. I have known him and his father since they started their business. I have been a great admirer of their initiatives and their service to the public. I just want to make that a part of the record.

Mr. DIPERT. Thank you, Mr. Hammerschmidt. I send my father's great regard for you, and mine as well, I might add.

Mr. SKAGGS. I better cut into this before we get carried away.

It occurs to me that the testimony we have heard about loss of revenue producing seats is relevant only if your collective experience is that you are having relatively fully loaded vehicles most of the time. So I am also interested in data being provided for the record, if you will, as to your average occupancy rates and, therefore, whether or not the loss of two seats, let's say, is going to have a real effect or only a hypothetical one.

Mr. BUSSKOHL. Could I just offer one comment? One of our motor coaches was in Washington yesterday. That very same coach two weeks ago was on our schedule. Therefore, the way we operate that piece of equipment is interchangeable, and if we are not allowed to make it interchangeable, then it makes our operation higher cost, less efficient.

Mr. SKAGGS. That is interchangeable between your scheduled and charter operations?

Mr. CURREY. Yes, and if I may, sir, comment upon that also, that is certainly the case with Greyhound Lines in that the charter fleet during the colder months between peak periods of demand is a charter fleet, but during peak periods of line demand, it is a line fleet. So there is a forced interchangeability of the fleet in order to accomplish the demand responsive service that we offer. Because, for instance, should the first bus be full, we, in general, offer to bring up another bus on the same schedule in order to accomplish the trip for the people.

Mr. SKAGGS. Well, even with that additional insight, perhaps the data could be organized in a way that addresses that which would also deal with how many of your charter operations are fully booked. I am just looking at what percentage of marginal operations are really going to be impacted by this.

Mr. CURREY. Of course. And in conjunction with our regular line service, if you visualize, I can visualize pieces of the map, but if you visualize a route that begins in a major metropolitan area and traverses the country, often the average load on that route would be maybe 20 to 25 people out of 47. But the schedule might, nonetheless, with high frequency, depart the original location with a full bus load. So one has to be careful looking at average load figures.

Mr. SKAGGS. Well, I will count on you to point out those discrete considerations for us.

Mr. CURREY. Indeed.

Mr. SKAGGS. Finally, let me just make an observation. Many of you have referred to the low frequency of requests for service. I, for one, question how much relevance that carries with it in that the habits and expectations of the disabled community, in taking the initiative to make a request, are probably conditioned to some degree by the lack of availability of service. So it tends to be a self-fulfilling kind of thing. And I don't think requests necessarily are the best indicator of need.

Finally, Mr. Chairman, if I may, since I have to leave, if I can welcome in advance, Mr. George Herman, from the Regional Transportation District in Denver, who will be testifying in the next panel, and invite you gentlemen perhaps to stand by to listen to his testimony. I think we have some very hopeful experience coming out of the Denver Bus System as to both cost and frequency of use and other indicators that perhaps we can address these problems at lower costs and with greater impact than may have otherwise been suggested.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you, Mr. Skaggs. Mr. Hancock?

Mr. HANCOCK. As we all know, bus transportation has been in decline for probably 40 years, a very rapid decline, in fact. I am just curious, with this type of an increase in overhead, which would definitely indicate an increase in prices, you indicated that—in fact the entire panel has indicated that this would cause a further decline probably or possibly in bus ridership. Can public bus transportation exist for another 10 years with this type of increased overhead? I am not talking about the tour buses. I am talking about the public buses, the Greyhounds.

It would appear that even though we are definitely concerned about giving people access and mobility of people that suffer handicaps, but is it possible that what we have had for years will go out of existence in a comparatively few years with this type of an increase?

Mr. CURREY. It is certainly possible. For instance, to put it in perspective for our company, the airline industry for the last 12 months reported profits of $611 million, for the last reported 12-month period, $611 million. DOT studies indicate that the cost to the airline industry of the implementation of the accessibility standards is between $5.4 million and $18.7 million, depending upon definitions, et cetera. Our company lost $17 million last year, is expected to earn $10 million this year on a comparable basis to the airlines' $611 million. Our company is approximately the size of the eighth largest airline, that is Swiss Airlines. Our company earns two cents on every dollar this year hopefully. Swiss, the eighth largest airline, earns 10 cents on every dollar.

So we have $611 million profit, cost to implement industrywide of $5.4 million to $18 million as a range. The cost to implement alone to our company is between $40 and $80 million, and I frankly believe the $80 million is more realistic, but no need to argue the cost issue. Even at the lowest possible costs, it is a bolt to the heart. That bolt to the heart will cause the kind of restructuring we attempted to present with the maps.

Mr. HENRY. Thank you.

Mr. MINETA. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

I served on a transit district board for some time, and during the period of time when we were not only anxious but required to implement accessibility on public transportation systems across the country, and I recognize the dilemmas and the costs and the problems.

Here we are talking about private companies, though, not public companies, and there is a little bit of a difference, I suspect. I would like to inquire as to your perceptions of how far reaching this piece of legislation would be. Would it require access, for example, on old-fashioned San Francisco-style trolleys? Would it require lifts on D.C. tourmobiles or on London-style double-decker buses or on Disneyland horse-drawn carriages? How far reaching is the bill?

Now, I assume from you, as representatives of small companies that may only operate a few buses, that you are assuming that this piece of legislation will impact your buses, your units. To your understanding, how far reaching will it go? Will it get down into these unique kinds of vehicles that would have to meet the same requirements?

Mr. **Currey**. Yes, we believe it will. We believe that the definition of accessibility as applied to private carriers, Mr. Packard, is a wheelchair lift on each bus, and what you hear us all saying is, that accessibility we are for. You hear us testifying not only on our current process of managing transportation for Americans with disabilities, be they in wheelchairs or the blind or the deaf, but you hear us saying that we have every intent to continue that. But we wish accessibility to be defined for us in the same fashion that it is for the airlines with their $611 million of profit and for private school bus companies. We wish a commonality of that definition.

Mr. **Packard**. Is the regulation in existing law and the proposed regulation in this proposed bill the same for public as it is for private carriers?

Mr. **Currey**. That is the heart of the difficulty, in that there are two sections to this bill. One section applies the private-sector standards of accessibility to us common with the sorts of definitions used for school bus companies and bus companies that transport people from airports to hotels, for instance, airline companies, two-story office buildings, et cetera, et cetera. But then there is another section of the bill that treats us exactly like public transit companies, that is to say it mandates the definition of accessibility to be a wheelchair lift on each vehicle, and it is that second definition to which we are opposed. We are obviously concerned.

I, myself, served, as you did, as Chairman of the Board of Trustees of the Dallas Transit System at the period of time when there was implementation of wheelchair lifts on our DTS system, and what we are dealing with there were 80 percent Federal tax dollars so that the burden was spread not upon the poor who ride inner city buses but across the entire tax base, 80 percent Federal dollars, 15 percent State, in our case, and five percent local. That is the way we did our access at DTS, probably the same way you did yours.

Mr. **Packard**. I don't think there is any question about our commitment to try to solve the problem for our handicapped people. The question is how we do it.

Mr. **Currey**. Of course.

Mr. **Packard**. I think that is the discussion of this hearing. I would like to ask Mr. Henry or Mr. Busskohl, and perhaps Mr.

Dipert, because you represent associations, maybe your information would be helpful in this question. How much of your capital and rolling stock are government subsidized? Being private companies, how much are you receiving and other companies that your association represents?

Mr. HENRY. I represent seven companies, and we receive no assistance.

Mr. PACKARD. No government assistance.

Mr. HENRY. The only assistance we receive would be in the tax on fuel. But we receive no capital assistance and no other assistance.

Mr. PACKARD. Is that true of other companies?

Mr. BUSSKOHL. Individually our company is running a pilot project for rural transportation in the State of Nebraska, so at this point in time we are receiving about $200,000 per year for operation only.

Mr. PACKARD. That is in your company?

Mr. BUSSKOHL. Yes.

Mr. PACKARD. Is that true of other companies that your association represents?

Mr. BUSSKOHL. As far as I know, we are the only pilot project for rural transportation in the country.

Mr. PACKARD. And that $200,000 represents about what percentage of your total operational cost?

Mr. BUSSKOHL. You are talking about the total company?

Mr. PACKARD. Yes.

Mr. BUSSKOHL. I didn't calculate the percentage, but $200,000 out of a $7 million operation isn't much.

Mr. PACKARD. Okay. Now, the question was regarding capital and rolling stock, and apparently there has been no subsidization for your companies in that area. And Mr. Busskohl addressed operating costs. Is there no subsidization generally throughout the industry? That is true of Greyhound also?

Mr. CURREY. That is true of Greyhound.

Mr. PACKARD. Well, then my next question, of course, doesn't apply. My next question is, could you survive without a government support? But if you receive none, you have survived apparently.

Mr. CURREY. I wish to correct myself. We have a number of buses, less than 10, that received some capital subsidy, that is to say we leased these buses from the State of Michigan under a capital subsidy program of the State of Michigan DOT, and that just hit me as I was answering. I wish to correct myself. That is less than 10 out of 4,000 pieces.

Mr. PACKARD. On public equipment, as we know, it is taxpayers' money that is implementing the accessibility requirements, and a significant amount of money is used for that purpose, as some of us know, and it takes a lot of dollars to retrofit 120 buses in a community, public buses.

Your concern and your desire for the study is to determine if, in fact, private companies would be able to survive without some government assistance in retrofitting. What would be your response if there were a proposal that the government would assist private industry in meeting this requirement if, in fact, it became law?

Mr. **Henry**. There again, in a small business perspective, if that was an opportunity whereby we could better serve the public and still survive, we would certainly want to look at that.

Mr. **Packard**. Please be aware, I am not offering any Federal monies for that purpose. We certainly don't have any to spare, at least that I am aware of. In your judgment, do you see that there is a difference between public and private transportation in regard to these kinds of requirements?

Mr. **Busskohl**. Well, I do. Private industry, once again, we are talking about the motor coach industry has survived on a very narrow margin, and we, I believe, pride ourselves in doing that and being able to do that without the government assistance, and within that fabric, we have been able to handle handicapped people at this point.

Now, the most extreme example might not be the best, but it does serve the purpose. So from my standpoint, again, being a free enterpriser from the word go, I believe that the government assistance would be the last thing that I would want to hang my hat on.

Mr. **Packard**. I appreciate it. Thank you. Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much, Mr. Packard.

Mr. Henry, if I might ask, you in your statement said that the capital cost for installation would be anywhere from $20 million to $30 million. Roughly how much additional operating costs would be incurred by the inter-city bus industry in order to implement the ADA bill?

Mr. **Henry**. Having no experience in operating this type of equipment, but judging by what our maintenance is on our normal fleet, I would have to take it on a per-bus basis, and I would guesstimate that we would probably allocate in our budget between $1500 to $2500 per year for the maintenance of that vehicle. I have never operated one, so I can't give you an example figure.

Mr. **Mineta**. I take it that given that kind of additional cost that that would make certain inter-city bus routes unprofitable.

Mr. **Henry**. Yes, it would, sir.

Mr. **Mineta**. Now, under the ADA bill, the requirement for wheelchair lifts on all inter-city buses could extend to, let's see, a ten-year replacement cycle, so that would then make these wheelchair lifts on buses take in reality some 15 years to implement the provisions of the ADA bill as passed in the Senate.

What interim policies will the ABA membership implement to provide for individuals with disabilities to get on and off the bus given that kind of a time period for the implementation of the legislation?

Mr. **Henry**. In interim we would be working, for example, with the five-point study Mr. Currey has mentioned. We would continue doing what we have been doing now and, as I said, we have extensive meetings with the handicapped association trying to make the best of what we have, to provide better service.

Mr. **Mineta**. On that score, would there be some specifics? What kind of advertising or public relations or outreach program is there to indicate what is going on right now?

Mr. Currey or any of the others might want to respond.

Mr. CURREY. Mr. Chairman, we have taken a very close look at the demand side. The Department of Transportation did a study in 1978 that states that there were 400,000 persons in wheelchairs as of 1978. We have received information from various disability groups that indicates that that figure may be as high as 700,000 now.

We have projected, therefore, usage consistent with the usage of the intercity bus transportation in the population at large to be usage at approximately 1 percent of Americans. That would mean that figure would range between 400,000 and 760,000. We have projected further the utilization of the intercity motor bus for more than one trip a year so that one must use a multiple of 400,000 or 760,000 people if people in wheelchairs traveled with the same proclivity by bus as the population at large.

We believe people in wheelchairs having a proclivity to travel on inter-city buses is a rational assumption because so many people in wheelchairs have specialty vehicles that can get them not simply from the terminal but from origination to destination, from the place where they live to the place where they are going.

Further, we have taken a careful look at Peter Picknelly's results and we believe those results are consistent with those percentages as well when we take a look at the percentage of people who are in wheelchair lifts within the confines of his system. He has a well-defined test because it is Boston to Springfield. So our objective and our five-point program is desired to enhance the existing service that we do have today.

The dollars of advertising we are suggesting in our five-point program, while they don't sound high, could be target marketed with a rifle shot, if you will. We do a lot of specialty advertising of that type to a very focused group, utilizing media that group particularly reads or sees or hears.

So we believe that we can enhance the service that we provide today and can specially advertise that. Further, we believe that tests, very carefully monitored tests—Peter has carefully monitored his but he is not a federal agency—but a very carefully monitored test like Peter's would either bear out my analysis I just gave you, or will not.

Maybe usership is much higher. Maybe it is up at 2 or 3 percent proclivity to travel as opposed to 1 percent nation-wide. Even at a figure like five, there is no way for the accessibility by providing a single wheelchair lift for each vehicle to be cost effective.

Mr. MINETA. When you say you do that kind of focused advertising, is that in terms of attracting a specific group to your service, or you say we have accessibility or other provisions?

Mr. CURREY. Yes. For instance, we spend about $18 million a year on radio network advertising. When I mentioned reducing fares, cleaning up terminals, answering the telephones, we have spent a lot of money on network radio advertising.

We have said to members of the disabled community that we would be pleased to add a tag line on many of our ads saying, "We welcome disabled America", we do, we do today. We welcome them as an industry and a company.

So we would be pleased to say that as a tag line phrase. But, Mr. Chairman, we cannot pursue the one program if we are under the gun to put lifts on all our buses. If we are under the gun to put lifts on all our buses, what I have to spend my time, money and energy is into reprogramming our route structure so we can survive, so half our customers can have a ride with us, and half of our employees can have jobs, and half our points served can be served.

I have to readjust my thinking. I have to go this afternoon to explain all of this to my bond holders who are looking at the whole process with a very jaundiced eye.

Mr. **Mineta**. The air carrier rules do not mandate wheelchair access to restrooms on airplanes. Is it fair to mandate them on inter-city buses?

Mr. **Currey**. If we are talking full accessibility to the full line service to accommodate a person in the wheelchair, the same type service that you would be giving someone else on that bus, I assume they would have to have accessibility to the restroom.

Mr. **Mineta**. But on the other hand if that exemption were included in it in terms of accessibility to the restroom——

Mr. **Currey**. If that were excluded obviously it would cut down some of the cost of operating that piece of equipment because you would not have to take out an entire row of seats. It would be an assist but not the answer to the overall problem.

Mr. **Mineta**. Mr. Busskohl, you referred to 10 to 15 percent in funding the costs of purchasing lifts for your buses and a 30 percent loss of passenger/package carrying capacity. If a lift were available for only 5 percent of the cost of a new over-the-road bus and no loss in cargo capacity, would you still argue that this cost incurred only once in 10 years or so would drive transportation companies out of business?

Mr. **Busskohl**. Yes, sir. I will give you an example: in the best of years we have made maybe 8 percent profit. In the worst of years, which have come three and four times in a row, we have been minus 3 percent.

So in a minus 3 percent position any additional costs will drive us farther into the road.

Mr. **Mineta**. You mentioned, Mr. Dipert, NTA members have practiced the goals of equal access for disabled Americans. How do NTA members currently provide equal access for individuals with disabilities?

Mr. **Dipert**. There are several. One of the things we have involved in our association, we invite several of the handicapped associations to our conventions and our meetings. One in particular is the Handicapped Travel Association which sends a representative.

Our members offer tours, although they are limited, as to the amount of tours, to handicapped travelers, as one of my colleagues mentioned here earlier. To my knowledge there is no company that is offering both service to handicapped and able bodied at the same time on all the departures of their tours.

Mr. **Mineta**. There are essentially two packages, a package tour for those with disabilities and "others"?

Mr. **Dipert**. Able bodies, yes, sir.

Mr. **Mineta**. In your 17 years in the motor coach industry and having packaged and promoted thousands of tours all over North America, following up on the question that Mr. Skaggs asked about the fact that you have lack of requests for service, what do you attribute that lack of requests to? In other words, as Mr. Skaggs was saying, that may not be an indicator.

You are not getting a lot of requests, but that may not be an indicator of the potential that is out there. What would you say is the background on the lack of requests itself?

Mr. **Dipert**. Mr. Chairman, I don't think anyone on this panel came here today thinking there is not something that needs to be done. We are asking for some relief. We see a problem in our small businesses. I don't know the answer.

Mr. **Mineta**. We have a call of the House for a vote, so we will recess right now and then come back to resume the questioning.

Following the completion of these witnesses, we will break for lunch and probably have about an hour after the completion of this panel before we resume with the next panel.

We break now for 10 minutes for this vote.

[Recess.]

Mr. **Mineta**. The subcommittee will reconvene. This time let me pick up on the questioning.

Mr. Picknelly, let me ask, in your testimony you say that you would guarantee that an accessible bus would be provided for every charter group that requests one. How would this guarantee be implemented, and absent ADA, what recourse would a person with disability have if he or she were denied a charter bus?

Mr. **Picknelly**. That is a hard question to answer, Mr. Chairman. I guess I can answer it only to the extent of the experience that we have had over the last three years in particular. since we have had two buses in our fleet like this.

The requests have been so minimal that we just have not had the problem. Again, we now have seven buses in our fleet because of the Massachusetts program and we have not had any additional calls for seven as opposed to two. So, short term, the problem certainly is not a problem.

Mr. **Mineta**. That availability has been pretty well publicized?

Mr. **Picknelly**. Yes, it has. The commonwealth printed a brochure. There have been a lot of newspaper articles and public interest type news releases on the availability of those buses throughout the state, not only on our fleet but other bus companies serving Massachusetts.

Mr. **Mineta**. Has the state done much to publicize their program that has been extended to the private bus companies in this manner?

Mr. **Picknelly**. Yes, they have, sir.

Mr. **Mineta**. The private company industry has consistently opposed charter activities by public transit operators. Under the ADA, let me ask, why should you be permitted to lease a lift-equipped bus from a transit operator to provide service to the disabled community rather than allow that transit operator to provide the service or purchase lift-equipped buses yourselves?

Mr. **Picknelly**. Again, because of the cost required to purchase a lift-equipped bus. This is a cost we feel that our industry simply cannot afford.

Mr. **Mineta**. Mr. Currey, how is it that Greyhound has been able to determine that to fully implement the provisions of the Senate-passed ADA, that it would cost approximately, as you say in your testimony, about $40 million a year. How did you arrive at that?

Mr. **Currey**. Mr. Chairman, I would like to submit for the record the document entitled, "Annual Costs for Greyhound" that details the information I am about to speak to if I could.

Mr. **Mineta**. Without objection.

[The information on Greyhound follows:]

ATTACHMENT A

H.R. 2273 ANNUAL COST FOR GREYHOUND

The following is an analysis of the annual, per bus operating costs to Greyhound of the requirements of H.R. 2273, using the lowest and highest realistic cost estimates. The calculations assume a 4,000 bus fleet with 400 buses being purchased each year and used in the fleet for 10 years. Thus, capital costs, such as purchases and installation of the lift are amortized over a 10 year life. The total annual cost figures appearing at the bottom of the page represent the per bus costs multiplied by 4,000 buses.

	Low Estimate	High Estimate	Explanatory Notes
Lift Purchase and Installation	$ 1,000.00	$ 3,500.00	Lowest and highest estimated costs of lift and installation ($10,000.00-$35,000.00) amortized equally over 10 years.
Restroom Installation	$ 100.00	$ 100.00	$1,000.00 installation cost amortized over 10 years.
Cost of Loss of Seats Due to Lift	$ 2,400.00 (2 seats)	$ 4,800.00 (4 seats)	Annual cost of running extra busses due to two seat (and four seat) reduced capacity.
Cost of Loss of Seats Due to Restroom Accessibility	$ 4,800.00 (4 seats)	$12,000.00 (10 seats)	Annual cost of extra buses due to four seat-ten seat lost capacity. Four seat lost capacity assumes restroom and lift are adjacent.
Loss of Package Express Capacity	$ 0.00	$ 9,000.00	High estimate is due to loss of 30% of package express capacity.
Maintenance Costs	$ 1,000.00	$ 3,000.00	Actual best estimates of those that have used the lifts in question.
Training Costs	$ 800.00	$ 1,600.00	Annual training costs based on DOT airline requirement of one day training and retraining for all operational personnel. Differential is due to different levels of travel and lodging costs.
Per Bus Annual Operating Cost	$10,100.00	$33,300.00	Low and high estimate of total annual *per bus* cost of wheelchair lift and accessible restroom.

TOTAL ANNUAL COST OF H.R. 2273 TO GREYHOUND

Low Estimate	High Estimate	Explanatory Notes
$40,400,000.00	$133,200,000.00	Total annual cost of wheelchair lift and accessible restroom for 4,000 bus Greyhound fleet when H.R. 2273 is fully implemented.

NOTE: These numbers, if anything, are too low. They do not include estimated increased interest and insurance costs. We have not been able to finalize those cost estimates, but typically capital equipment is financed and there is consensus that insurance costs would increase. In addition, the latest figures from the agency supplying the "low estimate" lift purchase figure indicate that this estimate needs to be increased by at least 50 percent.

Mr. **Currey**. Greyhound first utilized, in arriving at its numbers, the low cost of the Hubmatic lift provided to us initially by the people in Denver; that is $10,000. We have continued on our low cost estimates to use that $10,000, or a 5 percent of a $200,000 bus number.

I would emphasize that that number is not borne out by the estimates given to us by Hubmatic distributors, in that their estimate to us for very large numbers is $15,000, not $10,000 and further, the distributor says that the distributor by no means will guarantee that package express or luggage space is not utilized in that process.

In any event, how we arrived at the numbers; we began at the $10,000, 50 percent too low number from Hubmatic. Our estimates were done on the basis of amortizing that over 10 years. Restroom installation amortized over 10 years, cost of loss of seats due to the lift of $2,400.

A cost of loss of seats due to the restroom of $4,800. We did not provide for any lost revenue figure whatsoever from package express, which is fallacious, frankly, but we could not do so accurately enough to sustain credibility. We provided maintenance costs of $1,000 a year. That is one penny and a half a year on a vehicle that operates 66,000 miles a year.

That is a low, low cost. Keep in mind I have been in the wheelchair lift business with the Dallas Transit System myself, so I know something about the cost of maintaining and operating lifts.

Finally, we provided numbers for training costs, so that we used arithmetic that fully implemented, ADA on the minimum side would cost our company using 10-year amortization schedules, $30 to $40 million. Frankly, I know as a businessman that is a low number but I felt no need to argue with anyone from RTD in Denver or anyplace else, because that number, although low, is so punitive that there is not much need to argue that it is any higher.

Mr. **Mineta**. If there was an exemption for restroom accessibility, as I said earlier, and that chart you indicated represents $4,800 of that $10,100, does that make a difference?

Mr. **Currey**. Well, if that amount were exempted we would have to ask you to take more into account what we believe to be the real cost of the lift, or $35,000. Let me for a moment speak to the restroom accessibility issue.

If you will please visualize the route I was on a few weeks ago going from Santa Barbara to Oxnard, Ventura, Santa Monica to L.A. I rode that route and spoke with every passenger on that route. If a person was on that route and we had utilized a wheelchair lift promising full accessibility as defined by a wheelchair lift and we did not provide accessibility to the restroom, we would be holding out an inappropriate hope for that passenger.

I don't think that is consistent with what any of us wish to do in that if that passenger needed physical relief to use the toilet during such a trip, it simply would not be available. But there is a further problem with that, in that even with a fully accessible restroom on that route, accessibility to the toilet except at stops, for a person in a wheelchair would be highly questionable because of the way the road weaves up and down.

I think it is important, we hope, for you to try to examine us, as you are doing quite ably with our numbers, because no matter how we cut these numbers the cost is so excessive that it will force a massive restructuring of our business.

The bill as enacted, that second portion which treats us like transit, simply does not represent reality because we are not like transit. That is a different system.

Mr. **Mineta**. How much of that cost of the $10,100 would recover on the sale of that bus?

Mr. **Currey**. That is an interesting question. We believe what we testified to earlier with respect to the numbers of people in wheelchairs; that is using the 1978 figure of 400,000 or the current figure of 760,000. We believe, based on the Peter Pan experience, that the proclivity of Americans in wheelchairs who travel on intercity buses is not substantially higher than the proclivity of Americans at large to travel by intercity bus.

We believe there is such a de minimis factor that the wheelchair lift equipped bus on sale would be a drag on the market, not an asset on the market, and we would be forced to reconvert for very private use, which is to say church or school, or as a school bus it would be exempt and many buses go into the use of church-related activities, it would not be required. We believe that the usage indicates that it would not be needed and rather than an asset on the sale, it would be a liability on the sale.

Mr. **Mineta**. In looking at their route structure prior to deregulation compared to since that time, what would you say is the cut back in terms of the number of stations or stops?

Mr. **Currey**. From 1976 to 1987 when we bought this asset the cut back was 50 percent. This is documented by a DOT study. It went from 20,000 places served to approximately 9,500 places served. We have been able through our rural connection program and through our outright refusal to reduce any rural service except in the most disastrous circumstances—I mean we reduced some in Kansas that were generating 10 cents a mile, but we had net added service and we have added a large increment of service through connecting with the rural systems.

We believe we have now stabilized that. It is right off of our books in Des Moines, which are open to audit by this committee, that we arrive at the 32 percent of our restructure that is cost subsidized by solid routes. So you go from 20 to 10. That is very well documented. We believe with the ADA cost we will have to go from 10 to five.

We believe that is what this structuring would do. If we have the costs out here facing us, we have to get on with this restructuring. It might in the short term enhance profits until such time as ADA came on, but we have to get on with this structure with anticipation of those costs.

Mr. **Mineta**. You are saying about 50 intercity locations would lose bus service upon enactment of ADA?

Mr. **Currey**. Yes, sir. Look at this map from Texas. I just say, Mr. Noonan here from North Carolina.

Mr. **Mineta**. Do you have all the states of our Members of the committee up there?

Mr. CURREY. I don't have California. No, sir, I wouldn't do that. I hope I am more astute than that. Here is North Carolina. The yellow lines are the connecting carriers. The pink are our routes that would go negative under the ADA cost structure.

The blue are the routes that would remain. What happens is that the whole infrastructure gets collapsed down just like the 20,000 to 10,000 that occurred from 1978 to 1987. That is what we want to avoid. We think that is not necessary if we can get the same definition of accessibility with the same penalties I might add, that school bus operators have, airlines have, et cetera. We don't want anything any different.

We don't want not to be under the gun. You can put us under the gun.

Mr. MINETA. How many of those communities would lose service in any event without passage of ADA?

Mr. CURREY. Since 1987 we have increased the number of communities served, we resolved to do that. I wish a Member was here from Ohio, there is one, Mr. McEwen. I can show how our commission agents in Ohio, Lee and Jane Woods, improved service. There is a positive example of the private industry restoring service with no subsidy.

Here is Sandusky, Ohio, you will notice the yellow line from Sandusky to Freemont, Norwalk and back to Sandusky. That is run twice a day by a van service, utilizing our franchise name on the side of the van, by Lee and Jane Woods, our commission agents in Sandusky. What happened there was that this local road had service collapsed, as did a cross road that does not show on this map. What we have here is two private entrepreneurs who have established a pick up and delivery service.

They are serving senior citizens' homes. I rode this van on its inauguration. The mayor of Port Clinton said, "I never thought I would welcome anybody from Greyhound to this town, because when you abandoned us I really hated you." So we have gone back. We are asking you not to put us back into the shape we were in in 1978 yet for a different reason.

We are not pleading not to provide accessibility. We are willing to provide accessibility consistent with the definitions of airlines, school buses and all other public carriers, but not the ones, the definitions for federally funded transit systems.

Mr. MINETA. If Congress were to enact that ADA that requires to provide accessible service, not just accessible vehicles, how will Greyhound determine how many vehicles will be needed to provide access for vehicles with disabilities?

Mr. CURREY. I think there are two ways to address that. The present legislation provides for a study. We do have the Peter Pan example.

Mr. MINETA. You said the present study requirements. I thought that was pretty descriptive.

Mr. CURREY. We believe the study should determine the need. We believe we have a profile of what the need is. We believe that a specially designed chair can permit the use of a intercity bus for charter, tour and regular route by persons in wheelchairs with improved grace and dignity.

We think it is important to develop that chair and provide it. We think that is important. Further, we would support strongly a system where the Department of Transportation and industry at large, like the Massachusetts example, but the Department of Transportation since we are dealing with interstate commerce, would have a fleet available for call up at all major centers across the country, call up for charter, call up for tour, call up for regular route to the inter-city.

Indeed, it is that interchangeability of equipment that we think is important to approach this problem in a capital-responsive fashion.

Mr. MINETA. If we are going to come up with legislation that is a cookie cutter template to apply across the country, that may fit Greyhound, but how does it fit Mr. Dipert, or a two or three bus operation in Missouri or wherever?

Mr. CURREY. They, of course, are ready, willing, and able to speak for themselves but all of us are a network. We terminal with Frank Henry at Wilkes-Barre, Pennsylvania. His company is our commissioned agent in Wilkes-Barre. We feed one another traffic. You are looking at us, those of us who operate inter-city service, you are looking at us as separate individuals but we are part of the same network.

We feed one another in this network. We are all, in this intercity transportation network, all in the charter and tour business. We don't operate tours directly. We try to induce Dan Dipert and his colleagues in the charter tour business to utilize our bus.

In that case we are competitive with Curvelle, Valley Transit, and all the other providers on the map of Texas. We are colleagues with respect to the exchange of inter-city passengers and competitors in the charter and tour business. That is a generalism. My colleagues may not go along with it.

Mr. DIPERT. Mr. Chairman, my company is a large user of Greyhound equipment. If there were a pool of buses that were available to handicapped, we would use that pool just as when my 14 over-the-road buses are busy with my own programs, I call Greyhound up and lease their coach. I would call up the pool and lease that coach for the need.

Excuse me, Mr. Currey.

Mr. CURREY. I would just like to amplify on one point. Our five point program is designed to give 85 percent accessibility in two years without notice.

Mr. MINETA. But at a reduced number of cities or locations?

Mr. CURREY. Eighty-five percent comes from the fact that there would be 200 locations at which the special chair would be available. Those 200 locations represent 85 percent of our total boardings. The other 15 percent we could provide with either a 24 or 48 hour notice.

Mr. MINETA. So you are saying the community would be covered? The community with disabilities would be covered by communities, in the sense of towns and locations would be reduced?

Mr. CURREY. All communities would be covered. The difference would be notice. The larger communities would be covered when the person in a wheelchair presented themselves to the terminal.

Persons in the smaller community would have to give us 24 to 48 hours notice.

Mr. **Mineta**. Going back to that other chart, the pink and blue and yellow chart, you are talking about curtailment of service to communities because of unprofitable service. So there would be in that sense a reduction in the number of locations that would be served.

Mr. **Currey**. No, sir.

Mr. **Mineta**. You said with 24 or 48 hour service you would still be able to provide it?

Mr. **Currey**. Sustain service to those communities. What we are talking about here is whether there is a capital intensive non-revenue producing solution to this problem on the one hand, and what the Senate bill is. Or on the other hand, a non-capital intensive revenue producing answer to this problem, and that is what our five point program is.

Mr. **Mineta**. If I were a two-bus operator as a member of Dan Dipert's association what would I do?

Mr. **Currey**. If you were a two-bus operator, a member of Dan's association, or a member of the ABA?

Mr. **Mineta**. I can't afford the ABA. But I could afford to be a member of Dan's organization.

Mr. **Currey**. Mr. Henry reported total industrial profits of $40 million. We had a loss of $17 last year. I believe you top draw your own conclusions about my smaller friends and their profitability. They are very good business people and they would not be in this business if they were not very good business people.

It is a very cost intensive system. What Dan would do or any other charter carrier would do, should there be a pool of buses in the Dallas/Fort Worth regions, then utilizing the 24 to 48 hours notice that bus could be pulled on stream to be utilized with a lift if a lift-equipped trip were desired.

If the customer desired to go immediately on impulse, as it were, then the customer would utilize one of the special boarding chairs that we would expect to have.

Mr. **Mineta**. You refer to the public transit operator that would have the 100 percent fleet.

Mr. **Currey**. In conjunction with the Department of Transportation. That makes the most economic sense from a public and private sector point of view. Should we have those pools of the type that Peter has in Springfield and Boston then we would observe usage.

We would all observe usage for a period of time. We would do what we have always done in the bus business which is be very demand responsive. When we see a demand, we respond.

Mr. **Mineta**. If I could play devil's advocate here. You know I don't like to be sitting in a nice 47 passenger parlor car upholstered, swivel seats, maybe reclining back on a tour, but now I am all of a sudden sitting in a 47 passenger Dart which has been pulled out for service on this package tour.

Mr. **Currey**. As a former member of the Dart Board I protest, sir. I would propose that it be a non-upholstered, straight back seat, Dart bus. I would propose that the bus companies through a cooperative program with UMTA create a pool of city buses as luxurious as Peter's or Chuck's or ours, which would be available for any inter-city trip within the community at large. That is what I will propose so that you take the Massachusetts example, if you will, and re-replicate it but with a pooled equipment concept as opposed to a specific owned equipment concept.

Mr. Mineta. On the scheduling, you will have to do this, positioning your equipment to where you need it.

Mr. Currey. Of course, we do, all the time.

Mr. Mineta. What does that do to our operation?

Mr. Currey. Well, it would be a problem to manage but we all have communications systems. We all have a flow of traffic today. Frankly, out in your country often there is a disproportionate flow of traffic from L.A. to San Francisco and sometimes in the other direction, so you are always having to balance the equipment and put it back into place.

We run a lot of deadhead miles to get equipment at the point of demand just like the railroads. That is within our cost structure. It would be a problem to manage, but as a problem, addressing the problem in a non-capital intensive fashion is in everyone's interest. It is certainly in the disabled Americans' interest, because certainly they wish service to be continued to all the rural towns in America they like to go to also.

Mr. Mineta. Would you think the replication of the Massachusetts kind of program modified to deal with it nationally would be, from your experience, a pretty good way to address the issue?

Mr. Picknelly. Yes, sir, I believe it would.

Mr. Mineta. Thank you.

Mr. Shuster, my very fine colleague.

Mr. Shuster. Thank you, Mr. Chairman.

First, I would like to ask unanimous consent that we keep the record open in expectation of receiving statements from the American Association of Retired Persons, the American Car Rental Association, and Claude Robinson, the transportation consultant.

I would also like to ask unanimous consent that a statement by Mr. Lightfoot be entered in the record.

Mr. Mineta. Without objection.

[The statement of Hon. Jim Lightfoot follows:]

STATEMENT OF HON. JIM LIGHTFOOT, A REPRESENTATIVE IN CONGRESS FROM IOWA

Mr. Chairman, I am pleased the Subcommittee on Surface Transportation will continue their hearings examining the transportation provisions included in the Americans With Disabilities Act. As a former member of the subcommittee, I look forward to hearing from our panelists.

I recognize and support efforts to protect individuals with disabilities from discrimination. This measure addresses a wide variety of concerns. I am particularly interested in how we can meet the mobility needs of disabled individuals in the most efficient and reliable manner.

As the Senate bill stands, private bus carriers are required to equip all vehicles purchased after a six or seven year period with wheelchair lifts. I have some concerns how this mandate would affect access to services for those individuals who traditionally use private carriers as a mode of transportation: the low-income, elderly, rural and small town residents. Private carriers represent a more cost-efficient means of transportation for these individuals, therefore, any increase in fare would limit access.

It has been my experience most private entities have established policies attempting to meet the needs of its physically challenged community.

Mr. Chairman, I would like permission to submit questions into the hearing record so that our witnesses might provide me with their insight.

Thank you, Mr. Chairman, for allowing me to participate at today's hearing.

Mr. SHUSTER. Gentlemen, I want to thank you for your testimony today. I think it has been both rational and well reasoned. I have seldom seen a piece of legislation which under the banner of doing good, does so much harm to low-cost transportation availability, particularly for the poor and senior citizens.

I hope we can fix it because I certainly hope we can have legislation to take to the floor and get to the Congress so we can provide reasonable improvements for the disabled of America.

Mr. Currey, you talked about reducing the number of communities served from about 10,000 to 5,000 communities. Of the 5,000 communities that would no longer get your service, how many would no longer have other public transportation available to them? In other words, where you are now the sole provider?

Mr. CURREY. In the vast majority of those communities, we are the only provider.

Mr. SHUSTER. We are talking about close to 5,000 communities having no public transportation service if the bill as passed by the Senate becomes law.

Mr. CURREY. And in many of those communities, in addition to the passenger business, we are the life blood through the package express distribution system, literally transmitting blood as a very major category to small town hospitals.

Mr. SHUSTER. Let me come back to a subject which the chairman ended on, which is trying to understand how a small charter company will provide service. Let's say a rural charter bus company has somebody in a wheelchair who wants to go on a charter tour, and we have given them some form of exemption, and they do not have the requirement that they have to have lifts on all their buses. They have no lifts on any buses. You are saying that they would pick up the phone and call a city, a public transit facility, and say, "We want to charter a deluxe transit bus with a lift for a 10-day period," if it is a 10-day charter. What is the requirement, and what is the probability that that public transit system is going to have a bus available and be willing to provide it?

I can see some of my friends in Pittsburgh and Philadelphia not being particularly responsive unless there is some stick that requires them to be. I can see them saying, "Wait a minute, we have that bus out, we are using that bus, we don't have that $200,000 bus sitting there just waiting for a little rural charter company to telephone us once every four months and ask for the bus." How reasonable is it that such a bus would be available?

Mr. CURREY. Well, we think it is quite reasonable should the Department of Transportation establish regulations with respect to the use of such a bus. It is like having a standby vehicle, but a standby vehicle available for use in the community at large as opposed to the capital cost of equipping all the vehicles in the community. So it is not as if that bus would get maximum total usage unless we are all wrong about the demand, in which event we would need more buses.

Mr. **Shuster**. So we could just as easily, instead of giving it to a public transit operator in a city, we could establish a pool of 10 private bus companies and subsidize their having one such bus.

Mr. **Currey**. We could. We could.

Mr. **Shuster**. So you are saying—I understand where you are coming from. I have difficulty seeing how this is going to work smoothly, but I appreciate your response.

Let me turn to the Denver lift and your assessment of it. We have had testimony here ranging from its low cost, it works fine, and it is the wave of the future to testimony that it is only a couple of prototypes and we don't know really what it is going to cost, we don't even know if it is going to work.

What is your assessment of the Denver lift?

Mr. **Currey**. My assessment of the Denver lift is that, point one, we utilized the suggested cost of the Hubmatic lift provided by Denver RTD in our low-cost estimate, as I have previously testified. However, we went to Stewart & Stevenson Headquarters in Houston, a very, very major distributor of Hubmatic in the United States. Stewart & Stevenson's installed cost ranges from $15,000 to $17,000.

Further, Stewart & Stevenson states that it will require very substantive restructuring of the flooring and package express space, diminishing the place available for luggage or package express by as much as one-half. One-third to one-half are the estimates.

Finally, Stewart & Stevenson has yet to provide us with any estimates about what the maintenance cost is.

Now, I would like, if I could just for one moment, to differentiate that use in inter-city service from use in transit service. Transit service is a hub-spoke service. I worked deeply and for long years in the transit business in a pro bono job. Transit service is a hub-spoke service so that equipment sits idle every night between 11:00 to 12:00 p.m. and 6:00 a.m., when the big roll-out is the next morning. Our bus leaves New York City, and it is on the road for four days before it gets to San Francisco or LA, or three days before it gets to Miami, et cetera, et cetera, et cetera. So the ability to sustain and make quality maintenance for the safety of the patrons using the bus is an entirely different proposition.

Further, the pattern of usage of transit buses equipped with wheelchair lifts and those equipped for inter-city purposes is entirely different, as is borne out by the Peter Pan experience, in that transit passengers establish a pattern. So if there is a lift-equipped bus by the spot every 10 minutes during the period of time of going to and from work, people get into a transit pattern to and from work.

That is not the way inter-city travel is accomplished. It is an entirely different decision pattern of deciding to make a trip by inter-city bus. It has to do with the fact that we only handle travel for one percent of all Americans, so to conjure up an example that extrapolates the Denver experience into the inter-city experience is nonsense, sir. It is absolute nonsense, and the cost estimate is nonsense, too, even though we have continued to use it.

Mr. **Shuster**. I don't want to put words in your mouth, but what is your assessment, then, of the reliability of the Denver lift as applied to inter-city bus travel?

Mr. **Currey**. My assessment is that both on the cost of maintenance and on the original cost of the lift, we have far under-estimated it in our low-cost estimate. We are much closer to our high-cost estimate, but no need to argue the higher cost estimate, frankly, because the lower cost estimate is a bullet to the heart to us.

Mr. **Shuster**. Does that mean with adequate maintenance, with substantial maintenance, it has worked reliably for sustained periods of time?

Mr. **Currey**. We don't know that it is, but I wouldn't say it is not. I am a believer in technology, either the MCI lift or the Hubmatic lift. The lift, there is no mystery about it. It can be made to work, it is only a matter of money and labor dollars to maintain it. I wouldn't argue for a second a lift couldn't be made to work, sir. It is all a matter of price.

Mr. **Shuster**. Let me turn to some of the smaller bus operators. Is it not reasonable for a small bus operator to look at the ADA Senate version, if it passes, and say to himself, "I am going to make a prudent business decision here which is, fundamentally, I am going to disinvest because the bill doesn't take effect for—what is it—seven or eight years, six years." The smaller operators, because you have some years, why wouldn't the prudent businessman say, "I will simply run my fleet into the ground, in fact increase my profitability or increase my cash flow in the short run over a period of five, six, seven years and get out of the business or sell off what I have left to whoever wants to stay in the business," maybe to Greyhound or to somebody else, why wouldn't that be almost a classic kind of a prudent business decisions that a small businessman would make?

Mr. **Busskohl**. I would think that some people would do that, you bet, and one of the things that would maybe force you to that is your banker that says you will pay the rent. If you are going to stay in the business, there isn't a prudent banker in the world that is going to give you a loan, which we always have to have on a $225,000 piece of equipment, that would in his right mind give you a loan on that thing.

Mr. **Shuster**. Is it reasonable, or am I going too far when I say, that in addition to the problems that Greyhound has outlined and your profitability problems of a small bus owner—is it reasonable to assume that there will be an acceleration of disinvestment and getting out of the business by the smaller owners as a result of the ADA bill if it becomes law?

Mr. **Henry**. Congressman, I think that there is a very definite issue there. A family corporation like we have, we are now in the fourth generation; my son, this same thing came up, he said, "How do you see the future of this industry?" He doesn't care whether it is buses or planes or boats, he has to make a living for his family. I said we would sit down and see what our ROI was in this industry.

Quite frankly, with what we are talking about today, he wouldn't be in this industry. That is a business decision.

Mr. **Shuster**. That is in addition to the ones we have been talking about here today, isn't it? All right. Thank you.

One final point, Mr. Currey. When you talk about serving 10,000 towns down to 5,000 towns, I presume you have calculated—if you have 10,000 towns and if 32 percent of your miles are at a loss today, and if that is going to go up to 51 percent, that means that you have a base that you are serving today which includes 32 percent.

If ADA passes, the base is reduced.

Mr. CURREY. Right.

Mr. SHUSTER. And so you don't have the same percentage of profitability to spread over even a smaller 32 percent base?

Mr. CURREY. That is exactly correct.

Mr. SHUSTER. So the implication is an accelerated leverage to reduce the communities you serve, and I presume that kind of calculation is built into your reduction from 10,000 to 5,000?

Mr. CURREY. Exactly, and that is why we would have to begin almost immediately to rationalize these routes—that is the euphemism for eliminating small towns—to rationalize these routes into a different kind of route structure, because we couldn't do it overnight because we would stand the risk of collapsing the whole system.

Mr. SHUSTER. Let me ask you one final question. As a businessman running a company to make a profit, why do you serve 32 percent of your mileage today when it is operating at a loss? What does your Board of Directors say? Don't they ask you that kind of a question?

Mr. CURREY. Often.

Mr. SHUSTER. I would think so.

Mr. CURREY. It is a balance between the feed that you get from the lost routes and the miles on the profitable routes that that feed runs. It is that balance. Those of you that dealt with matters of air transport during the days of regulation will remember that balance.

Well, that balance is obviously quite precarious for us because last year we lost $17 million on that balance, and don't think that I didn't get interrogated by the Board of Directors about it, because I sure as heck did for a long time. But I have been convinced that that field would be our life blood for the future if we could sustain that, and this year that is proving to be correct.

If I sound desperate about not wanting to reinstitute the divestment program, then that is a true representation of my understanding of the matters. I think it would be a desperately bad thing in the public interest, in our customers' interest, in my own shareholders' interest, and I know in our employees' interest, because we are going to have to get them out of there by large groups.

Mr. SHUSTER. Does part of your thinking in terms of your long-term strategic thinking include the thought with further concentration in the airline industry prices will be going up in the airline industry, and, therefore, you stand to benefit from that in the long run?

Mr. CURREY. Yes, sir.

But I would urge consideration of our actual results. For instance, in the month of August this year we handled 837 million passenger miles versus 785 million passenger miles last year, an increase about which we are quite proud. But I would like to note that we handled that as a result of a decrease in yield, that is revenue per passenger mile, from 917 to 907.

Mr. **Shuster**. Is that fixed route only you are describing?

Mr. **Currey**. Yes, that is fixed route only I was describing. So it is further proof of the fact that demand for inter-city bus travel is closely tied to price, and I would also like to point out that an interesting phenomenon, extremely interesting phenomenon in our business, this route that originates in New York and goes across country through Cleveland and Toledo and Chicago becomes unprofitable west of Chicago going to San Francisco, so you might say that doesn't make any sense.

Well, it isn't because the loads are not on that route. Our average loads on that route are high, 23, 24 passengers. It is because the yield on these miles out here has to be very, very low to get any traffic at all, and we are operating that route, second, because we are cost subsidizing it with the setting between New York and Chicago where population is more dense, the miles are much shorter, so people will ride the bus at a higher rate per mile. But out here we are hauling people from Chicago to San Francisco at five and six cents a mile.

Now, what that means in conjunction with your airline comment is that we are not—I mean, the airlines can triple their price from San Francisco to Chicago, but there is an absolute maximum that a bus passenger can pay that isn't related to air fares, and so we bump up against that price, and that is what we call the stay-at-home phenomenon. We say to our people all the time, "Look, we have got three competitors, the airlines, the automobile when it is used against the incremental price of a tank of gas, and "stay at home", and our biggest competitor is "stay at home". We compete against "stay at home" when our service is lousy or our price is too high, and so we have got to keep our service up and our prices down if we expect to survive.

Mr. **Shuster**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Mineta**. Mr. McEwen.

Mr. **McEwen**. Thank you, Mr. Chairman.

I have appreciated the testimony very much. Just a couple of questions from the testimony we will receive shortly after you leave, and if you could respond to them, I would be appreciative. We have a general support for a regional transportation district which, as you know, operates with certain flexibilities that those in the private sector do not enjoy, but he is able to make observations such as this, that he provides the accessible wheelchair service without an increase in schedules, safely, reliably and cheaper.

He further points out that—would any of you have any comment on that as to how one can do that?

Mr. **Currey**. Does he want to buy a bus company?

Mr. **McEwen**. I am asking for some figures as to how much those in the rest of the country get to contribute to his ability to operate more cheaply, but we don't have those numbers as yet.

The same testimony goes on to point out that Denver has lost some four seats in the application of their lift, and then we have further testimony coming right afterwards, that the same manufacturer that Denver uses, when applied to a bus occupies zero baggage space, will remove only one seat, adds $11,000 to the cost, and this price can be expected to fall.

Your testimony is such that it takes more than one seat. In fact, Denver says their experience has been they have taken four. Can you reconcile this for us?

Mr. PICKNELLY. In the bus that we have in our fleet, for one wheelchair position, it would replace four conventional seats. I am not familiar with the Denver lift. The buses that we have and I see every day is a replacement of four conventional seats for one wheelchair.

Mr. MCEWEN. Like I say, when we receive testimony, we build a record that says certain things. If they are left unchallenged, then the presumption is that somehow or other they are valid. Every experience we have testimony on has been four seats have been removed; yet we are about to receive testimony saying that is not the case, notwithstanding your experience, that a lift would not do that. Your experience is a lift that you deal with would have to remove a minimum of four seats in order to have them installed in your vehicles?

Mr. PICKNELLY. Yes, that is right.

Mr. MCEWEN. All right. I thank you.

The way I got involved in this, is that 51 disabled Americans living in Chillicothe, Ohio, came to me in the spring of 1981, pointing out that the bus service in Chillicothe was about to receive the new buses under the new Transit Act, and the regulation they had previously was about to go into effect that would require all these vehicles to have lifts.

They suggested that they would prefer to have personal door-to-door service which was currently provided by a series of charitable organizations rather than having that happen.

Of course, when we checked the regulations we found out that was universal. We went to the Secretary of Transportation, explained the dilemma to him and asked that if somehow or other we could provide superior service, could we receive an exemption from the four buses that were currently in the process of being built in North Carolina to be delivered to Chillicothe, Ohio?

The Secretary or Transportation agreed. The regulation was implemented, and I remember the day that it took effect. As it came across on the news broadcast I was out in Ohio, and the first person they interviewed was the Mayor of New York, in which he said he was going to save a billion dollars because of this common sense application of not requiring across-the-board institution, but allowing local policy-makers to decide how they can serve people the best.

I see we are back to square one, and as the questions from our colleague from Pennsylvania reflect, sometimes it appears to the point that government does not know how to create jobs or provide service. They are not in the business of purchasing vehicles cost effectively and providing small towns with service, but an entrepreneur provides the risk and muscle and the blood and sweat to provide that service, then the government comes sashaying up alongside and says, "Now that you are doing this, here is how you will do it," to which the proper response might sometimes be, "If you knew how to do this, why didn't you do it yourself?"

And that is kind of where we are in our desire to do what is right and what is good without recognizing that there is a tremendous service that is being provided to those of us in the rural area that needs to be preserved in a manner that is not only compassionate but cost effective.

I think they can be reconciled much better on a limited application basis as opposed to a universal one-swat hammer Federal law.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. McEwen. Let me thank all of you for taking time from your own busy schedules to be here and giving us the benefit of your experience and background. This is a very important piece of legislation. It passed the Senate, as all of you know, with eight no votes. It has got the strong endorsement of the President, and this legislation is going to be law.

The question is how is it going to be law? Your input into this legislative process today has been very, very helpful in our deliberations as we come to the head of putting something together. So I really appreciate your taking the time from your own schedules to come here and enlighten us as to what the ramifications are of this bill. I would like to thank you very, very much.

The subcommittee stands in recess until 2:30.

[Whereupon, at 1:25 p.m., the subcommittee was recessed until 2:30 p.m. the same day.]

[The statements of Frank M. Henry, C.D. Busskohl, Dan Dipert, and Fred G. Currey follow:]

STATEMENT OF

FRANK M. HENRY
CHAIRMAN OF THE BOARD
AMERICAN BUS ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
HONORABLE NORMAN Y. MINETA, CHAIRMAN

TUESDAY, SEPTEMBER 26, 1989
2167 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

American Bus Association
1015 15th Street, N.W.
Washington, D.C. 20005
(202) 842-1645

Mr. Chairman and Members of the Subcommittee:

My name is Frank M. Henry. I am the president of Frank Martz Coach Company of Wilkes-Barre, Pennsylvania, and chairman of the board of the American Bus Association (ABA). I appreciate this opportunity to present the views of the Association on the proposed Americans With Disabilities Act of 1989.

ABA is the national trade association for the intercity bus industry. The Association's 700 bus operator members range in size from operators of two or three buses to Greyhound Lines, Inc., which has a fleet of some 4,000 buses. A few members of ABA provide only scheduled, regular-route service; several hundred members, like three of my own companies, provide both regular-route service and tour services; and the remaining 500 or so members are engaged exclusively in charter and tour operations.

My companies, Frank Martz Coach Company, Gray Line of Washington, D.C. and Gulf Coast/Gray Line in St. Petersburg, Florida rely heavily on scheduled service and tour operations. Any service that depends on individual fares, such as regular route and special operations tours, price their trips so that they are divided among the number of seats available on the bus. The reduction of seats and added operating costs, which are proposed in the Americans With Disabilities Act of 1989, would make regular route lines unprofitable in most areas and would thus cause the service to be curtailed. Tour prices would be increased to a point where many of the now offered tours would be too expensive for those on retirement or restricted incomes. In order to continue these services the industry would require heavy subsidies from the federal government to stay in business.

We believe all Americans should be able to use all of the transportation services offered by the intercity bus industry. With but one exception, that right is honored by the industry today. Disabled Americans who are confined to wheelchairs should have access to intercity buses. That objective should be achieved in a way that does not destroy a substantial part of the intercity bus system.

Disabled Americans in wheelchairs should be able to utilize all types of intercity bus service. That right can be accorded without installing lifts on all of the intercity coaches of all intercity bus operators.

Section 304 of the Senate-passed bill would require wheelchair lifts to be installed within six or seven years on new vehicles operated by intercity bus companies who provide regular-route and charter services. Such service is provided today in approximately 20,000 intercity coaches.

Intercity bus operators attempt to replace 10 percent of their fleets each year. The estimated cost of lift installation ranges from approximately $10,000 per bus, the cost of lifts on coaches used in suburban commuter service by the Denver RTD, to $35,000, the present cost of lifts installed on intercity buses by Motor Coach Industries, Inc. Thus, the industry's total annual cost for installing lifts on 20,000 buses would range from a low of $20 million to a high of $70 million. Average annual revenue after expenses but before income taxes (net operating income) for the entire industry in the five-year period, 1982-86, was only $41.5 million.[1]

Lift installation is not the only cost involved. The report of the Senate Committee on Labor and Human Resources indicates that space must be reserved in the bus for at least two wheelchairs. This would result in the permanent loss of two to four revenue seats.

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[1] Federal Subsidies for Passenger Transportation, 1960-1988: Winners, Losers and Implications for the Future, Robert R. Nathan Associates, Inc., May 1989, Appendix C.

At page 73 of its report, the Senate committee stated that it expects the Department of Transportation to --

> develop regulations which require that accessible restrooms be installed on intercity coaches when technologically feasible.

Wheelchair access to restrooms on buses may be technologically feasible. The restroom would have to be enlarged to accommodate wheelchairs, thus reducing seating capacity. And, if access were required from anywhere in the bus, an entire row of seats would have to be removed to make the aisle wide enough. Thus, restroom accessibility does not appear to be economically feasible.

In sum, the mandatory lift requirement with its attendant costs including installation, seat loss, and possible package express loss would spell the end of intercity bus service in the United States. Rural communities, now served only by intercity bus, would have no public transportation available. Customers now served, many of whom are young, old, and poor and who have no other means of transportation, would be stranded.

There is no justification for the sledgehammer approach taken in section 304 of the Senate bill. ABA is willing to accept legislation along the lines set forth in the Air Carrier Access Act of 1986. Under that Act, the Secretary of Transportation is authorized, but not required, to mandate the installation of wheelchair lifts on commercial aircraft to implement the following prohibition:

> No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

The Senate imposed this standard on us in section 304 (a) of its bill, but then imposed a second standard on us in section 304 (b)(4) that requires lifts on all vehicles. The first standard, which tells us what to do seems appropriate for us (as it is for private, unsubsidized air carriers). But the second standard, which tells us how to do it is the same as that applied to the publicly financed transit agencies and is not appropriate for the private sector.

There are possible solutions other than full accessibility on every one of our coaches. Charter trips are planned in advance. Fully-accessible buses could be leased from transit authorities and from other bus operators. A charter bus operator with 50 buses in its fleet could guarantee the availability of a wheelchair-accessible bus with only one or two of its own buses so equipped. To require the remaining 48 buses in such a fleet to be equipped with lifts involves a monumental waste which contributes absolutely nothing to the transportation of the disabled.

Regular route operators could do very much the same. When prospective travelers call to make their travel arrangements (check schedule and fare information), they also can ask for an accessible bus and, with a reasonable notice period, the bus will be provided. It will not be a paratransit vehicle but, rather, the regular bus for all the passengers on that particular run. This would be the same as the charter operator who would secure an accessible vehicle for the group. Furthermore, regular route operators can, through the use of specially designed loading chairs, provide accessible transportation without prior notice in the vast majority of cases. We would note that this offer on our part goes beyond the standards currently being promulgated by DOT to be imposed on the airlines.

The American Bus Association is prepared to cooperate fully with the Congress, the Secretary of Transportation, and groups representing disabled persons in finding ways to improve access to intercity bus services. It is not clear to what extent, or under what circumstances, the installation of lifts on intercity buses is economically and technologically feasible. We do not think it is unreasonable to ask that an impartial study precede the enactment of any law or the promulgation of any regulation on the subject. The Senate bill includes such a study, and we applaud that amendment. We do believe, however, that its outcome is forecast by the inclusion in the legislation of a mandated lift requirement.

ABA is pleased to have had the opportunity to present its views on this important matter.

TESTIMONY

U.S. HOUSE OF REPRESENTATIVES

Committee on Public Works and Transportation
Subcommittee on Surface Transportation

C.D. "Chuck" Busskohl, President

Arrow Stage Lines, Inc., Sioux City, Iowa
Director, United Bus Owners of America
September 26, 1989
Re: H.R. 2273, Americans with Disabilities Act of 1989

Mr. Chairman, members of the Committee, as President of my own company, operating both intercity and charter motorcoach businesses, and as a member of the Board of Directors of the United Bus Owners of America (UBOA), representing more than 1,000 members, I urge that significant changes be made in H.R. 2273, the Americans with Disabilities Act, before this Committee approves the legislation for full House consideration.

My own business, Arrow Stage Lines, Inc., of Sioux City, serves Iowa, Nebraska and much of the West with intercity, charter and tour service.

The United Bus Owners of America is an association of private bus owners and operators ranging in size from Greyhound's 4,000-bus fleet to single-vehicle charter operators. We also represent, as associate members, the commercial businesses which serve the needs of this industry. Our associates include coachbuilders, equipment and accessory makers, and representatives of a wide variety of service industries.

In unison, we applaud the goal and concept of this legislation: the elimination of discrimination against our American neighbors with mental or physical handicaps. And, in unison, we speak out against the single-minded legislative approach to accessibility which drives this bill to demand -- in the case of private intercity transportation -- that the forest be clear-cut so we may have a better view of the trees.

In the legislative authors' enthusiasm to "do right," we believe that H.R. 2273 was introduced with serious flaws. These desperately need to be corrected prior to its becoming law. They threaten the very existence of the American private bus industry and, if they are not addressed, the passage of a bill designed to assist the handicapped will instead result in the near-total loss of intercity bus service to the handicapped and to every American.

This Congress must understand that is may well jeopardize the most widespread, most affordable means of transportation now available to the American citizen to establish a worthy but limited goal of "full accessibility" for a small segment of this Nation's population.

Specifically at issue is the requirement in H.R. 2273 that all new buses sold in the United States be made "***readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.***"[1]

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[1] H.R. 2273, Title III, §303(b); Title IV, §402(b)(7)(B)

Mr. Chairman, members of the Committee, our operators today offer the most accessible, most available, most affordable means of public transportation in America. And, unlike our competitors, we do so virtually without assistance from this or any government. We survive because our members are good businessmen and women who are willing to accept a very narrow margin of profit to continue in business as independent, tax-paying enterprises.

Despite the narrow margin of profit and the near-total lack of governmental funding, the estimated 46-million handicapped persons addressed in the preamble of this legislation already find that our owners and operators are among the most accommodating businesses in the Nation. With very few exceptions, private bus owners are prepared to transport handicapped persons in the same manner and level of service afforded fully-capable passengers. In many cases, handicapped persons are offered discount or totally free passage; in others, attendants travel at reduced fares or completely cost-free. Guide dogs have long been welcomed aboard our vehicles. Wheelchair-using passengers who are brought aboard by attendants are easily accommodated.

It is only the occasional wheelchair-bound passenger, who may even remotely perceive that he or she is denied "ready accessibility" to the services offered by UBOA members. It is also this final category of potential rider whom, we believe, is being excessively accommodated by this bill's most serious degree of "legislative overkill," the apparent requirement that every new or re-manufactured bus sold in this country be equipped as "fully wheelchair accessible."

Allow me to address four important aspects of the bill's intended requirements: **cost, safety, practicality** and finally, **alternatives.**

First, however, it's critical that the goal of this Committee be carefully defined. Legislative language and perceived intent have a great deal to do with the way any legislation is enforced. If the transcript of these hearings is to be used as a guide for future enforcement, our perception of the intent is that all persons must have equal opportunity to board, move about within and use the available facilities of every passenger vehicle on the road.

If that is the case, every motor coach used by UBOA members must, at a minimum, be wheelchair lift equipped; it must have aisles and restrooms which are wide enough to accept wheelchairs; it must allow enough seating space to secure a wheelchair.

I'd like first to address the question of the cost of these changes to the private bus industry in America. For the moment, I'll limit my comments to equipment purchase costs.

The average private line motor coach sold in the United States today is $200,000. It carries 47 passengers; it is 40-feet long and 102" wide. It's aisles are 14" wide and the floor of the passenger deck is approximately four to five feet off the ground, riding atop a luggage and storage compartment with a capacity of some 330 cubic feet. It's useable life, depending on the service requirements, is 8 to 12 years.

The addition of a wheelchair lift and coach design changes to aisle, restroom and seating, will cost each new coach buyer an estimated $15-$35,000 -- depending on a variety of elements -- at the outset of this bill's life. I admit that the exact cost is in dispute, as are the durability of technologies involved. But because of vague language, frankly today's operator cannot be certain of the extent of changes which this bill mandates.

Lifts on intercity buses will need to reach the lofty second deck safely and to be fitted into a coach which is far more complex in its engineering than the everyday transit bus. While cost would be expected to drop over a period of time, reflecting the economies of volume as the luxury coach business adopts these standards, the lift will never be as inexpensive as its transit bus counterpart. By the same token, the mechanical reliability of lifts will, hopefully, improve dramatically in the future, reflecting technological advances which naturally follow a high-demand product.

I'll come back to cost, but for now let's assume that every bus buyer in the Nation is prepared to pay the additional 10 to 15-percent front-end cost for the equipment.

Let's move on to the question of safety.

Lifting a passenger 18-inches from ground to the deck of a transit bus or a step-van is a comparatively risk-free activity. Equipment need not be intricately designed, nor employees highly-trained to affect the loading of a passenger. Such is not the case with a four to five foot lift onto the second deck of a luxury coach. No doubt, insurance liability costs will mirror the increased risk from injury in falls caused by potential equipment failure or poorly-trained staff. But if we were to assume the optimum -- 100-percent equipment reliability and 100-percent reliable employees -- what's to be said about safety on once the passenger is on board.

Today, the U.S. Department of Transportation hazardous cargo regulations prohibit the stowing of battery-equipped wheelchairs in bus luggage compartments. Will the DOT look more favorably to the transport of these explosive-potential batteries in the passenger compartment? Or should DOT simply drop it's prohibition? Technology is, at the moment, targeted on creation of a safe battery which may be stowed and transported, but if this legislation is approved quickly, will only non-electric wheelchairs be permitted? Will the wheelchair occupant be required to bring along his or her own seat belt? Will there be a standard implemented to see that all chairs are secured properly during transport?

UBOA interprets this legislation as prohibiting any rules for wheelchair bound passengers which it would not apply to fully-mobile passengers. As such, wheelchairs must be allowed to traverse aisles during a journey, certainly at least to the restroom. We suggest, however, that an unsecured wheelchair -- not to mention its occupant -- would become a lethal missile in an emergency situation. Even if it remained on the deck, it represents a barricade to paths of escape, a violation of federal safety regulations.

I remind the Committee that the tragic crash of an out-of-service school bus being operated by a church cost 27 lives in Carrollton, Kentucky, just last year. In large part, those who died were not victims of the trauma of the crash, they died because they could not escape the burning bus. Federal investigators found that items as insignificant as picnic baskets and coolers in the aisle cost the lives of some of those who might otherwise have escaped. A picnic basket is far less impeding than a wheelchair.

If we assume that there is a way to ensure that the wheelchair passenger is properly secured at the time of a vehicular accident, we cannot assume that the paralyzed occupant is capable of negotiating his or her way to a proper exit. Elevators in buildings -- where all other elements are stable -- all carry warnings that they are not to be used in times of emergency conditions. Will we expect a higher standard of mobile elevators? Or will each bus be designed with some form of ejection device for the occupant of a pre-designated seat or wheelchair pad? If so, how many devices or directions need be considered?

From a safety and emergency escape standpoint, the on-board wheelchair can be a nightmare within a nightmare. This Committee must share the responsibility, with buyers and with manufacturers, of deciding on a reasonable and acceptable method and level of safety for the wheelchair-bound passenger.

From a third perspective, I urge this Committee to look at the practicality of its demand that 100-percent of the American fleets of intercity and privately-owned buses be equipped to accommodate three-tenths of one percent of the population.[2] In a survey of UBOA members, annual requests for lift-equipped buses -- in those cases where any request was made at all -- averaged two. One member in the busy San Francisco area noted that, over 11 years of business, he had yet to receive one request. In virtually every instance, operators noted that alternative sources of transportation for the wheelchair-bound passenger are abundantly available through existing community services. Virtually all responses indicated that this legislation -- if approved as is -- would force them to close the door to their business.

Which brings me back to a point which I already understand this Committee does not want to discuss: the cost of this measure, in realistic, boilerplate terms. Or, maybe I should say it brings me back to a discussion of "value: cost versus returns."

Compassion is a wonderful thing. Without compassion for one's fellow human beings, without altruistic motivation, America could not ever have become the power it is today. Without charity and a belief in the "rightness" of what we are doing, little would ever be done. And, while I applaud the "rightness" of the goal of the ADA, I suggest that the brilliance of compassion has handicapped this legislation.

What this Committee decides to do with federal money is, technically, its business, though it is our members who pay the taxes which pay for your decisions. If it is the desire of this Committee to require its federally-support transit fleets to be fully lift-equipped, and if you're ready to pay the cost of that, we urge that you follow your conscience. You and your constituents will, ultimately, decide whether or not your vote to disburse billions of tax dollars was a sound decision. I suggest that the soundness of federal policy might be questionable when -- in the same year -- federal sources would require spending $20-50,000 to accommodate one **potential passenger** in 300.

But what you do with our money and our business is another matter. Earlier, I skipped past initial vehicle modifications so that we could look at the many other aspects of this bill's requirements. Now I want to return to it.

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[2] U.S. Department of Commerce, Bureau of the Census, U.S. population in 1980: 226,000,000+; wheelchair-using population, approximately 720,000 persons.

If we still assume that the UBOA member who buys a new bus can, indeed, afford to spend an extra money to purchase the vehicle, it's highly doubtful that he or she will ever be able to afford o keep that bus on the road.

From the current 47-passenger configuration, lift installation and creation of a tie-down area for the chair will cost at least four seats. Now we're down to 43. Expanding the size and access of the restroom, will cost another two seats at a minimum. Now we're down to 41. Aisle widening will force reconfiguration of the current four-across seating to three across; mark out another 9 to 11 seats. Now we're down to 32 passengers, at best, in a business where 47-seats have served as the norm.

Depending on the technology used, the same is true of the capacity in the luggage compartment where valuable package express services help underwrite the cost to passengers.

Remember that we're prohibited from expanding the size of the bus; state and federal size restrictions determine the maximum exterior dimensions of that vehicle. Unless the Federal government widens roads or mandates smaller people, we're pretty well stuck with what we've got.

This bill, then, costs a minimum of a 30-percent loss of passenger and package carrying capacity, **on top of the increased cost of the vehicle.** No carrier -- from UBOA's largest member to its smallest will be able to absorb that cost without passing it directly on to the customer.

And who is the passenger who'll be expected to pay this cost?

In large part, the bus passenger today is: a) someone who cannot or chooses not to afford a personal automobile; b) senior citizens on fixed incomes; c) low-income families; d) students; e) virtually anyone who wishes to take public transportation to or from an American community which is not served by an airline or rail terminus. There are, by the way, plenty of those latter communities. Regularly scheduled air carriers reach fewer than 500 communities; AMTRAK about the same. Regularly scheduled bus service today touches about 10,000 communities.

These are not customers with a choice of transportation modes. These are not customers with deep pockets who travel by bus so they can spend more at the Atlantic City gaming tables. These are people with only one avenue to the foundational American promise of affordable and available travel.

Today's bus operator lives on a very narrow ledge, whittled back even farther by the grossly unbalanced federal transportation subsidy policies of the last generation. Since 1965, the pre-tax net income of the intercity bus industry has fallen to one-eighth of its level at that time.[3] That drop seems to correspond near identically with the spending of some $90.5 billion[4] in federal assistance since 1960. During that time, while Congress subsidized each AMTRAK passenger with $33.45 per ticket, intercity bus passengers received eight-cents each.[5]

The intercity bus is a low-margin, peak-period business. The charter bus business is little different. Customers turn to the bus to save money; it's a fact of life. When that single and slim marketing edge is lost, so too is any reason to stay in that business.

Leaving us at the bottom line: most of our members will be forced out of this business.

The added cost of vehicles will force many out right away. The added cost of operating will force out many more. Those who are left, if any, will be left to charge airline prices for intercity travel -- prices which thousands of Americans already find intolerable.

The decreasing passenger levels will, of course, contribute to a downward spiral of service and an upward and corresponding spiral in prices.

Should this legislation pass as it is now written, UBOA predicts that a decade from today the private bus operator will be as scarce as the private rail passenger line in this Nation.

Congress will, indeed, have torn down the discriminatory barriers between the handicapped and able-bodied traveler in America: neither will be able to afford or to find intercity bus service. Able-bodied and handicapped will, together with elderly, low-income and every rural resident without private transportation, become a Nation of shut-ins.

To the age-old question, "How ya' gonna' keep 'em down on the farm?" this bill seems to have found the answer.

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[3] "Federal Subsidies for Passenger Transportation, 1960-1988: Winners, Losers, and Implications for the Future," Robert R. Nathan Associates, Inc., May 1989.

[4] ibid.

[5] ibid

A decade from today or before, Congress will be faced with a single alternative: the creation of "AMBUS," a nationalized, fully-subsidized intercity bus line operating with all of the efficiencies and innovation of the Nation's existing transit systems. The same basic subsidies will be applied to create an intercity clone to the transit system which, in his final budget to this Congress, President Reagan said, "finance high wages and low labor productivity. The subsidies encourage waste, distort local decision making and perpetuate public monopolies that discourage competition. Very little of the subsidy benefits the transit rider."[6]

What are the alternatives?

UBOA agrees that more can be done in our industry to accommodate the handicapped passenger. Uniform standards and policies toward the handicapped rider might become voluntary criteria so that the handicapped know what to expect when they are in need of intercity transportation. More systems might be encouraged to invest -- with public assistance -- in lift-equipped vehicles. More cooperative efforts can be encouraged between public and private operators; after all, virtually all lift-devices today are publicly-underwritten or -owned. Direct federal assistance -- both capital and operating assistance -- can be offered to private operators to encourage lift installations. Even requirements for proportional fleet purchases would make more sense than this shotgun approach.

In the long run, however, UBOA believes that the ADA demands far, far too much from bus owners and operators in response to the statistical and demonstrated need for handicapped intercity transportation. Equipping every vehicle to prepare for the call which may never come is squandering precious resources which could certainly be better spent. And it doesn't matter whether those are private or public resources -- neither of us can afford it.

UBOA encourages the passage of those sections of the ADA which offer the handicapped a legal recourse to willful, obviously intentional and continuing discriminatory practices by American business, though we believe that far more opportunity for negotiated settlement should be added to this bill.

And to the extent that productive changes were made by the United States Senate in its deliberation on this bill, UBOA endorses the three-year study into needs and means of achieving full accessibility which are contained in the Senate bill, S. 933.

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[6] Fiscal Year 1990 Budget of the United States, Major Policy Initiatives. President Ronald W. Reagan, 1989.

But the mandate that every bus be fully accessible remains even in the Senate's bill. It must be removed. Our operators are full prepared to live with the results of the mandated study. We're certain, however, that there are far more efficient, more affordable, more satisfactory ways to achieve full accessibility than the single approach offered by this bill.

To summarize, Mr. Chairman, this bill's sections calling for modifications in all new buses sold in America will, at best, blanket this Nation with equipment which will never be used, for which too many people will pay too much. At worst, the private intercity and charter bus operator will disappear entirely, leaving the American traveler entirely in the hands of air and rail carriers which are too costly and reach too few communities. Or, it will force the nationalization of an entire industry or the abandonment of the American principle of a fully mobile population.

UBOA urges a more realistic and practical assessment of the problem be made, and a more solution be sought reasonable and pragmatic solution sought. If significant changes are not made, UBOA urges that this bill be defeated.

Thank you for this opportunity to address our concerns.

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MR. CHAIRMAN, AND DISTINGUISHED MEMBERS OF THE COMMITTEE,
MY NAME IS DAN DIPERT.

I AM PRESIDENT AND OWNER OF DAN DIPERT TOURS, THE LARGEST INDEPENDENT OPERATOR OF MOTORCOACH TOURS IN TEXAS. IN ADDITION, I AM A BUS OWNER. THIS YEAR I AM SERVING AS PRESIDENT OF THE NATIONAL TOUR ASSOCIATION (NTA). THIS ASSOCIATION REPRESENTS THE GROUP TOUR INDUSTRY IN AMERICA, WITH MORE THAN 3,500 MEMBERS.

EQUAL ACCESS FOR ALL DISABLED AMERICANS IS A GOAL THAT HAS BEEN EMBRACED AND PRACTICED BY NTA MEMBERS FOR MANY YEARS. TODAY I REAFFIRM NTA'S COMMITMENT TO THIS GOAL AS EMBODIED IN H.R. 2273. FURTHER, I WILL SHARE SOME BASIC QUESTIONS AND CONCERNS WITH THE MANDATES CONTAINED IN S. 933, AS PASSED BY THE U.S. SENATE.

BEFORE I DO, HOWEVER, LET ME PROVIDE YOU WITH AN OUTLINE INSIGHT INTO OUR ASSOCIATION. NTA'S BACKBONE IS 550 TOUR OPERATORS WHO DEVELOP, PACKAGE AND SELL GROUP TOURS TO DESTINATIONS IN THE UNITED STATES, CANADA, AND OTHER LOCATIONS THROUGHOUT THE WORLD. WE ALSO REPRESENT 2,500 TOUR SUPPLIERS: HOTELS, RESTAURANTS, MOTORCOACH COMPANIES AND AIRLINES. WE ALSO REPRESENT DESTINATION MARKETING ORGANIZATIONS, WHOSE MEMBERS REPRESENT LOCAL, REGIONAL, STATE AND PROVINCIAL TRAVEL PROMOTION OFFICES. BECAUSE OUR UNIQUE STRUCTURE COVERS EVERY FACET OF GROUP TRAVEL. NTA IS CERTAINLY IN PART, A SPOKESMAN FOR THE ENTIRE TOUR AND TRAVEL INDUSTRY.

THIS SUMMER THE NTA BOARD OF DIRECTORS REAFFIRMED OUR TRADITIONAL SUPPORT FOR THE RIGHT OF EVERY AMERICAN TO EQUAL ACCESS TO ALL FORMS OF PUBLIC TRANSPORTATION. H.R. 2273 IMPLEMENTS THE LAUDABLE ASPIRA-

TIONS OF INTEGRATING AMERICA'S DISABLED INTO THE MAINSTREAM OF AMERICAN LIFE AND SOCIETY. HOWEVER, OUR ASSOCIATION WOULD BE REMISS IF I DID NOT HAVE SOME BASIC QUESTIONS AND CONCERNS ABOUT SOME TRANSPORTATION PROVISIONS OF THE LEGISLATION THAT COULD PRODUCE EXTREME FINANCIAL HARDSHIP AND POSSIBLY LEAD TO THE TERMINATION OF SERVICE TO THOUSANDS OF RURAL TRAVELERS AND HUNDREDS OF RURAL COMMUNITIES.

TOUR OPERATORS AND COACH OPERATORS HAVE MADE SUBSTANTIAL EFFORTS TO ACCOMMODATE THE NEEDS OF THE DISABLED WHEN ASKED TO TRAVEL BY MOTORCOACH -- OFTEN FAR AND ABOVE THE DEMONSTRATED NEED. WE, HOWEVER, KNOW FROM OUR EXPERIENCE THAT, FOR OUR ORGANIZATIONS TO SURVIVE IN THE MARKETPLACE, WE MUST BE VERY EFFICIENT MANAGERS OF THE AVAILABLE RESOURCES. THIS LEGISLATION, IF IMPLEMENTED, WILL PLACE AN UNFAIR BURDEN OF ECONOMIC COMPLIANCE UPON THE OBVIOUSLY LIMITED CAPITAL OF THE NATION'S PRIVATE BUS OWNERS THAT SUPPLY THE MOTORCOACHES FOR OUR ASSOCIATION'S OPERATORS. ONLY ONE-THIRD OF OUR OPERATORS OWN THEIR OWN EQUIPMENT.

YOU HAVE BEEN TOLD THAT "THERE SHOULD NOT BE A PRICE-TAG CONSIDERATION WHEN INSTITUTING A BASIC CIVIL RIGHT." IN PRINCIPLE, THIS IS DESIRABLE; IN FACT, THERE IS NO FREE LUNCH. IS THE PRICE OF COMPLIANCE REASONABLE? INDUSTRY ESTIMATES SHOW THAT IT WILL TAKE BETWEEN $30,000 AND $50,000 TO INSTALL A LIFT AND RESTRUCTURE THE SEATS AND RESTROOMS ON BOARD A MOTORCOACH. THESE FIGURES ARE HIGHER THAN THOSE REPORTED BY DENVER OFFICIALS, WHO SAY THE AMOUNT IS CLOSER TO $8,000. DON'T COMPARE APPLES WITH ORANGES -- WHILE CITY BUSSES HAVE NO RESTROOMS AND NO BAGGAGE SPACES TO ALTER, WITH SEATS FACING THE CENTER AISLE, MOTORCOACHES HAVE HUGE LUGGAGE BINS, FULLY EQUIPPED RESTROOMS AND FORWARD-FACING SEATS. THE LIFT IN A CITY BUS MAY RAISE A PASSENGER 18 INCHES FROM STREET LEVEL; IN A MOTORCOACH, A PASSENGER MUST BE RAISED AS MUCH AS FIVE FEET TO CLEAR THE LEVEL OF THE BAGGAGE

COMPARTMENTS AND REACH OUR SEATS.

ALL THIS RESTRUCTURING COSTS US SEATING CAPACITY; WE WILL LOSE 15 TO 17 SEATS PER MOTORCOACH, LOWERING OUR REVENUES BY ONE-THIRD AND RAISING COSTS BY AT LEAST THAT MUCH.

THIS SPRING A STUDY WAS RELEASED BY THE LONG-TIME WASHINGTON, D.C., BASED FIRM, ROBERT NATHAN AND ASSOCIATES. THEY FOUND, FOR EXAMPLE, THAT MOTORCOACH AND INTERCITY BUSSES ARE THE LEAST SUPPORTED MODE OF TRANSPORTATION BY THE FEDERAL GOVERNMENT. FEDERAL SUBSIDIES TO THE AIRLINES TO SUPPORT AIR TRAVEL AVERAGE 70 CENTS PER PASSENGER TRIP; AMTRAK RECEIVED A STAGGERING $33.45 PER PASSENGER TRIP! MEANWHILE, THE INTERCITY BUS SYSTEM RECEIVED A PALTRY 8 CENTS IN FEDERAL GOVERNMENT SUBSIDIES PER PASSENGER TRIP.

THE TOUR INDUSTRY (IN THE FORM OF TOURS OFFERED TO THE PUBLIC) IS A LOW-MARGIN, PEAK-PERIOD BUSINESS THAT DOES NOT OPERATE ON FIXED-SYSTEM ROUTES. THE INDUSTRY AVERAGE RETURN ON INVESTMENT IS 9 PERCENT. THE SLIM MARGIN OF PROFIT WOULD BE FURTHER REDUCED WHEN BUS OWNERS PASS ON COSTS OF MANDATED LIFTS TO THE LEASING TOUR OPERATOR. THIS FACT, COUPLED WITH THE COMPETITION THAT OUR OPERATORS FACE FROM THE NON-PROFIT COMMUNITY WHICH OFFERS DISCOUNTED TOUR AND TRAVEL OPPORTUNITIES, MEANS THAT EACH MONTH SOME OPERATORS IN CERTAIN MARKETS ARE FORCED OUT OF BUSINESS.

THE TOUR INDUSTRY HAS ALWAYS TRIED TO BE RESPONSIVE TO THE NEEDS OF THE DISABLED TRAVELER. WE WILL CONTINUE THAT EFFORT. I AM ABSOLUTELY CONFIDENT THAT ALL NTA OPERATORS ARE CAPABLE OF PROVIDING THE SAME DEMAND-RESPONSE TOUR FOR DISABLED PERSONS THAT WE PROVIDE FOR THE ABLE-BODIED.

IN MOST CASES IT TAKES FROM SIX MONTHS TO A YEAR TO PLAN, ORGANIZE AND CONDUCT A TOUR. THAT TIMEFRAME WILL GIVE PRACTICALLY EVERY OPERATOR THE

ABILITY TO LEASE LIFT-EQUIPPED COACHES TO ACCOMMODATE REQUESTS FROM THE DISABLED TRAVELER.

OUR OPERATORS ARE WILLING AND ABLE TO MEET THE EQUAL ACCESS MANDATE OF H.R. 2273 AND S. 933.

IN MY 17 YEARS IN THE MOTORCOACH INDUSTRY, I HAVE PACKAGED AND PROMOTED THOUSANDS OF TOURS ALL OVER NORTH AMERICA AND BEYOND, AND IN ALL OF THOSE YEARS, I HAVE HAD ONLY 15 REQUESTS FOR SERVICE TO DISABLED CUSTOMERS. IF I HAD BEEN REQUIRED TO COMPLETELY RE-EQUIP MY MOTORCOACHES WITH EXPENSIVE AND UNUSED LIFTS AND OTHER REQUIREMENTS THAT MAY YET BE DETERMINED BY THIS BILL, RESULTING IN FEWER SEATS TO SELL TO MY CUSTOMERS, THEN I MIGHT NOT HAVE BEEN ABLE TO REMAIN IN BUSINESS LONG ENOUGH TO TESTIFY TO YOU TODAY.

I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO BE WITH YOU TODAY TO EXPRESS THE CONCERNS OF OUR INDUSTRY.

THANK YOU!

STATEMENT OF

PETER L. PICKNELLY, SR.
CHAIRMAN OF THE BOARD, PETER PAN BUS LINE
SPRINGFIELD, MASSACHUSETTS

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
HONORABLE NORMAN Y. MINETA, CHAIRMAN

TUESDAY, SEPTEMBER 26, 1989
2167 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

American Bus Association
1015 15th Street, N.W.
Washington, D.C. 20005
(202) 842-1645

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to present the views of Peter Pan Bus Lines, on the proposed Americans With Disabilities Act of 1989.

Peter Pan is a Class I motor carrier of passengers headquartered at 1776 Main Street, Springfield, Massachusetts. Peter Pan provides regularly scheduled intercity bus service over routes in Massachusetts, New York, New Hampshire, and Connecticut, charter service from New England origins to various destinations throughout the United States, and both one-day and multi-day tours sold on an individual fare basis. That service is provided in 146 MCI motorcoaches seating from 47 to 49 passengers.

Peter Pan is one of the few privately owned bus operators with experience in the operation of lift-equipped buses in intercity passenger service. In 1982, Peter Pan designed a wheelchair lift and installed the lift on one of its motor coaches used in charter service. The availability of a wheelchair-accessible bus was widely advertised and Peter Pan received much favorable publicity for its innovation.

Unfortunately, there was no demand for the fully accessible charter bus. In 1985, the lift was removed and the bus reconverted to a conventional coach.

In 1985, the Commonwealth of Massachusetts initiated a program for the purchase of 25 buses to be leased to private carriers for the purpose of upgrading regular-route service within Massachusetts. Six of the original 25 buses had wheelchair lifts, two of which were leased to Peter Pan. Massachusetts expanded its bus lease program in 1989 to include 20 to 28 additional buses all of which will have wheelchair lifts.

At the present time, Peter Pan is operating 7 buses equipped with wheelchair lifts and leased from the Commonwealth. The lifts were developed by Motor Coach Industries and installed at the MCI factory at a cost of approximately $35,000 per bus. About one-half of the cargo space is sacrificed to the installation of the lift. In addition, transportation of one (1) passenger in a wheelchair results in the loss of four (4) revenue seats depending upon the interior configuration of the bus. On the buses leased to Peter Pan, the wheelchair passenger has no access to the restroom.

Ridership on the accessible buses has been negligible. During the three (3) years from 1986 to 1989, during which time Peter Pan had two (2) wheelchair-accessible buses in its fleet, each bus was used less than once every two (2) months as a wheelchair-accessible vehicle.

But for the costs borne by Massachusetts, Peter Pan could not afford to own and operate the fully accessible buses in its fleet. Peter Pan pays the Commonwealth of Massachusetts approximately $675 per bus per month, which enables the Commonwealth to recover the purchase price of the leased equipment less the cost of the wheelchair lift.

Under the Massachusetts bus lease program, a disabled person must give 24 hours' notice of this or her intent to travel. The purpose of that restriction is to enable bus operators to position a limited number of accessible buses and to enable paratransit service to be arranged at the trip origin and destination points. No such restrictions would be permissible under the language of the Senate bill.

Peter Pan derives approximately 50 percent of its operating revenue from charter and tour services. Even if the arguments advanced for installing lifts on all buses used in providing regular-route service were sound, they would not apply to buses used exclusively in charter and special operations. This is because charter and tours are planned far enough in advance to enable accessible buses to be provided if there is a demand for them.

Peter Pan is prepared to guarantee that an accessible bus will be provided to every charter group that requests one. That guarantee can be met by purchasing one or two lift-equipped buses and by leasing buses from public operators. To require Peter Pan to install lifts on its entire charter bus fleet would not benefit any disabled person but would cripple Peter Pan.

Statement by Fred G. Currey, Chairman and Chief Executive Officer, Greyhound Lines, Inc., 901 Main Street, Dallas, Texas 75202.

Before the Subcommittee on Surface Transportation, Committee on Public Works and Transportation, U.S. House of Representatives, September 26, 1989, regarding the Americans with Disabilities Act, H.R. 2273.

INTRODUCTION

This historic legislation will remove barriers for millions of Americans. Greyhound Lines supports the bill's objective of improving mobility for disabled Americans. Indeed, our company was founded 75 years ago to improve mobility for all Americans.

We support, however, an amendment that would require the intercity bus system, as a total system, to be accessible without requiring each and every bus to be accessible.

We respectfully petition the Subcommittee to amend the bill for the following three reasons:

1. The double standard. It is ironic that a bill designed to reduce discrimination in itself discriminates against the intercity bus industry. It does so twice:

. The intercity bus industry is treated differently than all other forms of transportation.

. The intercity bus industry is treated differently than all other private entities.

2. Loss of rural service. If the bill stands as passed by the Senate (S.933), the fully implemented cost to Greyhound Lines will be about $40 million dollars a year. We will have no alternative but to curtail service to thousands of small towns and rural communities. The result: reduced mobility for the disabled as well as all other Americans.

3. There is an alternative. There is a better way to achieve the goals of ADA without destroying intercity bus service to small-town America. As the House holds its hearings, Canada is launching a joint public sector-private sector pilot program to provide accessible bus transport on a major passenger corridor. We should do the same.

DISCRIMINATORY TREATMENT OF THE INTERCITY BUS INDUSTRY

Rhetoric about ADA implies that it sets new standards for the field of "transportation." Nothing could be more misleading. For one thing, airlines and taxicabs are exempt. For some other modes of transportation, such as school buses and hotel shuttle buses, only some vehicles in each fleet must be accessible. Even in the public sector, Amtrak must make only one car per train accessible. In the private transportation sector, only the intercity bus industry is singled out for accessibility on each and every vehicle. It is the difference between having, on the one hand, an accessible system, and, on the other hand, 100 percent accessible vehicles.

It is not enough to defend this double standard by saying it exists because airlines are not in the bill, that they are covered by the Air Carrier Access Act of 1986 (ACAA). The different treatment of air carriers and bus companies, plus the difference in the financial strength of the two industries, reveals the greatest inequity in ADA. According to the most recent figures available, for the 12 months ended September 30, 1988, the nation's airlines reported net profits of $611,420,000. By contrast, Greyhound Lines lost $17,000,000 last year, and forecasts a profit for this year of less than half that amount. Yet, the U.S. Department of Transportation estimates that compliance with ACAA will cost only between $5.4 and $18.7 million annually for the entire airline industry. Greyhound Lines alone, however, will spend more than twice that much, at least $40 million annually, to comply with ADA.

The American system is based on fairness. That, of course, is the reason for ADA's broad support. Fairness requires all modes of private transportation to be treated equally, even if they are covered by two separate pieces of legislation. Greyhound Lines and the airlines should receive the same treatment.

ADA also discriminates by setting two separate and distinct standards for the private sector intercity bus industry.

. The first standard requires "full and equal enjoyment of public transportation services. This is fair. It is essentially the same standard imposed on airlines in ACAA and on other forms of bus service in ADA.

. The second standard is inappropriate for the private sector, unsubsidized intercity bus industry. It requires every new vehicle be "readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs." This standard for the private intercity bus industry was lifted verbatim from the section of the bill covering federally subsidized public transit services.

While the second standard may be appropriate in cases where it will be financed by U.S. taxpayers, it will devastate the private sector bus industry. It is a question of who pays. Greyhound's compliance with ADA will not be paid by American taxpayers. it will be paid by our customers, who are the least able to afford higher fares. It is nothing less than a regressive tax.

There is a second double standard, in which intercity bus companies are treated differently than other private entities. Throughtout the Senate bill, all other private entities are governed by standards of reasonableness that will prevent undue hardship. The bill takes into account "undue hardship" and significant difficulty or expense." It speaks of "demonstrated good faith" and "to the maximum extent feasible." Even for public paratransit systems, there are exceptions where the bill "would impose an undue financial burden." A full list of exculpatory provisions is attached to this statement. Only intercity bus companies are denied access to standards of reasonableness.

COLLAPSE OF RURAL SERVICE

Although the ADA is clearly discriminatory, and should be amended, it was passed by an overwhelming majority in the Senate and has the unqualified support of the Administration. As prudent business operators, therefore, managers of Greyhound Lines have no choice but to begin planning for operation under the legislation.

There can be no doubt about what is ahead for us. We face an enormous new cost burden, and a price-sensitive customer base that will not allow us to raise prices. The only alternative is to curtail or eliminate unprofitable service.

Before getting to the specifics, let me take a moment to set aside several myths that sometimes get in the way of a rational business discussion.

. First, we hear the comment, "You are a big company and you can afford it," as if those two characteristics were inseparable. We are about the size of the nation's eighth largest airline, Southwest Airlines, which earned a profit of 10 cents on the dollar last year, and is having another great year in 1989. After two losing years in a row, we have high hopes of making 2 cents on the dollar this year.

. Second, we have been lectured repeatedly that costs don't count, and can't be considered in matters of this type. That is easy to say for someone who is spending other people's money. Those of us who must contend with employees who want job security and more pay, customers who resist higher prices, and bankers and stockholders who want a fair return on their investments can never say that costs don't count. And that does not apply to the private sector alone. It seems to me that the focus of our government for the last decade has been on dealing with problems created by the "costs don't count" attitude.

. Third, I'm giving you cost estimates of complying with ADA, knowing full well that many people automatically dismiss any cost estimate from a company faced with new legislation or regulation. Even The Wall Street Journal, in its editorial denouncing ADA, could not resist the temptation to discredit our numbers. I believe you can decide this matter for yourselves. Our financial reports are a matter of public record. I have copies with me today of our reports to the Securities and Exchange Commission for 1988 and the for first six months of 1989, available to anyone who is interested.

. Fourth, when all else fails, people tell me we have six years to get ready, so why worry about it today. Let me tell you why. My associates and I acquired an operation in March, 1987, that had been allowed to deteriorate for a decade or more. We launched a massive investment program to rebuild the company, including new buses, new computers, new terminals, training programs for employees, and much more. We are building for the long term, and from that point of view six years is not far away. A new bus at $200,000 should last 10 or 12 years. In June, we opened a new terminal in Kansas City, for $6 million. Another new terminal, at a cost of $15 million, is under construction in Chicago. We expect these and other new facilities to serve our needs for several decades, and we have arranged financing accordingly. Now, our entire rebuilding program is called into question. These financial issues are much on my mind, because when this hearing is completed I will be going to New York for a meeting with our bondholders. They do not believe six years is such a long time, and they want to know about our plans.

. Fifth, and finally, we are up against the myth of the Freedom Riders. The civil rights movement of a quarter-century ago ended racial discrimination in transportation. The beneficiaries were the poor, minorities, and people in isolated rural communities. Those same people will be victims this time, through increased fares and loss of intercity bus service to most rural areas. While the earlier civil rights movement expanded mobility, this bill will curtail mobility, not for airline travelers but for our core customer base of rural people and those who can't afford to fly. We have seen the freedom ride, now we may see the last ride for much of our system.

With that said, let me turn to our business plans. The starting point is the concept of cross-subsidization, which was common in the airline industry during regulation. Airlines were given lucrative, high-density, high-profit routes in combination with low-traffic, unprofitable routes. They had to take the bad to get the good. Profits from some routes covered losses on others. As soon as deregulation came, of course, airlines pulled out of the losers, turning them over to commuter airlines. For routes that are not economically viable, Congress provides a subsidy through the Essential Air Service Act.

At Greyhound Lines, after deregulation, we are still operating under the cross-subsidation system, as a way of maintaining service on unprofitable rural routes.

The following table shows the number of miles operated for the month of July, 1989, and for the 12 months ended July 31, 1989, and the shift that would take place under ADA.

	CURRENT		AFTER ADA		CHANGE	
	MILES (000)	%	MILES (000)	%	MILES (000)	%
July 1989 (000)						
Profitable miles	21,902	68%	15,811	49%	(6,092)	(19%)
Unprofitable miles	10,079	32%	16,170	51%	6,092	19%
Total miles	31,981	100%	31,981	100%	0	0
Last 12 months						
Profitable miles	219,531	68%	158,191	49%	(61,340)	(19%)
Unprofitable miles	103,308	32%	164,648	51%	61,340	19%
Total miles	322,839	100%	322,839	100%	0	0

The key numbers are on the second line. We are operating 32 percent of our bus miles today at a loss. Under ADA, if we were to keep the same route structure, we would be operating 51 percent of our bus miles at a loss. I know of no enterprise that could survive with more than half its operations losing money.

Most of the 32 percent of the bus miles we are operating at a loss today are in rural areas. Under ADA, those loses will increase. Here is a list of the people who are now subsidizing our rural routes:

. Our urban passengers, who are the least able to do so. They include people on tight fixed incomes, such as students, enlisted military personnel, and senior citizens. They also include lower income groups, the disabled, and people who can not afford rising airline fares.

. Individuals and small businesses who ship packages.

. Our employees, whose wages and benefits are set by competitive market rates and by our financial performance.

. Our investors and shareholders, who will receive depressed returns if we continue to operate at a loss.

In short, our policy of cross-subsidation will fail under ADA. There will not be enough profitable routes left to support the unprofitable ones. Furthermore, monumental losses of this kind can not be fixed through tinkering with schedules. It will require a new business strategy that reduces fixed costs for terminals, garages, and payroll.

I have some maps that show the work we have done to date on our restructuring.

The first map shows routes where all schedules, even under ADA, will be profitable. These are the high-density routes connecting major urban areas, and are only a small part of today's national network.

On each route we usually operate several schedules a day. The second map shows routes where at least one schedule a day, usually more than one, will be operating at a loss under ADA.

The third map shows the routes that will be operating at a loss. That is, the total of all the schedules is in the red.

The fourth map shows the outline of the new Greyhound Lines system that will emerge from our restructuring. It has three zones:

. The blue zone shows our strength. In this area we will be able to maintain a network of routes to serve major locations. However, as I will show in a moment, there will be substantial cutbacks within most of these states.

. The yellow shows the area of major restructuring. This is where most routes now lose money, even before ADA. We will discontinue service to most locations off the main roads, and the buses on the main roads will make fewer stops.

. In the pink area, we will maintain only the one bridge route on the interstate highway connecting east and west.

Now let's turn to some individual states.

Here is our home state of Texas, where we have unprofitable service to dozens of small towns. In addition, here is what we see ahead in Ohio, North Carolina, and Missouri.

In summary, we now serve about 10,000 locations. Since all the airlines, including commuters, serve less than 500, and Amtrak serves basically the same places, we provide the only public transportation to 9,500 towns and rural communities. Under ADA, Greyhound will cut in half the number of locations it serves. The new structure will provide service to about 5,000 locations, putting an end to intercity bus service to the other 5,000 locations now on our map.

The radical restructuring will have a devastating effect on our people. Greyhound now employs 12,500 people, with another 8,000 people working for contractors who operate our terminals. In the transition to the new route network, we will eliminate 10,000 jobs.

THE ALTERNATIVE

Fortunately, there is an alternative.

The reason for today's hearing, and the controversy about provisions of ADA dealing with the intercity bus industry, is, to use a cliche from another form of transportation, we have the cart in front of the horse.

ADA proposes a comprehensive study of technology, costs, market demand, and alternate solutions. Normally, that information would be available before, not after, enactment of a legislative mandate. In business school slang, the Senate bill is a case of "Ready! Fire! Aim!" Again, it is not enough to say that adjustments will be made as indicated by the study, which will be available in three years. Adjustments will not be automatic, but can be made later only through new legislation.

Three years from now happens to be 1992, which happens to be an election year. Who wants to predict what the Senate, the House and the Administration will do with a hot potato like this in a campaign year. It is not a comforting prospect.

Let me propose a five-point program to increase mobility for the disabled.

1. Our new Transportation Assistance Program. For the last 14 years, under our Helping Hand program, we have provided free transportation to companions traveling with disabled passengers. At the request of the disabled community, we have revised the program to permit the disabled to travel alone, with advance notice of 24 to 48 hours. We will provide boarding assistance, and will carry most types of battery-operated wheelchairs.

2. A nationwide 800 number for the disabled. This number will go into effect with the new Transportation Assistance Program. Operated 24 hours a day, it will provide information and make reservations for wheelchair passengers.

3. A new boarding chair for the disabled. We are designing a chair to permit loading of disabled passengers through the front door. It has a sliding seat mechanism which, in combination with the movable armrest of the Greyhound seat, will enable a pasenger to be moved into the bus seat without any lifting. It is better than procedures used by airlines. In two years, we will have these chairs in our 200 largest terminals, which handle more than 80 percent of our passengers. For other locations, we can transport a chair from one of the larger terminals on 24 hours notice.

4. We will support the Technical Assistance Program as advocated in draft form by the National Council on Disability. It is a federal assistance program to help private sector entities fulfill their responsibilities under the new legislation. We will contribute $100,000 on a matching basis for a marketing campaign in behalf of our new transportation services for the disabled.

5. As part of the study required by the Senate bill, we will participate in a pilot program with a public agency to operate lifts in regular route service. As we struggle with these issues here today, the Canadians are setting an example for us.

They are beginning a three-year pilot program that will answer from real life all the questions the ADA study will try to answer through computer models based on someone's assumptions.

The Canadian federal government and a private carrier are funding a program, roughly 50 percent each. The carrier operates six buses with wheelchair lifts on a passenger corridor across southern Ontario, connecting to our system in Buffalo. The buses are equipped with prototypes of two types of lifts, manufactured by different companies.

The program includes advertising and other marketing programs designed to encourage the disabled to travel. Careful records will be kept of such obvious areas of interest as actual travel by people in wheelchairs, operating efficiency of the two types of lifts, and maintenance costs.

There is no reason I can think of for not duplicating the Canadian initiative in this country, before we mandate expenditure of huge sums of money and the unnecessary loss of bus service to thousands of rural communities.

Greyhound Lines is ready to join with the U.S. Department of Transportation or any state agency in funding and conducting a pilot program. Two obvious locations would be the northeastern corridor from Washington, D.C., through New York up to Buffalo, to connect with the Canadian carrier, or the Interstate 5 corridor in the west, from Los Angeles to Seattle. Undoubtedly, there are many other suitable locations for a pilot program.

CONCLUSION

In outlining our contingency plan to curtail service to rural America, I said that as prudent business people we have no choice but to get ready. Clearly, we don't want to do that. We would much rather run our business so that it grows, and extends its service to more and more locations.

In the same way, we face another unpleasant choice. If the Senate bill is enacted, it will be disastrous for our company. Half the communities we serve today will lose public transportation, and several thousand employees will lose their jobs. We will be fighting for survival the next six years, and that means whatever it takes, year after year, in behalf of legislative relief.

Again, that is not our choice. We believe it would be in our interest, and in the public interest, to use our time and resources in a constructive search for ways to increase mobility for the disabled, and all other Americans. We believe the five-point program I have outlined here today will serve that objective.

Accordingly, we commit to the full implementation of this program if Congress enacts a final ADA provision that requires us to provide accessible service nationwide, but gives us the flexibility to provide that service in a reasonable and cost-effective manner. Such legislation would require that our service be fully accessible, but would not hold us to a higher standard than the airlines and would not require that every vehicle be equipped with a wheelchair lift. Greyhound respectfully urges the Subcommittee to adopt such a provision for private sector bus companies so that we can start together on a public-private partnership that will truly improve and insure mobility and intercity bus service accessibility for the disabled.

ATTACHMENT

Exculpatory provisions in the Bill based upon standards of Reasonable Accommodation/Undue Hardship.

Title I - Employment

Section 102(b)(1)(E) [the term, "discrimination" includes] "not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee,

> **unless such covered entity can demonstrate that the accommodation would impose an undue hardship (emphasis added) on the operation of the business of such covered entity."**

Section 101(9): "(A) In general - The term 'undue hardship' means an action requiring significant difficulty or expense."

Section 103. Defenses:

> "(a) In General - It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation" (emphasis added)

Title II - Public Services

Section 203(b)(2) "USED VEHICLES. . .shall make demonstrated good faith efforts. . ."

Section 203(b)(3) "REMANUFACTURED VEHICLES. . .to the maximum extent feasible. . ."

Section 203(c)(1) "PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM. . .unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity."

Section 203(c)(2) UNDUE FINANCIAL BURDEN

> "If provision of comparable paratransit and other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity." (emphasis added)

Section 203(d) "COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC. . . it shall be considered discrimination. . .to purchase or lease a new vehicle. . .that is not readily accessible unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public."

Section 203(e) "TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE - With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates--

1. that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

2. the unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

3. that the public entity seeking temporary relief had made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

4. that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity."

Section 203(h) "ALTERATIONS OF EXISTING FACILITIES. . . it shall be discrimination. . .to fail to make the alterations in such a manner that, to the maximum extent feasible (emphasis added), the altered portions of the facility are readily accessible. . .

Section 203(i)(3)(c) "INTERCITY RAIL SYSTEMS

All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchair, as soon as practicable, but in no event later than 20 years (emphasis added) after the date of enactment."

Section 203(i)(3)(B) "RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL SYSTEMS

Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible. . . as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility (emphasis added)."

Title III - Public Accommodations and Services Operated by Private Entities

Private entities covered by this legislation include:

a. an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

b. a restaurant, bar, or other establishment serving food or drink;

c. a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

d. an auditorium, convention center, or lecture hall;

e. a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

f. a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacist, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

g. a terminal used for public transportation;

h. a museum, library, gallery, and other similar place of public display or collection;

i. a park or zoo;

j. a nursery, elementary, secondary, undergraduate, or postgraduate private school;

k. a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

l. a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

Section 302(b)(2) SPECIFIC PROHIBITIONS

(A) DISCRIMINATION - "As used in subsection (a) the term 'discrimination' shall include---. . .

> (ii) a failure to make reasonable (emphasis added) modifications in policies, procedures, when such modifications are necessary to afford such privileges, advantages, and accommodations to individuals with disabilities. . ."

Section 302(b)(2)(A)(iii) "a failure to make reasonable (emphasis added) modifications in policies, practices, procedures when such modifications are necessary to afford such privileges, advantages, and accommodations to individuals with disabilities. . .unless the entity can demonstrate that taking such steps. . .would result in undue burden (emphasis added)."

Section 302(b)(2)(A)(iv) "a failure to remove architectural carriers and communication carriers that are structural in nature in existing facilities. . .where such removal is readily achievable (emphasis added)."

Section 302(b)(2)(A)(v) "where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make. . .available through alternative methods if such methods are readily achievable (emphasis added)."

"Readily Achievable" - defined in section 301(5)(B): factors considered in determination include:

(i) the overall size of the covered entity
(ii) the type of operation
(iii) the nature and cost of the action needed

Section 302(b)(2)(A)(vi) does not "require the installation of an elevator for facilities that are less than three stories or that have less than 3000 square feet per story. . ."

Section 302(b)(2)(B) "FIXED ROUTE SYSTEM

> (ii) Equivalent Service - If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible. . it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities. . .equivalent (emphasis added) to the level of service provided to the general public."

Section 302(b)(2)(C) "DEMAND RESPONSIVE SYSTEM. . .an incident in which (iii) such entity purchases or leases a bus or vehicle. . .that is not readily accessible. . .unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public except over the road buses (emphasis added). . .

Section 303 "NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT

(a) . . .failure to design and construct facilities. . .that are readily accessible. . .except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection. . ."

(b) Elevator exception - same in section 302.

Section 303(b)(3) "the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services. . .except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible. . .if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public."

Section 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS

Title IV - Telecommunication Relay Services

Section 401(a) "(b) AVAILABILITY OF TELECOMMUNICATION RELAY SERVICES

(1). . .shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible (emphasis added). . .

(d) REGULATIONS.---(3) JURISDICTIONAL SEPARATION OF COSTS(B). . cost caused by interstate telecommunications relay service shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. . .

(5) UNDUE BURDEN. . .the Commission may extend the date for full compliance by such carrier for a period not to exceed one additional year."

Mr. MINETA. The subcommittee will please reconvene. At this time I would like to call forward a panel made up of Marilyn Golden, Policy Analyst, Disability Rights Education and Defense Fund; George Herman, General Superintendent of Maintenance, RTD Denver; Tim Cook, Director, National Disability Action Center, Washington, D.C.; John Winske, Assistant Director, Massachusetts Coalition of Citizens With Disabilities; and Ralph Markward, Executive Director of the Zia PVA, Albuquerque, New Mexico.

Ms. Golden, we all have copies of your statement, and in fact, all the statements of the members of the panel will be made a part of the record. Please proceed.

TESTIMONY OF GEORGE HERMAN, GENERAL SUPERINTENDENT OF MAINTENANCE, RTD DENVER; MARILYN GOLDEN, POLICY ANALYST, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND; JOHN WINSKE, ASSISTANT DIRECTOR, MASSACHUSETTS COALITION OF CITIZENS WITH DISABILITIES; RALPH MARKWARD, EXECUTIVE DIRECTOR, ZIA PVA; AND TIM COOK, DIRECTOR, NATIONAL DISABILITY ACTION CENTER

Ms. GOLDEN. Thank you, Chairman Mineta, members of the committee and staff. My name is Marilyn Golden. I am a Policy Analyst for the Disability Rights Education and Defense Fund. I will summarize my testimony, but first I would like to proceed immediately to answering some of the issues that were raised this morning.

Quite a few things were raised by quite a few people, so please bear with me. First I want to respond to Mr. Currey, and I want to say that I very much appreciate his concern to come up with a feasible way of providing access to inter-city transit. This definitely shows his eagerness to cooperate with the disability community, and we are very pleased to see his keen interest in coming up with methods that will work.

We in the disability community are not eager to rush into an infeasible solution that will bankrupt Mr. Currey's company because we, too, want access to every city that he currently serves, and ideally, more. That is why, when it came time to compromise, when the Senate was considering the bill, the Senate compromise included not a mandate for lifts, as some of the speakers would have led you to believe this morning; the Senate compromise and the House bill do not require lifts. They require access.

I think that the current bill, certainly the Senate bill, includes both what we want and what Mr. Currey presented. Which is that all the solutions he presented and other solutions that have been advocated can be considered by the Office of Technology Assessment study. But access will be required, as Mr. Currey, as well as the rest of us, imminently seem to feel is reasonable at least some way and, therefore, would be reasonable to require, so at least in that point we are in agreement.

Again, I want to just reiterate that the current bill, the Senate compromise bill, requires access, not lifts. The study can look at every method that has been suggested. We can proceed, I think, with the Senate compromise completely encompassing and including everything that Mr. Currey recommended this morning without changing the bill.

I also would want to warn Mr. Currey of the comparison to airlines. The 504 regulations of the 1973 Rehabilitation Act require all airports that receive Federal funding, which is the overwhelming majority of them, to require a lift or a ramp level boarding device so that people in wheelchairs do not have to be carried upstairs onto a plane. If the bus transit industry is to be compared to that, those devices would be required of them, too, and the compromise that Mr. Currey suggested in terms of carrying up wheelchair users in separate chairs would not be permitted. So he may want to beware of that comparison to airlines. We would love him to be considered just like airlines and lifts or ramps would then be required.

I want to go on to some other points that were raised, particularly to tour and charter services, and some of the objections that Mr. Skaggs raised. The distinction is already in the bill, that is the Senate compromise bill, between a common carrier and a tour charter. We don't have to put that distinction in, it is there. Demand response providers, tours and charters are considered differently than fixed-route providers, common carriers.

Fixed-route providers have to provide vehicle access whereas demand response providers only have to provide access when their system is viewed in its entirety. If they cannot accommodate the disabled customers that they have now, then new vehicles would have to have lifts. If they can accommodate them, new vehicles would not have to have lifts. I think that simple feature, which is already in the Senate compromise bill, would take care of their concerns.

I want to address the issue of seat loss. Figures have been thrown back and forth. It is true that, as Mr. Herman will testify in a little while, the Denver seat loss on their current generation that is in service, was four. But as Mr. Herman will testify, he expects to go back and retrofit those buses in a reasonable way; he is not required, he just wants to. That will minimize that seat loss back to zero or one, and his next generation, which is almost ready to go on line, will have a seat loss of zero or one. That should explain the discrepancy. Any future Hubmatic installations will only have a seat loss of zero or one.

To the concern Mr. Packard raised about retrofit, I want to again remind the committee that no retrofit is required in any situation by the bill.

I want to go to the issue of rest rooms. A significant amount of the cost that has been figured in by Greyhound is for rest room access. Rest room access is something to be required as technology becomes available, and this is also in the Senate compromise. It is a distortion to assume that rest room access is required by the Americans With Disabilities Act. It simply isn't, and in fact the Senate report very directly addresses that it could be considered a future requirement as technology becomes available, and the OTA study could, in fact, look at using boarding chairs or other devices.

The other thing to realize is that people with physical disabilities have dealt with the "no rest room" issue for a long time. Those of us who have struggled our way onto buses, those of us who have taken long flights, international flights, some of us use various medical devices; others use means that I will not describe, but, you know, it is not a new problem to us. And again, while we really appreciate Mr. Currey's insistence that access means rest rooms, which sort of helps out his cost figures, it makes them bigger, access to us doesn't mean rest rooms in this case, at least right away, and we reject any cost estimates that count them in. It is a distortion of the requirements.

I would like to rebut this morning's testimony of both common carriers, some of the smaller carriers, as well as Greyhound and the charter services, who say they have served people with disabilities. We have numerous reports, and I will not take up your time, but I could document them easily, of massive amounts of discrimination. Just the other night we had a story of a charter company where a young disabled adult was blanketly refused to be carried, even if they could get themselves on, even if they could get their friends to carry them on. The charter company said, "No, we will not carry you, I am sorry, it is against our insurance regulations."

Now perhaps that charter company is not in the charter company association that was represented this morning, but I don't think it is fair for the association to deny the fact that discrimination exists. We can give you all the documentation and anecdotal evidence that you want, that it does exist.

I want to clear up something about the Hubmatics in Denver. The Hubmatics' cost isn't necessarily $17,000. The future generation of Hubmatics, as Mr. Herman will testify, could be easily $7,000 to $9,000. It is another issue where cost estimates really have to be taken with a grain of salt. We do think there is a certain amount of hysteria, despite the documentation that was given this morning. We have experienced this before.

Section 503 of the Rehabilitation Act, before it was passed, was accompanied by humongous cost estimates by medical providers and universities that never panned out to be true. You all know that the New York subways are having key stations rehabilitated now for access. The actual cost estimates are known because of the working drawings which are being done. Before the New York rehabbing, there was never an example of actual rail rehab for access. Now we have an example of when it has actually been done, and lo and behold, the wild, early scare-tactic cost projections for the New York system were fully ten times what the actual costs are going to prove to be, and I wouldn't be surprised if the cost estimates we heard this morning would turn out to be similarly inflated, not in a deliberate sense.

I am sure they are not being deliberately inflated, but I think that when a mandate is passed, when the reasonableness of it is realized, the industry finds a way to do it that can be accommodated because at that point it is in their interest to do so. I am sure Greyhound will be able to do that.

Advance notice was raised this morning as a possible way to accommodate people with disabilities. As was testified last week in relation to public transit systems, publicly funded transit systems, advance notice has never worked. It completely rules out spontaneous travel, family emergencies, business travel. We have to remember that there is still, without regulation, quite a bit of discrimination on the airlines, and people with disabilities may look to buses for their business travel. It is a very seriously second-class alternative at best.

We also reject the idea very much of having a study without a mandate, and also the metaphor that it is—I think it was termed—ready-fire-aim. I can see how it would be termed that, but I don't think that is a fair analysis. We face a situation in which a study without a mandate would produce probably quite a bit of basically foot dragging.

We think it would seriously weaken the bill. If the mandate were removed, the interim years would expectably be used by over-the-road bus providers to contest the feasibility of accessible service or to pretend that a second-class way of providing it is really a decent way rather than really getting ready to deliver accessible service.

I want to remind everyone involved that the aim of the legislation is to facilitate accessibility, not to create incentives for resisting it.

I also want to address the issue of ridership figures, and some of the members of the committee addressed them as well. It is really silly to count requests on systems that have no access. It is a little bit like the futile gesture concept, in affirmative action employment. The courts have ruled in those situations that discrimination has been committed even in situations where, say, people of ethnic minorities don't even apply for jobs in situations where it has been so clear that discrimination is rampant that it would be a futile gesture to apply.

Similarly, it is a futile gesture for disabled people to complain to Greyhound. They are a private company, they are not accountable. To count the complaints is not an accurate measure of demand. Our figures in California have indicated a much different number of wheelchair users across the State than Mr. Currey estimated. I would estimate more like 1,700,000, and I think that they will ride at least as often as the rest of the public. Some of them have the specialized vehicles Mr. Currey mentioned, but many, many more cannot drive and are very much dependent on public transit, or cannot afford vehicles. I think the demand will be very great.

The other thing to remember about ridership is that you can't ride a half-accessible system, as other disabled testifiers will testify today. As happened in the case of Peter Pan, you can't really expect a high ridership when you can go somewhere and then when you get there, there is no way to get past the bus station or into town. Ridership has been shown to go up in Denver, in Seattle, in New York City in terms of buses, in cities where total access is provided so that you can connect to other places, and where the systems function well enough so that disabled people's confidence in the system goes up.

You know, I don't think members of the committee themselves would have a lot of confidence in some of the half accessible or poorly maintained systems that exist today. We do have cities where ridership has gone up very strongly, and Mr. Herman will testify to his high figures. We reject the analogy that our demand is not great because there is only two or a handful of organizations that provide disabled groups with tours.

We reject the notion that we travel in groups or packs. Disabled people are individuals first, and disabled second. We want to travel with our families, with our friends who could be amongst anyone, we want to travel alone. We don't necessarily want to be in a herd with other disabled people, and, you know, some disabled people use those group tours because they want to go somewhere and they can't get there any other way, and I empathize with them and may do it some day myself, though my own brand of travel has been to strike out in unfamiliar territory on my own and somehow make it.

But people have different levels of bravery on that situation, and the demand really cannot be measured by the number of disability tour companies.

I think it is interesting that Mr. Currey termed the inter-city transit industry as the one that is being discriminated against by how the ADA is set up. In a sense they are a discriminated group against the Americans With Disabilities Act, which was his first statement, because actually the ADA, in my opinion, is the most generous with the inter-city transit industry. No other feature of the bill takes six or, in the case of small providers, seven years to click into effect other than extraordinarily expensive structural modifications to rail systems, which is 20 years. But with the exception of that feature, every single other aspect of the ADA clicks into effect either after 30 days or 18 months, two years, three years, or five years. I think that actually the ADA treats the inter-city transit industry very, very generously.

A few other responses. Mr. Packard had a concern about a number of kinds of specialized vehicles, including San Francisco's trolleys and cable cars and other recreational vehicles and double-decker buses. A lot of these specialized vehicles really wouldn't necessarily be covered by the bill. The ones that were covered, because they are light rail vehicles, I think the disabled community would quickly agree could be dealt with as special circumstances under regulation.

It is certainly not a high concern in our mind that those particular situations have the immediate accommodation that we do see as much more urgent for the forms of transit that we must rely on just for our basic transit needs, buses and rail.

It was mentioned that possibly the White House did not—it seemed a little strange to me—but it was contested the White House may not fully understand what was required and may be willing to renege on the requirements for, say, small charter companies and small common carrier providers in terms of an exemption or a further weakening of the requirements.

I am not sure that that is true. I think really intense negotiations went on during the Senate compromise. We were very, very pleased that the Bush Administration very well understood and supported the compromise that emerged which includes, again, access and charter companies and other demand response systems only when viewed in their entirety and of small common carriers on a vehicle by vehicle basis when vehicles are new.

I was also pleased that Congressman Shuster pointed out how some of Greyhound's proposals to share vehicles would probably be unworkable. He took the lead on pointing out an objection that was strong in my mind when Greyhound was detailing this morning, for the first time I knew about, that it would be very difficult and unworkable to have a pool where there would be a great lack of availability when the need arose.

That was a concern of mine too. Though of course it would be fine for the OTA assessment to look at it. That concludes the points I wanted to address from this morning.

In summarizing my prepared testimony, in disability advocacy I have been pleased to work with transit providers, and many were like Mr. Herman of Denver Rapid Transit who calls himself a convert, a transit operator who thought fully accessible transit was a physical impossibility but when he tried it, he came an ardent booster.

I think once these others see the feasibility, they will likewise become boosters. I will leave to Mr. Herman the defense of the Denver lift. It is not necessary to take up seats and occupy baggage space, plus the factor that six years of delay in the lift industry basically represents three generations of lift technology, three generations of lift technology in the public transit arena has meant enormous improvements in how well lifts function.

Lifts are like any other piece of basic technology. When there is a high demand, they will get cheaper and more available. Anyone who doubts this is ignoring America's historic ingenuity. You know the lift companies outside of Denver are not real eager to make Stevenson make all the money. Lift companies may benefit from the ADA but they don't need the ADA to benefit, because lifts are the trend, both inter and intra city. They are tripping all over themselves to develop better lifts of every kind.

A six-year extension before the inner-city transit industry has to comply with the act is very, very generous.

I want to mention a couple of other requirements of the ADA that I think will be mentioned by the next panel. You may hear it is infeasible for airport shuttles to provide access, but there are examples where they do, in the San Francisco Bay area where I live, and in L.A., a company called Super Shuttle has been providing demand response service for years.

In a couple of cases they contract for the accessible vehicles rather than owning them, and this too is permitted by the ADA. The same is true for charter companies and all the demand response providers.

One other concept on lifts: though they are not always required, I want to put the cost issue into perspective when they are, for public and private transit.

Lifts in general add about 5 percent to a new bus' cost. This means when 21 buses would have been purchased, now only 20 could be. It means when $200,000 of financing would have been necessary to add one vehicle to the fleet of a small provider, now a whopping $210,000 of financing will be necessary.

Yes, it is a little more. This cost must be weighed against the desperate need for integration into society by millions of potentially productive Americans. The weighing of these factors is in your hands, reasonable cost versus the integration or lack thereof of millions of potentially productive Americans. Your assistance is urgently needed to pass the Americans with Disabilities Act of 1989.

Thank you.

Mr. MINETA. Thank you.

Mr. Herman.

Mr. HERMAN. My name is George A. Herman, general superintendent of maintenance, Denver, Colorado. Originally I was from Pennsylvania, born and raised there and in the transit business. Then I spent four years in Texas in the transportation business and now four and one-half years in Denver.

So I am not sure if I have you surrounded or you have me surrounded at this point. We have been providing since January 20, 1989 accessible inner-city type transit service. I agree with Marilyn that I am a convert. I recall 14 or 15 years ago when 504 regulations went through, I thought lifts on buses were the craziest thing I ever heard about.

Having been in Denver now for some time I can see where an accessible system that has lifts that work, works. In 1977 the RTD Board of Directors instructed the staff that the RTD system operating throughout the Denver area would be made accessible to the handicapped on fixed-line route service. Included along with this decision, was to equip the 1986 inter-city buses being ordered from Neoplan USA with the capability of providing wheelchair accessibility. The mechanical staff at RTD in Denver was given this task to complete. It was not an easy task. We do use our baggage compartments a lot. We run airport service through Boulder, Colorado through the same terminals that the inter-city carriers operate and our luggage carriers are too small.

We started with a lift that actually took about one-third of the luggage compartment and ended up with a story I will not go into on how we discovered the lift out of Germany. Was the price restrictive? The answer is that the lift is compact and as a result, very low in price. We are estimating the cost of the lift on normal application to be somewhere between $7,000 and $9,000 total. That is installation on a new coach not a retrofit. There is a big difference. We recently installed a lift in an MCI coach, used in inter-city bus service. The total cost of the engineering, modification to the lift, door and all auxiliary parts was $15,000. That includes engineering costs.

The next question we had to ask was, is the lift reliable. I have all the costs on all 608 buses which are lift equipped with every device known to man and you can compare that along with the testimony that I presented.

We have had no failures with the lift. In fact, I believe our total cost for the first seven or eight months of service was something around $85 which includes the maintenance program.

The lift is now manufactured in this country through Stewart & Stevenson, rather than order it from Germany, we had to pay the costs to get it in. The ink is not quite dry on their brochure. I am not their representative but they were the company that did, through my request, incorporate and build the lift in this country so it would be more available.

How many seats are lost? That is always a big question. I can understand charter and tour companies, having been in that business for 16 years, realizing what they would lose. Due to RTD Denver's commitment to the handicapped community, and due to the length of time it has taken to provide a lift that was satisfactory for this type of service, you have to remember we were sued back in 1979 to put in accessible service. The result was to provide the accessible service. RTD Denver has lost some four seats in the application of this lift. RTD Denver mechanical staff is presently in the engineering mode of utilizing a collapsible recliner seat to reach the point that no seats are lost. I believe that is mechanically feasible and the technology is around the corner.

Is it easy to gear up for production? How quickly can these buses be reproduced in mass? Answer: This lift is available today. What is our ridership? Perhaps Denver is sort of unique as far as ridership, but we average 42,000 wheelchair patrons a year. I believe that we don't really record all those wheel chair passengers. I believe our drivers are at a stage now where it is another passenger and all they care about is that they collect the fare.

That is my personal opinion in observing the operation.

Will the lift function in harsh weather? Certainly, it has; we had snow last week and we have it all winter. All RTD lifts function well, including snow conditions. The RTD Board of Directors and staff are committed to accessible transportation.

It has been alleged that Denver over-the-road coach service is not genuine over-the-road service. This is simply untrue. Our coaches make constant runs from 50 to 100 miles for 18 hours daily. We operate these coaches with their lifts continuously through great changes and altitudes and snow and ice conditions.

In reality, the provision for providing handicapped transportation through fixed-line bus service and inter-city type bus service saves you dollars. The key to this is the fact that mobility is certainly the answer for almost all individuals, handicapped included. Since RTD Denver has taken the course to provide accessible, main-line transportation for the handicapped, we have seen a noticeable change in the handicapped community itself. The fact that they now have the mobility throughout the Denver area has made them self-sufficient and removed the need for them to be kept in nursing homes, for example, which are very expensive. If we would certainly add up the costs of confinement of the handicapped individuals who are locked into wheelchairs and the daily care that they would need provided to them, I would certainly believe that anyone would come to the conclusion that mobility and access to transportation saves you money when applied to the handicapped community itself.

In the 14 years I have been involved with the handicapped community, I have noticed a tremendous change in the attitude and appearance of the handicapped individuals. They are more in tune to the general day-to-day life that each of us not confined to a wheelchair enjoys. They can go where they want, when they want, in complete safety.

Only the technology was holding back the transit systems from providing this service. This technology is now readily available and very reasonable in cost.

I know there is reluctance of many private companies and individuals to provide this type of transportation. I was a little amused with Mr. Currey's testimony about losing money when he crossed the Mississippi. Perhaps if he provided handicapped transportation he would not be in such bad shape. It is simply a matter of not understanding what the long-range effects of providing this transportation really means. An interesting story that could well be applied to this situation would surround my assistant. My assistant and his wife were talking about getting a dog. The conversation surrounding the situation became, "Yeah, but we don't really need a dog. Yeah, but it would be nice to have a dog." The conversation continued on until they actually got a dog. They named the dog Yeahbut. Yeah, but perhaps should be applied to this situation. Why don't we just get on with providing the necessary transportation. In the long run we will save dollars.

I disagree with one of the statements Mr. Currey made on eliminating luggage department space. Actually, the pump and motor is about the size of a shoe box mounted below the floor on this particular lift. I believe that ends my testimony.

Thank you very much.

Mr. MINETA. Thank you very much, Mr. Herman.

Mr. Tim Cook.

Mr. COOK. Thank you, Mr. Chairman.

As Director of the National Disability Action Center, I have had the opportunity to see first hand the importance of accessible transportation to people with disabilities. Indeed, it was because of the enactment by the Congress of the Education of the Handicapped Act 14 years ago in 1975 that it has become more important today.

As a result of that Act, you now have adults with disabilities who have been educated, who want jobs, who want training, who want to be able to use recreation and social services in the community, but they cannot do so because of the lack of accessible public transportation. Transportation is probably the most important and fundamental aspect of the ADA because without accessible transportation, all the other things the Act provides us just don't matter—because we cannot get there.

It is a civil rights issue for us as much as it was for Rosa Parks 30 years ago in Montgomery, Alabama. She had to go to the back of the bus. We can't even get on the bus. The witnesses from the transit system this morning are still trying to argue over the issue of whether or not we can get on that bus. That should not be the debate anymore.

The transit systems' testimony asks these Members of Congress to continue to give them the ability to exclude us from buses. That should not be the debate anymore. The only debate at this point should be how to get us on the bus.

Contrary to the transit system witnesses this morning, the Americans with Disabilities Act as enacted by the Senate constitutes a number of very severe compromises on the part of disabled Americans in this country.

One, we are not asking any transit system to retrofit a single bus. Greyhound has 40,000 buses now that are totally inaccessible. ADA allows those to continue to be inaccessible. The thrust of the Act is future oriented; if you purchase a new bus, it must be an accessible bus. Although public transit systems must comply with this requirement 30 days after the enactment of the Act, private transit operators are given six to seven years to comply with the Act.

Under the Senate provision, that is actually extendable by the President to seven or eight years, a very long period of time. Remember, disabled people have been excluded completely from buses, ever since they started manufacturing buses in this country several decades ago.

But we are still willing to wait patiently all this time until we are able to use the transit system. Look what we are talking about here: if the ADA passes this session of Congress, we are talking about waiting until 1998 before that first accessible bus must be purchased.

Then we are talking an additional 12 years after that before an accessible bus system is phased in. So we are talking about the year 2010 before we have a fully accessible system in this country, 2010. That is a severe compromise. The transit system witnesses say, we want to be able to exclude you not only until the year 2010, but forever. That is the compromise we are not going to make.

The other compromise that is embodied in the ADA is that it does not dictate any particular methodology for making the systems accessible to people with disabilities. The Act does not say buses must have lifts. All the Act says is that they must be readily accessible. There is enormous flexibility in the way that transit systems can go about making their systems accessible under the Act.

Yes, they can purchase lifts. They can redesign the bus making a low-floored bus. We are talking eight years down the road. That is plenty of time if that is what the transit system chooses to do to redesign the bus and have a ramped bus. You could have a boarding lift come out to the bus if that is the way they want to do it. The point is that there is enormous flexibility in the way the Americans with Disabilities Act allows you to comply with the requirement.

Now, in terms of the mandate in the Act, and the study coming before the mandate, it is very clear—if I am an inventor and I have a choice of inventing a better lift for a bus or inventing a better widget, what am I going to choose to do with my time over the next eight years? If I see the ADA will make it a higher likelihood that my product will be purchased, I will put my resources into building a better lift. That is part of the economic system in this country.

If we don't put the mandate in, there is absolutely no incentive for any inventor or any industry in this country to work on building a better lift. If we mandate it now and have it take effect eight years from now, there is an incentive. This is not unusual.

This is something Congress does all the time. For instance in the area of auto safety Congress required greater auto safety including things like disc brakes and air bags to be required in the future before the technology existed for those things.

The purpose was to give incentive to develop the technology. Pollution controls is another example. There are many statutes for certain pollutants like benzyne and carbon dioxide that are required to be decreased by industry before the technology exists for doing so.

These are what in the field are termed "technology-forcing" statutes. That is what the ADA does, it gives incentives and puts the requirement in there in order to give the industries the incentive to develop the technology. That is the whole point, to force the technology through the means of legislation.

In terms of the costs, what we are talking about is a question of values here. The bus companies are willing to spend enormous amounts for extras such as air conditioning and luxury items for buses, but they are unwilling to spend that amount on lifts. What Congress will do by passing the ADA is to say to the transit systems, we are making a judgment that access is a civil right and that it is as important as our extras such as air conditioning, which are just as if not more expensive.

It is interesting what the industry has done with the costs. The first time we met with them several months ago they insisted that the cheapest way of providing access was by a $35,000 lift. In fact, in testimony before the Senate Subcommittee on the Handicapped in June, 1989, we had testimony by Mr. Charles Webb, a representative of the American Bus Association, which also testified before this body this morning. I am reading from page 172 of the hearings before the Senate Subcommittee on the Handicapped on the ADA: "Mr. Webb, if you could get a lift for under $8,000 with no loss of space for baggage and only one seat, do you think that would be reasonable?" Mr. Webb answered, "Absolutely."

So now that we have the Hubmatic lift with no loss of cargo space, no seat loss and with minimal operating costs, according to the American Bus Association's own testimony, in June, it is feasible. Now they are trying to backtrack furiously and now say they apparently didn't mean to say what they said in June. What they are doing before this Congress is attempting what many business people commonly do, paint the worst case scenario.

The costs in terms of accessibility are minimal compared to the enormous economic benefits not only to the people with disabilities in the country but also the economy as a whole. We are talking about a 70 percent unemployment rate among persons with disabilities, people who largely rely on public assistance, people who want to work, want to be able to transport themselves and become taxpaying citizens. The cost to people with disabilities of "special services" is enormous not only because of the loss of income but also because it completely eliminates the ability to travel spontaneously.

This 48-hour notice business Mr. Currey talked about this morning is the minimum amount of notice that will be required if his proposals were adopted. Remember, once you make that reservation 48 hours ahead of time, it is impossible to change it. It totally eliminates the ability to travel spontaneously. How many Members of this Congress would be able to get anything done if they had to make their travel arrangements 48 hours in advance without a possibility of a change? What do you do if you have an emergency? What do you do if someone calls and says, let's take a bus trip this afternoon?

If you are in a wheelchair, you cannot do it. Buses as they are constructed accommodate an enormously large spectrum of peoples' gaits and girths and they provide an enormous amount of luxury such as air conditioners. Disabled people are saying, we do not want something "special." All we want is a service that is "as special" as that provided to everyone else in this country.

We need to keep our eyes on the prize here, that is, equality, civil rights. In the area of transportation, that is a fundamental right, and that is what the Americans With Disabilities Act gives us.

Thank you very much.

Mr. **Mineta**. Thank you, very much.

Mr. John Winske, Assistant Director of Massachusetts Coalition of Citizens with Disabilities.

Mr. **Winske**. Thank you, Mr. Chairman. My name is John Winske. I live in Boston, Massachusetts. I guess today I am the Massachusetts point man to redirect some of the things Mr. Picknelly said this morning about the Massachusetts experience with lift equipped buses.

I am the executive director of the Massachusetts Coalition of Citizens with Disabilities and also the chairperson of the Access Advisory Committee to the Massachusetts Bay Transit Authority, one of the largest transit authorities in the United States.

In 1986, the Commonwealth of Massachusetts purchased six wheelchair accessible intercity coaches. This was the first time any state or any company in the United States purchased accessible intercity coaches. Early that same summer I met with a young lady named Joy who lived in Fitchburg, Massachusetts, a small city some 50 miles north of Boston. Joy, like myself, uses an electric wheelchair for mobility.

One of the companies which leased an accessible intercity bus was Englander Coach Lines, based in western Massachusetts. The bus route for Englander passed through Fitchburg and ended in Boston. For the better part of 15 months, Joy and I used that bus to visit each other on weekends and holidays. On a typical weekend, Joy would catch the bus at 8:00 p.m. on Friday after finishing her classes at Worcester State College. When Joy arrived in Boston at 9:30 p.m., she would wheel herself for the one mile trip to my apartment. She was not able to use the paratransit program in Boston because of residency requirements.

From June 1986 until October 1987, Joy and I took 50 round trips on the bus. In addition to visiting Joy, I used the buses for business purposes around the state. In October of 1987, Joy moved to Boston where she had gotten a job. After October, we both used the bus approximately once a month to visit Joy's family and to make our wedding arrangements. We were married in June of 1988.

It should be pointed out that if Joy and I had had to rely on paratransit (van) service to and from Fitchburg, it would have cost us at least $150 round trip. The cost of the bus was $9.00 round trip. At that time she was living on social security and I was making $7.00 an hour. It would have been highly unlikely that we could have carried on a relationship or romance at that price.

The fact that I am here today telling you this story actually speaks volumes about the need for an Americans with Disabilities Act. Two young people using buses to carry on their romance shouldn't be noteworthy, but for the disabled in America our story is quite unique.

Despite my story, you will hear today from opponents of this bill that the buses are not utilized very often. I would like to tell you some of the reasons for this apparent low ridership statistic.

Before 1988, there was no cooperative agreement between the 15 transit authorities in Massachusetts. That is to say that even if a person was eligible to use the paratransit (van) service in their own community, they could not use that service to travel to another part of the state because each individual transit authority had its own residency requirements. This is why Joy had to wheel the one mile to my apartment in the middle of winter or summer at 9:30 at night.

Because of the length of some of the routes, buses only made one round trip per day. A disabled person had to have accessible lodging for the night.

The new accessible bus program was not well publicized. This was deliberate since the lifts were of an experimental nature. There was concern that consumers might be stranded.

The lifts for the first year had several mechanical problems, and were out of service frequently. They were eventually rewired by one of the bus companies in Massachusetts and those ideas were incorporated into the new lift design.

Lastly, it must be mentioned that one of the reasons for the ridership figures not being high is the timidity of persons with disabilities. Persons with disabilities have been conditioned that they cannot ride buses. Society has told them no. It will take time for them to believe the word, yes. What is known is that as transportation systems become more accessible, the ridership by disabled consumers increases dramatically.

The MBTA has seen the demand for accessible buses increase six-fold since 1986. You have also seen the ridership on the Metro system here in Washington, D.C. increase. I understand that when that system was being built, there was concern that the disabled would not ride it. You know that this is not true. You have seen that, as confidence in the system grows, the number of disabled people using the system grows. We know as systems become more accessible and as the confidence of disabled people grows in the system, they ride the system. It can also be noted that Massachusetts this year purchased 22 more intercity coaches.

These were fully designed coaches. I want to point out that despite what Mr. Picknelly said this morning, with these new coaches there was no loss of seats. If no person with a disability is on the bus, then the seats snap right back into place. If there is a person in a wheelchair then you lose two seats. All the driver has to do is snap the seats into a forward position and there is room for the wheelchair.

Yes, the cost of the lift in Massachusetts is $35,000. Let me point out that this is because the buses are pulled off the assembly line to have the special lift put in place. If Congress sends the word that accessibility is a must, there is going to be a rush to build accessible buses. It will become a regular feature of buses and the cost will drop dramatically because it will be part of the tooling of the factory and will not be something that needs to be pulled off the line to be put in place.

We must strive to make all forms of transportation; public and private, accessible to the disabled. It would make no sense to have the buses in city A and the buses in city B both accessible but the bus which connects them inaccessible. It is only until the whole system in the United States is 100 percent accessible that we will see a dramatic upswing in the ridership by disabled people.

Let me give you a quick example of the need for accessibility on all forms of transportation. Marilyn called me Sunday to ask if I could be here. If I needed 48 hours to call ahead, I would have been in big trouble. Instead, I left my apartment at 9:00 p.m. and took the rail line to the Amtrak station. There I wheeled from a high level platform onto one of Amtrak's new sleeper cars. When I got into Washington, D.C. at 8:00 o'clock this morning I simply wheeled the 200 yards over to the Metro system, hopped on the Metro system and came back above ground some 500 yards from this building.

That is what accessible transportation means. Last year Joy and I paid almost $5,000 in federal taxes. That is pretty damn good for two people who were living on social security three years ago. All we want out of our country is to be able to work, to live in the community, ride the buses and enjoy all the opportunities.

Thank you.

Mr. MINETA. Thank you very much, Mr. Winske. That was very moving.

I would like to call on Mr. Ralph Markward, Executive Director, Zia PVA.

Mr. MARKWARD. Chairman Mineta and Members of the subcommittee, my name is Ralph Markward. I am the Executive Director of the Zia Chapter of the Paralyzed Veterans of America in Albuquerque, New Mexico. I speak in favor of the private transportation requirements of the Americans with Disabilities Act from personal experience.

I am a veteran of World War II. I was a tailgunner and flew 30 missions over Germany. I am proud of my service to my country, but my country doesn't seem very proud of me. I and my fellow disabled veterans experience discrimination every day.

When I was in the U.S. Army Air Corps, I was stationed in places like Pyote, Texas, St. Louis, Missouri, and Las Vegas, Nevada. In every station I took intercity Greyhound and Trailways buses from the base to town, and sometimes, home to visit my family. With my duffel bag over my back, I and soldiers like me were a familiar sight.

Now the same ex-soldiers, like me, who are disabled, cannot take these buses. My wife and I would like to travel aboard Greyhound with senior citizen groups, because my wife is unable to drive a vehicle on highways. But we can't. When we reach a new city, we would like to take tour buses like thousands of other tourists. Our money, as the saying goes, is as green as theirs. But my business is not welcome. The buses cannot accommodate me. And sometimes, they refuse to accommodate me, even if, with help, I could get myself on the bus.

My fellow disabled Americans who, like me, need access to private transportation, are likely to be poor, because disabled Americans are much poorer, as a group, than non-disabled Americans. In

1984, according to a Lou Harris poll, half of us had household incomes under $15,000, while only 25 percent of all Americans were that poor. For the older disabled, the poverty rate is greater—fully one in three older disabled Americans has an income below $7,500; twice as high as for the non-disabled. The more severe the disability, the statistically lower the income.

I don't have to tell you that private transit is the only choice available to poor Americans. What this means is that access to private transit is even more crucial for disabled persons than for the rest of the population. Yet we have none.

Let's look at my state, New Mexico. It is 46th or 47th in per capita income of all the states. Tourism is a big business in my state. Albuquerque is the only city in New Mexico served by major airlines; therefore, Greyhound bus travel is absolutely essential. But it is not available to us.

Accessible airport transportation, also essential, is absolutely unavailable. All paratransit is available only to certified handicapped persons, not tourists or business travelers, since certification requires a month. The "Shuttle Jack" bus service between Albuquerque and Santa Fe is also not lift equipped.

The enforced isolation of older disabled Americans is truly un-American. You may think that my age peers and I—and I am 64 years young—are taken care of by paratransit. But we are not. Paratransit is unsatisfactory as it is, around town. It would never work over long distances. Older disabled Americans need access to mainline transit as well as private transit. We may be older, but don't let us be forgotten. Please help restore our pride and our ability to be a part of our society, with your support of the Americans with Disabilities Act.

Mr. Chairman, I would like to make one other comment. I have been an activist for 25 years of my 37 year disability. It has been my pleasure and success to have been rather successful in my state in advocating for accessibility mostly as it pertains to buildings. We always hear that it costs too much. To this date I have yet to be sued the first time for having put a small business company out of business.

It just simply doesn't happen. If you don't pass a law, private business and even governmental units such as cities, countries and the states, will absolutely do nothing. A law must be passed mandating that this will be done.

When that happens, it does not cost the money that they always preach that it would.

Thank you, Mr. Chairman.

Mr. Mineta. Thank you very much, Mr. Markward.

Mrs. Golden, as you indicated the legislation only talks about access. I guess the problem is that the perception is that access means lift and I think a lot of people are sort of focusing on that perception and "fear" about requirement of access.

Ms. Golden. That is right. That is true.

Mr. Mineta. However, I think when you look at the Senate report, I think that is true. The problem is that people keep saying to me, well, if you look at the language of the bill, not the report but the bill itself, really the only thing they are talking about, even though they don't say lift, it means lift. I am wondering if there is some way out. I know the architectural board has the responsibility of making that determination as I understand it as to what accessibility means.

Ms. **Golden**. Do you mean in private or public or both?

Mr. **Mineta**. I believe it says both.

Ms. **Golden**. That is for public. I am not sure what you mean exactly, sir. I feel that you are right on the money in terms of the fear and the way the bill has been both portrayed and I would say distorted.

I think both the House and the Senate bills only require access. The Senate bill made that more clear and the report make it more clear. I would hope the successive refinements of the law would allay the fears of the industry, but they insist lifts are meant when lifts are not specifically required although they are certainly allowed.

I don't agree. I guess that I think it is really saying lifts. Perhaps I am missing something but I don't see why that conclusion would be drawn. I agree very much with Mr. Cook who spoke eloquently to the flexibility provided by the bill.

Again, I just want to say that, in negotiating the Senate compromise between the White House, key Senate leaders and the disabled community, as well as people who the White House was consulting with from the American Bus Association and groups of that nature, decided that the key concept was that they require access, give a longer time to comply with it and have the beginning of that longer period be a study to determine the most feasible way.

That also included the needs of the private transportation industry. We have so many cities that have successful lift service and have demonstrated that purchasing lifts on new buses is not financially burdensome, that I think it is only intra-city service where it may be a foregone conclusion about lifts. Since they have to start in 30 days, they are more restricted to what is on the market.

Other than that I don't think lifts can be read into the language.

Mr. **Mineta**. The other subject that does come up is the issue of electric wheelchair batteries, that I am told are not allowed on certain intercity buses. Is there a hazard with regard to batteries?

Ms. **Golden**. I am glad you raised that point. I want to use it as an opportunity to address what Greyhound is doing currently. I am glad that they are not saying it is enough. Greyhound will allow an attendant to carry on a person in a manual wheelchair, but they are not allowed to travel alone. They will not carry anyone's motorized wheelchair. Yet it has been thoroughly demonstrated in the air carrier industry by airlines that do it, that motorized wheelchairs with wet cell batteries can be safely carried.

I believe that in private meetings earlier compromise positions that fell short even of the positions offered by Greyhound this morning, indicated that they foresaw what they would be forced to do by ADA and that they would be willing to carry them.

To answer your question directly, no, there is not a danger. I think that, yes, if they were tossed willy nilly into a baggage department, yes maybe, but if carried in a reasonable way they do not propose a danger.

Mr. **Winske**. My wife and I both use motorized wheelchairs on intercity buses. The only way you would have a problem is if you had a wet cell battery and tipped it upside down which would be a silly thing to do in the first place.

So no, there should not be any problems.

Mr. MINETA. We have heard considerable evidence that installing wheelchair lifts on over-the-road buses would be less expensive than many have stated. Is it true that lifts would be the only means of assuring accessibility for disabled passengers at flagstops and other rural boarding locations?

Ms. GOLDEN. I think what you are implying is that the rural stations and flagstops would not have station lifts. If station lifts were in some way designated as a preferred alternative, it is true that they would be after the big cities certainly of being equipped but I don't think that is the only other alternative.

Mr. Currey had thoughts this morning that the OTA study could look at. There is also the lift forward kneeling process used in Europe.

Mr. MINETA. Are those inner city or intra-city type buses on the kneeling?

Ms. GOLDEN. I think they are intra-city and they are low. You can have the baggage on top or the back. Again, a creative design could be come up with.

Mr. MINETA. We got away from the buses with the luggage on top. Just to get away from inter-city right now and ask about something like intra-city, we have heard examples of Buffalo being 100 percent accessible. On the other hand, Milwaukee is a responsible, demand response system. I had a colleague a little while ago while we were on this last vote, say to me, what is the matter with the Milwaukee experience?

I mean, why can't we leave it up to the local agency to make that determination, because in Milwaukee it was the community with disabilities that said, "Hey, you know, this is what we want or what we like, what we prefer," and so this colleague was saying, why not let that happen rather than make it 100 percent accessible.

Ms. GOLDEN. I am glad you asked that question.

Mr. MINETA. If I could make one more point, he also said something about the winters being more severe. As an example, in Milwaukee they have minus 50 with wind chill factors, and it is better for the person to be inside waiting than to be out on the corner waiting for the bus for half an hour out in that cold.

Ms. GOLDEN. I think—I understand—I know that a great deal of the thinking by people that aren't as familiar with disability access that has been done on this question has been along the lines you described, and I am really glad you asked it that way because I want to present what I think is a better context for the question.

People in this country who are, shall we say, transportation-disabled, the groups we are talking about, in a sense, form two overlapping constituencies. One is a constituency that needs and wishes for para-transit. The other one is a group that needs and wishes for fixed route access.

They overlap to some extent. Some of those people could and will use whatever one is available. It is hard to determine how much they overlap, but it can be conceived of in that way. The local option idea pretends that a particular city has only one constituency, but that is not true. There are really all kinds of disabled people everywhere.

Milwaukee is not limited to people with a certain kind of disability, and Buffalo has another disability and in Miami there is a third kind of disability. People with all kinds of disabilities live in every single town in the country. The need is everywhere for a multi-modal system, which is what the ADA requires. What happened in cities like Milwaukee where they, in a sense, got burned, I think by lifts, you could say, is that early general lifts were bought, they weren't easy to maintain, a lack of commitment was shown by the transit district, sometimes they weren't well-publicized.

We heard in Milwaukee lift routes weren't well planned. We heard that training wasn't done, drivers didn't know how to operate the lifts, confidence was lost, disabled people lost confidence, decided that para-transit was better. That has happened also in a couple of cities in California that we could both name.

Whereas there is lots of documentation, more cities that I have heard of in this case, bought lifts when they were working, had commitment, and have systems that are working well. I think the point is that a multi-modal system can work. It is not fair to say—in a sense I think that that argument is the para-transit constituency saying to the fixed route constituency, we only want para-transit, and you can't have what you want.

I would like to point out that the fixed route constituency is never saying to the para-transit constituency, you can't have what you want. The people who want fixed route aren't trying to deny the people who want para-transit their preferred mode. We are trying to have both.

Both are needed in every city. The question is, can both work and be cost-effective, and I think that the experience of the cities, the Seattles, the Denvers, the Buffaloes, the Syracuses, the New York Cities, the Johnstowns, Pennsylvanias, the Champaign-Urbana, Illinois, show not only that multi-modal can work, but that it can work in the snow. And in addition to the systems I have named which work in the snow, there are a lot of days even in those cities and in Milwaukee and in every snow city, there are a lot of days in the year, certainly over half, where there isn't snow. We also heard testimony the other day of creative ideas for dealing with the snow, like Detroit where they show the orange mitt, and if they can just get to the bus route they are a bus stop.

The bottom line is that a multi-modal system will best meet the need and that it can work.

Mr. Winske. Boston has found the same thing. Boston has gone to a muiti-modal system and has found it to be the best thing and, in fact, when you consider that one way para-transit trips now run 25 to 40 dollars per trip, it is certainly more cost-effective in the long-run when those who can use fixed route, when the weather allows and when their ability allows, use fixed route, it is a cost savings.

Mr. Mineta. Fine. Thank you. Mr. Hastert.

Mr. Hastert. Thank you, Mr. Chairman. I just want to clarify some testimony by Mr. Herman. Mr. Herman, in your statement you estimate the cost of a Hubmatic lift at somewhere between 7,000 and 9,000 dollars. We have a letter here which you wrote to

Senator Harkin on May 15th of this year which contained three different estimates ranking from 5,000 to 13,000.

I also have another letter here from one of your colleagues at the Denver RTD, Mr. Larry Joe, who was a warranty administrator, addressed to an Illinois bus company in my district dated June 1, 1989. In this letter you estimate the cost of the lift to be 17,000. There are some discrepancies here. Certainly not 17,000.

Is it different costs for different buses or do the lift manufacturers know that lifts can be applied to a typical over-the-road coach, or how do you see this? What are the discrepancies?

Mr. Herman. R&D Denver paid all the engineering costs for this lift, including the transport back and forth to Germany on various versions. Along with the original cost for the lift was a lift that was purchased for the inter-city coaches from EEC Corporation through Neoplan, a lift that did not work. Because we had a contractual relationship with Neoplan, we had to fulfill that obligation.

It just kept driving the cost of the lift up. The latest version on the MCI coach was a total of 15,000 with engineering, If you deduct the engineering, if you went in and bought a lift for an application, we are looking at 7,000 to 9,000.

I don't think there has been an exact price on it. It may even be less than the 7 at this point in time. I realize it is very confusing, but again it was a confusing project.

Mr. Hastert. I understand. Thank you very much.

I have no further questions.

Mr. Mineta. Mr. Laughlin?

Mr. Laughlin. Thank you, Mr. Chairman.

Mr. Cook, I want to be sure I understood your testimony, and then I have another question. As I understood your testimony, and perhaps Ms. Golden also, it is not your position that this act requires all inter-city buses to be equipped with lifts. Did I understand your explanation correctly?

Mr. Cook. That's correct, not a single intercity bus presently out there ever has to be made accessible under the Americans With Disabilities Act, and not a single bus that is purchased over the next seven years has to be made accessible. It is only in 1998 at the earliest that accessible buses must be purchased, and then only if new vehicles are purchased.

Mr. Laughlin. What I want to be sure about, though, is you are not saying that buses in the future, and I don't want to put double negatives in and confuse the question—are you saying that buses in the future after 1998, all of those buses must be equipped with lifts?

Mr. Cook. That's correct, if a new bus is purchased, it must be an accessible bus, but not necessarily with lifts. It could be a low-floored bus with a ramp. You could use a lift at the station. There is, again, a wide variety of ways that you could provide accessible services.

Mr. Laughlin. The reason I asked that question is I did understand you to say that what you are really asking and what you expect is that all buses be accessible.

Mr. Cook. Eventually over time, by the year 2010 I am talking about.

Mr. Laughlin. Buses purchased in the future.

Mr. Cook. That's correct.

Mr. Laughlin. Be accessible. By being accessible, you are not saying that they must have lifts on them?

Mr. Cook. That's correct.

Mr. Laughlin. But in some manner enable persons with disability to be able to get on them?

Mr. Cook. The Congressman is correct.

Mr. Laughlin. All right. I wanted to be sure I understood that, and that is how I understood. Now, the other thing I want to ask you is, I understood Mr. Currey's testimony this morning was that under the Greyhound plan, in two years, 85 percent of their—I am going to call them bus stations because that is what I called them growing up—85 percent of the Greyhound bus stations would be equipped to assist a person with a disability to gain access to the bus without any notice, without a phone call, without a telegram or anything.

Did you understand that that way?

Mr. Cook. I wasn't quite sure what Mr. Currey was talking about when he talked about his specially equipped chair. Now, if that is a lift-type of device where the wheelchair user does not have to be carried, then it may well be a feasible means of complying with the Act, and this is something which I think the OTA and Architectural and Transportation Barriers Compliance Board study should look at, as one of the possible ways of providing access.

Mr. Laughlin. Well, I asked him and he agreed, as I appreciated his testimony, that the disability community would be consulted with, and we would have their input on the chair that—because I don't know what it looks like, and for it to work, and I think it is going to have to be acceptable to the disabled community.

The point I wanted to get to is, assuming that at 85 percent of the bus stations in America that without notice a disabled person can——

Mr. Mineta. Could I correct something. As I recall, I think Mr. Currey said 85 percent of the passengers at those two hundred locations. I don't think it was 85 percent of the 200 locations. I think that is where his 85 percent—I had a question in my own mind about that at the time you said that, and so I asked him about it later, and as counsel reminds me, it was 85 percent of the passengers at those 200 locations.

Is that correct?

Mr. Cook. That is the way I understood the testimony, yes.

Mr. Laughlin. Then I misunderstood it, and I am glad the Chairman got it clarified.

Mr. Mineta. No, I thought I heard it the same way, that's why I asked him about it.

Mr. Laughlin. Then I can take up with the Chairman then what happens to the other 15 percent. But then Greyhound certainly has more than 200 bus stations around.

Mr. Mineta. He has got, as I recall, how many, 5,000 locations? Ten thousand locations, and those you would call in advance 24 or 48 hours, as I recall.

Mr. Laughlin. But that accounts for only 15 percent of the disabled riders, then?

Okay, well, then I have no further questions, Mr. Cook. You have helped me get clarifications in the areas where I needed. Thank you very much.

Mr. Cook. If I could interject just one very brief comment about carrying. The reasons for our concern about having people with disabilities carried are two-fold. One is, it is an enormous indignity to a person with a disability to have to be carried instead of being able to just stay in their chair, and the second thing is, it is a very large safety hazard, not only for the wheelchair user, but also for the person doing the carrying, unless they have received specific training on how to carry a person in a wheelchair.

And I think Mr. Currey may not have considered that as a cost of the possibility of having to carry passengers through the use of his suggested device.

Mr. Mineta. I think that is why, Ms. Golden, you could understand why the employee would say or the company would say, our workers compensation wouldn't allow us, or a liability problem involved.

Ms. Golden. That is right. And just to further clarify, Mr. Laughlin, the original statement in terms of just clarifying the Act's requirements, it is correct that every future bus has to be accessible, as Tim was responding, for fixed route system, including Greyhound normal inter-city coach service, but the Act doesn't require that of demand response systems, like charter and tour services, and that was one of the misunderstandings this morning.

The Senate compromise only requires every new bus to be accessible in those systems unless the system is not now accessible when viewed in its entirety, which means unless the system cannot handle its disabled customers that call in at the current time. If they need more accessible vehicles, they need to get them, so charter and tour services aren't under as strict requirements as fixed route.

Mr. Mineta. Mr. Duncan.

Mr. Duncan. I will be very brief because we have other witnesses who have been waiting a long time to testify. But, Mr. Markward, you said in your testimony how important the Greyhound transportation system was to people in New Mexico to get to the airport and so forth.

Do you simply not believe Mr. Currey, the Chairman of Greyhound, when he testified this morning that many of those routes in New Mexico would be—that they would eliminate many of those routes if this Act passes?

Mr. Markward. I believe my answer would be, yes, I do not believe his statement this morning. Past experience has told me that in other items, especially with construction contractors, that that simply was not the case.

Mr. Winske. If I could, Mr. Duncan, one of the things that concerned me this morning about Mr. Currey's testimony was I think he vastly underestimated, first of all, the number of new riders he would generate. I don't think he comprehends that 70 percent of the people in America live below the poverty line and therefore would be inclined to use buses.

He made a statement that most disabled people own their own vehicles. That is factually not true. Most disabled people cannot afford their own vehicle. A new lift-equipped van is anywhere from 20 to 35 thousand dollars plus the insurance. Not many disabled people can afford that.

So I think Mr. Currey overestimated the cost because he was going by the cost figures of lifts today of 35,000 when it is a new technology, and I think he underestimated the new ridership.

Mr. MARKWARD. Mr. Congressman, if I may, Mr. Currey, this morning, asked an additional two years to study this problem. Why wasn't Greyhound Bus Company studying the problem two years ago? This subject has not just come up within the past two years.

Mr. DUNCAN. Well, that brings up another point. You know, I really don't know whether I am for or against this bill, but it does concern me when I read the lead editorial in the New York Times, which is not a conservative publication or particularly pro business, an editorial that is very unfavorable to this Act.

The editorial they had, I think, on September 6th, said, "blank check for the disabled." And when I read the column that I referred to in the National Journal, which is probably one of the most objective publications that is in existence today, when I read that they say that this Act is very ambiguous and that no one really understands what it means and that it is being rushed through, you know, out of sympathy for the disabled, which all of us have sympathy for the disabled—and does it concern any of you that perhaps we are—you know, that this is something that we need to do but that we are rushing into this and that we are going to end up with some pretty important legislation because we are putting this on too fast a track?

I know the easy answer to something like that is to say, well, this should have been done many years ago, but all this as far as this legislation is concerned, all of this legislation has come up just fairly recently that it has been given any real attention here in the Congress.

Who wants to——

Mr. COOK. If I may address that briefly, Mr. Duncan, this was a bill that originally was developed by the National Council on the Handicapped, an Executive Branch agency, which took over two years to draft the first version of the Americans with Disabilities Act. This was not just something that was done haphazardly or very recently rushed through.

It was a very painstaking process through an executive branch agency that had input from all over the country. A body of the House of Representatives, the Select Committee on Education established a body which held hearings in all 50 states on the Americans with Disabilities Act to receive input from not only people with disabilities, but from the people who would be affected by the Act all over the country. And that was the Committee on Empowerment of People with Disabilities chaired by Justine Dart.

In the Senate, there is a thousand-page volume of hearings that were held over three days with several dozen witnesses, including the Attorney General of the United States, testifying in favor of this bill.

I think there have been at least five hearings so far held in the House of Representatives on this bill, and so I think it is a little bit unfair of the New York Times—I think we counted, by the way, Mr. Duncan, 13 separate factual errors in that one short editorial in the New York Times. They simply have not talked to anyone in the disability community, anyone on the staff of the Senate Subcommittee on the Handicapped, before writing that editorial, and I think if they do get their facts straight they will find that this has been an enormously studied issue.

It is something that is way past being due for people with disabilities, and it is time that it is passed.

Mr. DUNCAN. Well, if it has been so painstakingly prepared, why does the National Journal and I believe even the Washington Post express some concern about it being too ambiguous and uncertain? Do you know why there is still that concern?

Mr. COOK. I would suggest that they read the testimony and read the Senate report, which is lengthy, on the bill, and I think many of the questions will be answered. I think some people have put the idea in their minds that this is something that is being haphazardly and too quickly done, but I think if they ever sat down and looked at what the process has been, they would see that it is not something that is haphazard, the issues have been addressed, and you know if they would talk to people with disabilities or talk to the people who actually developed the bill on the National Council of the Handicapped, they would get some different answers, I think.

Mr. DUNCAN. Well, I am told that these hearings that we are holding now, that we held one day of hearings last week and then this today, that this is the first time that these transportation issues have been really discussed here before the Congress or before the House. Is that correct?

Mr. COOK. That may be true in terms of the House. There is another hearing on Thursday to further discuss transportation issues. That will have been at least three separate committees having hearings on the issue of transportation alone, and I believe the issue of transportation has come up in other hearings, although it may not have been the central purpose of those other hearings.

Mr. DUNCAN. Mr. Herman, I was impressed by something that you said. We had heard earlier that in Seattle that even though the buses were lift-equipped that they were used on the average of once every three days, and in Johnstown, Pennsylvania, once every two days or maybe I have reversed that, I am not sure, but you said you had 42,000 handicapped riders.

Now, does that mean more than just people in wheelchairs, is that right?

Mr. HERMAN. That is strictly wheelchairs.

Mr. DUNCAN. That is strictly wheelchairs. Out of home riders is that? What percentage is that?

Mr. HERMAN. We transport about 180,000 people a day, and——

Mr. DUNCAN. 180,000 a day.

Mr. HERMAN. Including our mall operation.

Mr. DUNCAN. So you are talking—you said 42,000 a year?

Mr. HERMAN. Forty-two thousand a year, yes. I think the direct comparison——

Mr. DUNCAN. I can't do math that quickly. Do you know what percentage that is?

Mr. HERMAN. It is probably one or two percent of our total service. Budget-wise it is probably two-tenths of one percent the total cost of the lift service. I think the most dramatic comparison would be between our para-transit system. We do operate five para-transit vehicles in a population of around two million because we cover six counties.

Mr. DUNCAN. Something I haven't heard before and some of you may know this, and I would be curious. There are 43 million disabled or handicapped people, according to the estimates I have seen. How many are in wheelchairs all together in this country? Does anyone know?

Ms. GOLDEN. In California, to deal with some similar legislative issues, we did some calculations that came up with about 4 percent, and that totals something like about 1.7 billion nationally.

Mr. DUNCAN. 1.7 billion nationally in wheelchairs?

Ms. GOLDEN. I haven't checked out those figures on a national basis. I am using a statistical projection we developed in California. I would like to add on ridership. It depends on how you say it. I know Mr. Herman's figure of 42,000 a year is impressive. If you give Seattle a yearly figure instead of a per bus figure, they have a lot of buses. They would have 140,000 yearly.

When you look at it—and that multiplies out no different than what you heard the other day. Those aren't figures with discrepancies, but it sounds smaller. The average figure I don't think is misleading. It does show that a lot of people are getting a lot of places in Seattle, as well as Denver, as well as the other cities that have good service.

Mr. DUNCAN. You mean they have 140,000 wheelchair riders each year?

Ms. GOLDEN. Again, wheelchair rides. I mean, a lot of people are using it again and again, but, yes as Mr. Herman had 42,000 wheelchair rides.

Mr. DUNCAN. Certainly that would come out to more than one every two days.

Ms. GOLDEN. It is one rider per bus every two days. They have a lot of buses, they have three, four, five, six, seven hundred buses, so they have maybe 500 rides a day, but perhaps it is one per bus, something like that. So the figures, you know, can get sliced in ways that make them sound very different.

Mr. DUNCAN. All right, just one other question. Mr. Cook, you were saying in your testimony that this act allowed great flexibility and that it would even permit—what was it you said—the use of mobile lifts at bus stations rather than lifts on the buses?

Mr. COOK. That's correct.

Mr. DUNCAN. But I understood that the handicapped community, first of all, would not be satisfied nor happy with that, and secondly, the thought occurred to me that the private small tour bus companies could not use that because when they are taking groups around on these tours, they are going and stopping many different places where mobile lifts wouldn't be available. So they wouldn't have that flexibility; is that correct?

Mr. COOK. Well, the tour bus companies wouldn't need that flexibility because there is a separate provision of the Senate-passed bill which allows them to bring an accessible bus in, as needed. The entire fleet of a tour group would not have to be accessible, and so they just simply wouldn't need the same flexibility that the other over-the-road companies would have, under the bill.

In terms of the handicapped community's acceptance, that is the first I have ever heard that they wouldn't accept that option, and that is something which the OTA study is going to look at, and they will consult with people with disabilities over the next two, three years when they do their study, and give us the answers to those sorts of questions as to what the needs are of the disability community, and the most feasible way of meeting those needs.

Mr. DUNCAN. So what you are saying is that the act, as passed by the Senate, would allow exceptions even after this six or seven-year grace period so that companies, tour companies could come in, because apparently there are a lot of these little tour bus companies out here, a lot of them around the country.

Mr. COOK. It is not an exception. It just says that the standard is, again, that they must provide access. They can do that by getting an accessible bus as it is needed.

Mr. DUNCAN. So 100 percent of their fleet wouldn't have to be accessible?

Mr. COOK. Not only would 100 percent not have to be accessible, but a very small percentage or maybe zero if they have the capability of renting a bus as it is needed.

Mr. DUNCAN. Even after a six or seven-year grace period?

Mr. COOK. That's correct.

Mr. DUNCAN. But there is a provision that says all buses produced after the six or seven-year period of have to be accessible, is that correct?

Mr. COOK. No, that is not the requirement. It doesn't say all buses produced. It says all buses purchased by fixed route transit must be accessible. There is a different standard for the demand responsive transit companies in the act.

Mr. DUNCAN. All right. Thank you.

Mr. MINETA. Let me ask about this, let me clarify this just a minute. In the report the phrase, "readily accessible to or usable by," refers to the over-the-road coaches, and it is my understanding that there is an exception for charter use but that there is no exemption as it relates to over-the-road coaches.

Ms. GOLDEN. There is two different standards because there are two different kinds of service.

Mr. MINETA. I don't know if it is standards or whether there is one that gets an exemption and the other does not.

Ms. GOLDEN. You could call it an exemption, but the way the bill reads, "a fixed route service," you don't know who is going to be there to be picked up. They present themselves at the moment at the bus stop or the Greyhound bus station, so you need a vehicle-by-vehicle access. You need every vehicle eventually accessible, but in a demand response service, any time where there is a call ahead, where a charter company is giving a trip and people call in advance to make a reservation, or a gray line tour or an airport shuttle; if I have to call in advance, I say I am in a wheelchair. They can call up and say, "Oh, we need a lift-equipped bus on this run."

So they don't have to have every vehicle lift-equipped. They can just have a couple or however many would accommodate the need, so they don't need vehicle-by-vehicle access. That's why for fixed route, eventually, every newly purchased vehicle should be accessible, but for demand response, charters, tours, para-transit of all kinds they only have to be accessible—the phrase is, "when viewed in their entirety." That wording was borrowed from the regulations to Section 504 of the 1973 Rehab Act where it was used with respect to college and university programs and programs like that where—remember the requirement that you didn't have to make every building at Harvard University accessible. You could have a classroom, so the system was accessible when viewed in its entirety. Well, as it is going to relate to transit, it means that for a tour company they don't have to have every vehicle accessible as long as somebody shows up needing an accessible vehicle, they can dispatch one out of five, then it is accessible when viewed in its entirety.

Mr. MINETA. All right. Mr. Payne.

Mr. PAYNE. No questions, Mr. Chairman. Thank you.

Mr. MINETA. Mr. Clinger.

Mr. DUNCAN. Mr. Chairman, excuse me, in this report from the Senate there is a paragraph on page 73 that says, "With respect to the purchase of new over-the-road buses, it is considered discrimination to purchase or lease a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than six years after the date of the enactment of this act or small providers as defined by the Secretary of Transportation and five years for other providers."

Now, that is why I was asking a while ago, would that not mean that no company, even a small company could—they couldn't even purchase a bus that was not accessible?

Ms. GOLDEN. For a fixed route provider, that's correct.

Mr. DUNCAN. Well, even for a tour bus company.

Ms. GOLDEN. No. Are you reading from the Senate report?

Mr. DUNCAN. It says all over-the-road buses. That would include the buses operated by the tour companies, would it not?

Ms. GOLDEN. I support that that is under a section that addresses fixed route, and that there is another section that addresses demand response service, I believe.

Mr. COOK. Yes, that's correct.

Mr. MINETA. It is in reference to Section 304, and that is why there isn't that distinction.

Mr. COOK. Right. Do you have a copy of the Senate report?

Ms. GOLDEN. Yes.

Mr. COOK. The provision that we are speaking of with regard to the demand responsive systems comes under a different section. The section which you just read from the Senate report refers to Section 304 of the bill, which in turn talks about fixed route transportation. Section 302 of the bill, on the other hand, I believe is the correct number, refers to demand responsive vehicles.

Mr. DUNCAN. Well, I hope you all are right.

Mr. MINETA. Okay. Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Have we resolved this——

Mr. MINETA. No, we haven't.

Mr. **Cook**. I found the section, which is Section 302(c)2, which refers to demand-responsive systems. Such entity—this is under the definition of discrimination such entity that purchases or leases a bus or vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act that is not readily accessible to or usable by individuals with disabilities, unless such entity can demonstrate that such system when viewed in its entirety already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subjected to Section 304(b)4 and Section 305.

Mr. **Mineta**. So, Mr. Cook, doesn't that mean that they are covered under Section 304(b)?

Mr. **Cook**. If it is a fixed route system. This is a special provision for demand responsive systems, which is different from a fixed route system.

Mr. **Mineta**. But in that Section 302(c)2 that you were reading, it kicks it back to Section 304(b)4, which it seems to me that says you are under the umbrella, and you are covered. When you look at the Title of Section 304, it says prohibition of discrimination in public transportation services provided by private entities, which is charter.

Well, you know, let's—we will talk about this. Mr. Clinger?

Mr. **Clinger**. Let me just address a couple of questions to Mr. Herman. I understand that the route on which you operate the lift-equipped carrier is, I guess, a short run commuter service between Boulder and Denver?

Mr. **Herman**. Longmont, Boulder and Denver and to the airport.

Mr. **Clinger**. I am sorry?

Mr. **Herman**. Longmont, which is about 18 miles above Boulder.

Mr. **Clinger**. Okay. It is my understanding that the average over-the-road coach in inter-city service operates longer hauls for greater distances, and on different types of coaches than are operated in your service, so I guess the question is, are we comparing apples and oranges?

Can we really equate the service that you are providing on your run with typical inter-city service? Is there really a basis here for a fair comparison in your view?

Mr. **Herman**. Absolutely. We carry luggage in under floor compartments. We travel—I guess our longest run is 55 miles, but I think the problem would be boarding and deboarding, not so much the distance, if I am not mistaken. Same coach, absolutely the same coach.

Mr. **Clinger**. Ms. Golden, coming back to the somewhat confused figures we have had on some of the statistics and figures for purchase and installation and numbers of seats displaced and so forth, I think you stated that the Denver lift removed only one seat and costs $11,000 to purchase and install.

Mr. Herman, I think, testified that the lift costs between 5,000 and 8,000 and costs four seats to be displaced. Why do we have that? Can you explain the disparities between the two?

Mr. **Herman**. Again, we are going back to the production of lift in this country and the fact that we purchased ours out of Germany and that RTD covered all the engineering costs. On the tour bus, which I was an operator for many years, I agree with the fact that I don't think they should all be accessible, but I think all new buses can be manufactured to be accessible very easily by the simple installation of the two metal bars that support that lift, and then the lift could be exchanged from one bus to another.

I am throwing that out because I am sitting here listening to this. It is not necessary that the bus itself has a lift in it, as long as it can be made accessible very easily. The lift that RTD Denver ended up with is very easy to pull out of the bus and very easy to put in another coach.

Mr. **Clinger**. How many seats does it displace?

Mr. **Herman**. On our coach, on the original application we lost four seats. Again, going back to the fact we had a short time frame. Our intent is to go back in and try to not lose any seats. We are in that engineering mode right now with collapsible recliners.

On our retrofit on the MCI coach we lost two seats when we put that application in, which was just finished about a week ago, and again we are going to look at that one to look at seat technology and attempt not to lose any seats. I think it is possible.

Mr. **Clinger**. Staff informs me that the lift manufacturers have not been willing to guarantee any number of loss of seats. In other words, they are not willing to make any commitments in terms of how many seats would be lost with the installation of that lift.

Are you aware of that?

Mr. **Herman**. I think this is new technology. Of course we have had it in service since January. I think as a transit system who is knowledgeable in how to install seats, we need to work with that manufacturer.

Actually that lift would never have been installed on that bus a year ago if it wouldn't have been for the engineering that occurred at RTD in Denver, so I am saying that we need to work. My main goal as maintenance superintendent is to provide as many seats as possible, and we are going to meet that commitment.

Mr. **Winske**. Mr. Clinger, also if you would look at the MCI model bus used in Massachusetts, indeed now there is no loss of seats if no one with a disability is on the bus because the seats sit on a lift on a runner, and you can snap the seat back into the runner. If they pick up a person in a wheelchair, then you push the two seats forward so there is a loss of two seats for one disabled person, but otherwise there is no loss of seating.

Mr. **Clinger**. Okay. Thank you very much.

Mr. **Mineta**. Mr. Winske, let me ask, what is the current status of accessibility on the Massachusetts Bay Transit Authority's rail and bus fleet?

Mr. **Winske**. On the bus fleet 40 percent of the buses are lift-equipped. The current 504 plan that was submitted to UMTA calls for by 1993, 78 percent accessibility. On the rail system, I believe it is currently at about 50 percent, and there is current bond money available for another 15 stations, so it will be up around 65 percent or 70 percent in two years.

The biggest problem now is the green line in Boston, which is a light rail line that first opened in 1895, and they are currently conducting a $400,000 study of the green line system. That study is due to be released in December of this year, but already the company doing the study has indicated they believe access is achievable. They are now looking at how to provide that access.

Mr. **Mineta**. Do you believe that the inter-city bus capital assistance program in Massachusetts is an appropriate model for the nation in acquiring lift-equipped buses?

Mr. **Winske**. Thank you. I was kicking myself for the last 15 minutes for forgetting to put that into my testimony. I think it is. If you look at Massachusetts right now, I believe that the companies are lending their buses for between $750 and $850 for a bus per month, which is far below what it will cost them to go out and buy a bus on their own.

Now, granted at that rate they are not paying back the interest, they are merely paying back the capital over a seven-year period, so I think, you know, obviously Congress, given its dire financial state nationally, may need to look at recouping the interest at a lower rate over the seven or eight years of the bus. But I think that it is a model you should look at because, again, you can buy thousands of buses at a time, and certainly if you had a model such as Ibcap nationally, and you went out looking for 15,000 or 10,000 buses at a time, or maybe 5,000, I can't believe a manufacturer wouldn't find a way to retool his factory in a hurry, so I think it is a good model that you should look at.

Mr. **Mineta**. Mr. Markward, you mentioned in your testimony that you have been denied transportation on inter-city buses. I am wondering if you could elaborate on those experiences for the subcommittee.

Mr. **Markward**. Because New Mexico enjoys a large tourism trade, we have many tours coming to New Mexico. I have not been denied passage on a tour, because none of the tour buses have lifts on. There is no way that I can get on a tour bus, so why would I even attempt to get passage on a tour?

It is just simply impossible to ride on a tour bus in the State of New Mexico.

Mr. **Mineta**. What about an inter-city bus?

Mr. **Markward**. I haven't tried inter-state buses because the same thing exists. There is no inter-state bus travel available for a person in a wheelchair, and I haven't been able to find anybody that wants to carry me up the bus steps.

Mr. **Mineta**. All right. Let me thank this very, very fine panel for being with us and looking at these issues in a very real way. Again, I want to thank all of you for taking time from your own busy schedules to be before us. Thank you very, very much.

[The prepared statements of Ms. Golden, Mr. Herman, Mr. Winske and Mr. Markward follow:]

MARILYN GOLDEN
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

TESTIMONY, HOUSE OF REPRESENTATIVES PUBLIC WORKS
AND TRANSPORTATION COMMITTEE
SURFACE TRANSPORTATION SUBCOMMITTEE

ON THE AMERICANS WITH DISABILITIES ACT
SEPTEMBER 26, 1989

My name is Marilyn Golden. I am Policy Analyst with the Disability Rights Education and Defense Fund, or DREDF, our country's foremost guardian of disability civil rights for the last decade. Before DREDF, I directed an organization called Access California for nine years, and coordinated two other organizations, the September Alliance for Accessible Transit and the Disabled International Support Effort.

In ten years of disability advocacy, I've worked with many "converts" like George Herman of Denver Rapid Transit District, who testified before you this morning, transit operators who, at one point, thought fully accessible transit was a nice dream but a fiscal impossibility; operators who then provided access and became ardent boosters of accessibility mandates. In this testimony I will give a brief overview of the private transit issue and demonstrate why we believe the Americans with Disabilities Act presents very necessary and reasonable requirements.

The need for access to private transit is enormous. I could cite studies, documentation, and anecdotal evidence all day. Suffice to say, bus travel is the only travel available to poor Americans, and disabled Americans are three times more likely to fall below the federal poverty line than non-disabled Americans. Bus travel is also the only avenue available to rural Americans, and disabled Americans live in rural areas in higher concentrations than the non-disabled. Most transportation-disabled people can't afford cars or can't drive cars. Without private transit, hundreds of thousands are prisoners in their own homes.

The need doesn't stop there. Disabled businesspeople can't get an airport shuttle for business trips because they're not accessible. We learned the other night of a private charter company which patently refused access to a young disabled adult. Access is needed to all forms of private transit.

Let's look first at long-distance bus travel. The Act already allows private intercity transit providers a special exemption. Large providers have fully six years before new bus purchases have to be accessible, and small providers have seven years. Some providers, particularly Greyhound, have responded by raising the specter of financial ruination and service cutbacks, near to the point of hysteria. But these concerns do not hold up to the light of reason.

It is true that many of the accessible over the road coaches in use today cost an additional $35,000, using a lift that occupies a third of the available baggage space and eliminates some seats. But this particular design is far from the only available one. In fact, this design wasn't even originated for over the road use, yet it is being blamed with every complaint by the over-the-road industry. This coach was originally designed for Golden Gate Transit of Marin County, California, for intracity use.

Much more instructive is the experience of Denver, where seventeen accessible over the road coaches are in use currently, rain, shine, or snow, providing lift-boardings in excess of 42,000+ in a year. The Hubmatic lift used in Denver, originally of German manufacture, is now handled domestically, and is already available. The lift occupies ZERO baggage space, will remove only ONE seat, and added only $11,000 to the cost of each bus, comparable to the low 5% additional cost of regular city buses. This price, by the way, can only be expected to fall, with mass production and high market demand. It's been virtually maintenance-free despite climactic conditions. And contrary to what has been alleged, these coaches put in continuous rough snowy mountainous use, comparable to the roughest of over-the-road conditions.

Denver's experience demonstrates the bursting of a myth which we must look at very plainly here. The mechanics of lifts, what they cost, and when they work, has become very mysterious in these discussions. But bus lifts are very un-mysterious. They are simple devices, far simpler than an engine, for example, and cheaper, by the way, than the air conditioning. Lifts are like any other piece of basic technology. When there's a high demand, they'll work better, get cheaper, and become available quickly. Anyone who doubts this is ignoring the basic operation of our free market economy and America's historic ingenuity. And in the case of lifts, we don't have to wait for ingenuity. They're available now, and will be more so. Lift companies outside of Denver aren't so eager to let Stuart and Stevenson, who've got the patent on the Hubmatic, make all the money. And lift companies may benefit from the Americans with Disabilities Act, but they don't need it to benefit. The fact is, lifts are the trend, intracity and intercity alike. Lift companies are tripping all over each other developing better lifts of every kind, and quickly, while we sit here and deliberate. Given these conditions, a six-year extension before the intercity transit industry has to comply with this Act, is very generous indeed.

This is further evidenced by a 1988 Canadian study which showed that lifts on intercity buses provided the trips more cheaply than other methods by a factor of four.

During the first three years after enactment, a study is to take place which will help providers find the best method for providing access. The Act has been attacked by those who call for a study only, with no accompanying mandate for access. This would seriously weaken the bill. If the mandate were removed, these interim years would expectably be used by the over-the-road bus providers to contest the feasibility of accessible service, rather than getting ready to deliver it. The aim of the legislation is to facilitate accessibility, not to create incentives for resisting it.

Another myth which must be laid to rest, once and for all, is about restrooms. The Americans with Disabilities Act does not mandate wheelchair-accessible restrooms in over-the-road coaches, despite all the bally-hoo that's been made. The Senate report appropriately keeps open the possibility of regulations addressing this point as technology becomes available. But great loss of revenue due to great loss of seats due to restroom access is not a fair argument, since it's not required.

The Act's other requirements for private transportation can be just as easily accommodated. It's important to look where providers have had successes. You may hear today, for example, that airporters can't possibly provide accessible service. Yet in the San Francisco and Los Angeles areas, Super Shuttle has been providing accessible demand-response service for years: not with EVERY vehicle, but with only a couple of vehicles; their service is accessible WHEN VIEWED IN ITS ENTIRETY, as they Act would require. The same is true for charter companies and other private demand-response providers.

So keep in mind that lifts aren't always required. And when they are, let's put the requirements in perspective. Lifts, in general, add about 5% to the cost of a new bus. What does this mean? When twenty-one buses would have been purchased, only twenty can be. Where $200,000 in financing would have been necessary to add one vehicle to the fleet of a small provider, now $210,000 in financing will be needed. Yes, it is a little more. This cost must be weighed against the desparate need for integration into society by millions of potentially productive Americans.

I want to close with the story of John and Joy Winsky. Their story is the human element to the story of Peter Pan, a small provider in Massachusetts, who will be testifying today as well. Peter Pan has a few accessible intercity over-the-road coaches, and has complained of low ridership. Their low ridership stems from a complete lack of publicizing the program, and a few other factors, such as the fact that their cross-state run is so long, that a disabled rider has to stay overnight, even if they only travel twenty miles, because the accessible bus won't come back until the next day. Not to mention that a lack of inter-city cooperative agreements meant, until recently, that a disabled person couldn't use the paratransit in the city they're visiting, once they got there, to go anywhere from the bus station.

But despite these barriers, Peter Pan had some faithful riders for a couple of years. John Winsky, who lived in Boston, met his future wife, Joy, who lived forty-five miles away in Fitchburg. Both use wheelchairs, and thank god for Peter Pan, they could see each other. They commuted often for over a year, despite the fact that Joy had to walk a mile through the snow to John's house once she got to the bus station, due to the classic paratransit problem I described already. They took over sixty round trips on Peter Pan, and the paratransit costs to transport them would have been astronomical, paying for the lifts they used many times over. And their marriage points to the societal value of access that cannot be measured in dollars.

The weighing of these factors is in your hands. Reasonable costs, versus the integration, or lack thereof, of millions of potentially productive Americans. Your leadership is urgently needed, to pass the Americans with Disabilities Act of 1989.

WHEELCHAIR ACCESSIBILITY INTERCITY BUS REPORT

BY

GEORGE A. HERMAN
GENERAL SUPERINTENDENT OF MAINTENANCE
REGIONAL TRANSPORTATION DISTRICT

I am George Herman. I am the General Superintendent of Maintenance of the Regional Transportation District of Denver, Colorado. I am here to testify in favor of the Americans with Disabilities Act and report on our successful experience in Denver's providing wheelchair accessible, over-the-road service. RTD Denver currently has 17 such coaches in service. They have been in successful operation since January, 1989.

I, for one, am a convert. I had fought throughout the years the mere idea of providing fixed-line route bus service and intercity bus service for the handicapped. Since coming to RTD Denver in 1985, I have changed my mind completely. Not only can we provide the accessible wheelchair service without an increase in schedules, we can to it safely, reliably and cheaper.

In 1977 the RTD Board of Directors instructed the staff that the RTD system operating throughout the Denver area would be made accessible to the handicapped on fixed-line route service. Included along with this decision was to equip the 1986 intercity buses being ordered from Neoplan USA with the capability of providing wheelchair accessibility. The mechanical staff at RTD in Denver was given this task to complete.

The discovery of the Hubmatic lift manufactured in Germany which did not remove any luggage space and was totally within a neat package installed in the passenger compartment itself seemed to be the logical solution to this problem.

The following questions had to be answered during this engineering attempt:

1. Would luggage compartment space be eliminated?

   Answer: The lift was entirely within the passenger compartment in a small package. It required no loss of space in the luggage compartment. The only item in the luggage compartment is a small pump and motor that is entirely out of sight.

2. Is the price restrictive?

Answer: The lift is compact and as a result very low in price. We are estimating the cost of the lift on normal application to be somewhere between $7000 and $9000 total. This would include the door that is necessary on the right side of the bus in order for the lift to be deployed.

We recently installed a lift in an MCI coach, used in intercity bus service. The total cost of the engineering, modification to the lift, door and all auxiliary parts was $15,000. We expect the balance of the MCI fleet operated in Denver, Colorado could be accomplished for somewhere between $7000 and $9000 at this point in time.

3. Is the lift reliable?

After testing and nine months of service, we have had no lift failures and very minor maintenance required to the lift itself even though the lift is utilized some 100 plus times per week.

In the Denver area we have sometimes have snow even in the summer months, but the lifts have functioned successfully.

4. Is the lift available?

Stewart & Stevenson Power, Inc. of Denver, Colorado has applied for a patent on this lift design. This lift is now called the S&S Power Lift and is built and assembled in the United States and is available through that source.

5. How many seats are lost?

Answer: Due to RTD Denver's commitment to the handicapped community, and due to the length of time it has taken to provide a lift that was satisfactory for this type of service, RTD Denver has lost some four seats in the application of this lift. RTD Denver mechanical staff is presently in the engineering mode of utilizing a collapsible recliner seat to reach the point that no seats are lost. I believe that is mechanically feasible and the technology is around the corner.

6. Is it easy to gear up for production? How quickly these buses can be reproduced in mass?

   Answer: This lift is available today.

7. What is our ridership?

   Answer: RTD's annual boarding for wheelchair passengers averages some 42,000 plus per year.

8. Will this lift function in harsh weather?

   Answer: We had snow last week and we have it all winter. All RTD lifts function well, including snow conditions. The RTD Board of Directors and staff are commited to accessible transportation.

It has been alledged that Denver over-the-road coach service is not genuine over-the-road service. This is simply untrue. Our coaches make constant runs from 50-100 miles for 18 hours daily. We operate these coaches with their lifts continuously through great changes and altitudes and snow and ice conditions.

In reality, the provision for providing handicapped transportation through fixed-line bus service and intercity type bus service saves you dollars. The key to this is the fact that mobility is certainly the answer for almost all individuals, handicapped included. Since RTD Denver has taken the course to provide accessible, main-line transportation for the handicapped, we have seen a noticeable change in the handicapped community itself. The fact that they now have the mobility throughout the Denver area has made them self-sufficient and removed the need for them to be kept in nursing homes, for example, which are very expensive. If we would certainly add up the costs of confinement of the handicapped individuals who are locked into wheelchairs and the daily care that they would need provided to them, I would certainly believe that anyone would come to the conclusion that mobility and access to transportation saves you money when applied to the handicapped community itself.

In the 14 years I have been involved with the handicapped community, I have noticed a tremendous change in the attitude and appearance of the handicapped individuals. They are more in tune to the general day-to-day life that each of us not confined to a wheelchair enjoys. They can go where they want, when they want, in complete safety.

Only the technology was holding back the transit systems from providing this service. This technology is now readily available and very reasonable in cost.

I know there is reluctance of many companies and individuals to provide this type of transportation. It is simply a matter of not understanding what the long-range effects of providing this transportation really means.
An interesting story that could be well be applied to this situation would surround my assistant. My assistant and his wife were talking about getting a dog. The conversation surrounding the situation became, "Yea, but we don't really need a dog. Yea, but it would be nice to have a dog." The conversation continued on until they actually got a dog. They named the dog Yeabut. Yeabut perhaps should be applied to this situation. Why don't we just get on with providing the necessary transportation. In the long run we will save dollars.

Regional Transportation District

RTD

Memorandum

To: George A. Herman, General Superintendent of Maintenance

From: John Barberis, Division Maintenance Manager/Boulder

Date: September 22, 1989

Subject: Wheelchair Lifts on Intercity Buses

The Stewart & Stevenson Power Wheelchair Lift, formerly the Hubmatic wheelchair lift, has been in service in our fleet since January 20, 1989. These wheelchair lifts have been absolutely trouble free as they are the simplest and most basic design imaginable. We lubricate, clean and inspect these lifts on the regular 3000 mile inspection and have found very few minor problems such as the rubber hand grips have been removed by the passengers. This we solved by riveting the replacement grips on. Other than that, these lifts have been a dream come true.

In my 15 years in the transit industry, I have never seen such a simple and trouble-free wheelchair lift. I believe these lifts are the only practical solution to the handicapped accessibility problems we are presently faced with.

If you have any questions or concerns, please feel free to contact me.

for

John Barberis
Division Maintenance Manager/Boulder

Regional Transportation District

RTD

Memorandum

To: George A. Herman

From: John W. Davis

Date: September 22, 1989

Subject: Wheelchair Lift Costs

Per your request of September 21, 1989, I have compiled a summary report regarding the costs to maintain the various types of wheelchair lifts in use at the RTD. This information is from January 1, 1989 through August 31, 1989.

As of August 31, 1989, the RTD had an active fleet size of 721 buses, of which 582 (80.6%) were wheelchair lift equipped. As of September 11, 1989, 57 buses, all wheelchair lift equipped, were leased to a private contractor to provide service on 17 privatized RTD routes.

The total parts and labor costs associated with wheelchair lift maintenance on this group of 584 buses YTD through August 31, 1989, is $299,593.06 or $37,449.13 per month. This translates to an estimated annualized cost of $449,389.56 or an average annual cost per bus per year of $769.50.

Please note that the 1987 Neoplan intercity buses have an estimated annualized cost of $949.05 for 17 buses or $55.83 per year per bus to maintain the wheelchair lift.

I also took the liberty of attaching a report listing service and road calls for lift equipped buses for the same time period.

John W. Davis

John W. Davis
Coordinator, MRS
Operations

JWD/dlt
Attachment
cc: M. Ornes
M. Hecox

WHEELCHAIR LIFT PARTS AND LABOR SUMMARY

JAN. 1 THROUGH AUG. 31, 1989

SUBFLEET	LIFT MFGR.	LABOR HRS.	LABOR $	PARTS COST	TOTAL PARTS & LABOR
1977 AMG	EEC	$ 427.26	$ 7,263.42	$ 5,431.61	$ 12,695.03
1981 GMC	EEC	1,946.03	33,082.51	37,527.27	70,609.78
1978 Flxible	TDT	496.01	8,432.17	4,654.43	13,086.60
1982 & 1985 Mall Bus	MCR/Vetter (ramp)	291.58	4,956.86	13,511.01	18,467.87
1983 M.A.N. Artic	Lift-U	1,893.51	32,189.67	35,018.40	67,208.07
1986 & 1987 Neoplan	Lift-U	2,854.01	48,518.17	33,934.36	82,452.53
*1987 Neoplan Intercity	AMF Hubmatic	32.26	548.42	75.28	632.70
Unit Shop Rebuild	EEC/ Lift-U	2,026.44	34,449.48	Included above	34,449.48
GRAND TOTALS		$9,967.10	$169,440.70	$130,152.36	$299,593.06

*This is the 17 1987 Neoplan Intercity buses equipped with the AMF/Hubmatic lift.

LIFT RELATED SERVICE & ROAD CALLS from 01.01.89 thru 08.31.89

SUBFLEET.....	SERVICE CALLS TOTAL..	ROAD CALLS MAINT	TOTAL DELAY HOURS.
77 AMD	26	2	2.88
78 FLX MEDL	48	15	10.33
81 GMC TRNL	359	83	38.33
82 MALL ELEC	1	0	0.00
82 MALL VEH	13	6	1.83
83 M.A.N.	129	30	13.02
85 MALL VEH	4	0	0.03
86 NEO	231	39	26.05
86 NEOT	17	1	3.12
87 NEO	257	44	27.18
87 NEO ICITY	4	1	1.55
89 AM TRAN	1	0	0.33 > Mayflower Contract Service
89 TMC	2	0	0.00
PARA VAN	4	1	0.83
	=======	=====	======
	1096	222	125.49

VEH.003 R.T.D. DENVER ACTIVE LIFT EQUIPPED BUSES 09-22-89

SUBFLEET DESCRIPTION.........	AL VEH.	EM VEH.	PL VEH.	MALL VEH.	BO VEH.	LO VEH.	LL VEH.	UNITS
1977 AMG 4601-4776	4	7	11	0	0	0	0	22
1978 FLX 2338-2355	11	0	0	0	1	6	0	18
1981 GMC 4801-4927	0	46	42	0	0	2	29	127
1982 MALL 2501-2506	0	0	0	6	0	0	0	6
1982 MALL 2507-2519	0	0	0	13	0	0	0	13
1983 ARTIC 9001-9089	0	52	37	0	0	0	0	89
1983 NEOPLAN (6002)	0	0	1	0	0	0	0	1
1985 MALL 2520-2526	0	0	0	7	0	0	0	7
1986 NEO 5001-5167	40	42	34	0	0	0	28	150
5089-5101+5117-5120	0	0	0	0	17	0	0	17
1987 NEO 5201-5305	41	20	44	0	0	0	0	105
1987 ICITY 1501-1528	0	0	0	0	14	3	0	17
89 TMC (METHANOL)	0	0	5	0	0	0	0	5
1986 E8H 2411-2415	4	0	0	0	0	1	0	5
	====	====	====	====	====	====	====	=====
	100	167	174	26	32	12	57	582

AL = RTD, Alameda Facility
EM = RTD, East Metro Facility
PL = RTD, Platte Facility
MALL = RTD, Mall Buses
BO = RTD, Boulder Facility
LO = RTD, Longmont Facility
LL = RTD buses leased to LAIDLAW (private contractor)

Regional Transportation District

RTD

[illegible]
[illegible]
[illegible]

September 12, 1989

Ms. Irene Leventhal
U. S. House of Representatives
Washington, D.C.

Dear Ms. Leventhal:

Pursuant to our telephone conversation this morning, I offer the following information regarding the accessible service provided by the Regional Transportation District. As we discussed, RTD is in a transitional stage because we are in the process of privatizing a large segment of our service. The fleet figures reflect the vehicles operated by both RTD and the private contractors. All vehicles in contracted service must be wheelchair-lift equipped.

(1) Fleet Make-Up*

	Total Vehicles	Lift Equipped	% Lift Equipped
RTD	667	527	79%
Laidlaw	57	57	100%
Mayflower	55	55	100%
TOTAL	779	639	82%

* Includes handyRide vehicles

(2) Fixed Route Wheelchair Boardings (1988) Annual 42,087
Average Daily 115.31
(Figures are not available for peak hour boardings.)
operates 365 days per year.

(3) HandyRide

- o This service is provided by 10 vehicles plus 3 spares for a total of 13 vehicles (included in total fleet above). Service is provided only on weekdays. RTD receives no subsidies which are specifically designated for HandyRide.

- o HandyRide passenger trips (1988)

Wheelchair	Ambulatory	Total	Average Daily
17,740	22,707	40,447	158.62

– operates 6:00AM-6:00PM Monday to Friday no holidays

- o Cost per passenger trip (based on projected fully allocated costs and 1988 passenger trips): $35.87

(4) Wheelchair Lift Maintenance Costs (1988)

Parts	$ 158,871
Labor	246,566
TOTAL	$ 405,437

$537.00 per lift per year.

Sincerely,

R H Garside

R. H. Garside
Assistant General Manager
Operations

VEH.002 R.T.D. DENVER ACTIVE BUS FLEET SUMMARY 09-22-89

SUBFLEET DESCRIPTION.........	AL VEH.	EM VEH.	PL VEH.	MALL VEH.	BO VEH.	LO VEH.	LL VEH.	UNITS
1964-76 MCI 11-1200s	0	0	0	0	12	6	0	18
1976 AMG 3401-3440	8	9	22	0	0	0	0	39
1977 AMG 4601-4776	4	7	11	0	0	0	0	22
1977 GMC 1301-1312	0	0	0	0	12	0	0	12
1978 FLX 2301-2337	0	0	0	0	19	7	0	26
1978 FLX 2338-2355	11	0	0	0	1	6	0	18
1978 MCI/B 1401-1432	0	0	11	0	19	2	0	32
1981 GMC 4801-4927	0	46	42	0	0	2	29	127
1982 SUPER SKYLINER	0	0	0	0	1	0	0	1
1982 MALL 2501-2506	0	0	0	6	0	0	0	6
1982 MALL 2507-2519	0	0	0	13	0	0	0	13
1983 ARTIC 9001-9089	0	52	37	0	0	0	0	89
1983 NEOPLAN (8002)	0	0	1	0	0	0	0	1
1985 MALL 2520-2526	0	0	0	7	0	0	0	7
1986 NEO 5001-5167	40	42	34	0	0	0	28	150
5089-5101+5117-5120	0	0	0	0	17	0	0	17
1987 NEO 5201-5305	41	20	44	0	0	0	0	105
1987 ICITY 1501-1528	0	0	11	0	14	3	0	28
89 TMC (METHANOL)	0	0	5	0	0	0	0	5
1986 E&M 2411-2415	4	0	0	0	0	1	0	5
	====	====	====	====	====	====	====	=====
	108	176	218	26	95	27	57	721

STATEMENT OF JOHN WINSKE

LADIES AND GENTLEMEN OF THE COMMITTEE:

MY NAME IS JOHN WINSKE AND I LIVE IN BOSTON, MASSACHUSETTS. I AM THE EXECUTIVE DIRECTOR OF THE MASSACHUSETTS COALITION OF CITIZENS WITH DISABILITIES AND THE CHAIRPERSON OF THE ACCESS ADVISORY COMMITTEE TO THE MASSACHUSETTS BAY TRANSIT AUTHORITY.

IN 1986, THE COMMONWEALTH OF MASSACHUSETTS PURCHASED 28 INTERCITY COACHES THROUGH A PROGRAM CALLED THE INTERCITY BUS CAPITAL ASSISTANCE PROGRAM (IBCAP). SIX OF THESE BUSES WERE WHEELCHAIR ACCESSIBLE. THE SIX WHEELCHAIR ACCESSIBLE BUSES WERE LEASED TO SIX DIFFERENT COMPANIES THROUGHOUT THE COMMONWEALTH

EARLY THAT SUMMER, I MET A YOUNG LADY NAMED JOY WHO LIVED IN FITCHBURG, MASSACHUSETTS. FITCHBURG IS A SMALL CITY SOME 50 MILES NORTHWEST OF BOSTON. JOY, LIKE MYSELF, USES AN ELECTRIC WHEELCHAIR FOR MOBILITY.

ONE OF THE COMPANIES WHICH LEASED AN ACCESSIBLE INTERCITY BUS WAS ENGLANDER COACH LINES, BASED IN WESTERN MASSACHUSETTS. THE BUS ROUTE FOR ENGLANDER PASSED THROUGH FITCHBURG AND ENDED IN BOSTON. FOR THE BETTER PART OF FIFTEEN MONTHS, JOY AND I USED THAT BUS TO VISIT EACH OTHER ON WEEKENDS AND HOLIDAYS. ON A TYPICAL WEEKEND, JOY WOULD CATCH THE BUS AT 8 P.M. ON FRIDAY AFTER FINISHING HER CLASSES AT WORCESTER STATE COLLEGE. WHEN JOY ARRIVED IN BOSTON AT 9:30 P.M., SHE WOULD WHEEL HERSELF FORO THE ONE MILE TRIP TO MY APARTMENT. SHE WAS NOT ABLE TO USE THE PARATRANSIT PROGRAM IN BOSTON BECAUSE OF RESIDENCY REQUIREMENTS.

FROM JUNE 1986 UNTIL OCTOBER 1987, JOY AND I TOOK 50 ROUND TRIPS ON THE BUS. IN ADDITION TO VISITING JOY, I USED THE BUSES FOR BUSINESS PURPOSES AROUND THE STATE. IN OCTOBER OF 1987, JOY MOVED TO BOSTON WHERE SHE HAD GOTTEN A JOB. AFTER OCTOBER, WE BOTH USED THE BUS APPROXIMATELY ONCE A MONTH TO VISIT JOY'S FAMILY AND TO MAKE OUR WEDDING ARRANGEMENTS. WE WERE MARRIED IN JUNE OF 1988.

IT SHOULD BE POINTED OUT THAT IF JOY AND I HAD HAD TO RELY ON PARATRANSIT (VAN) SERVICE TO AND FROM FITCHBURG, IT WOULD HAVE COST US AT LEAST $150 PER ROUND TRIP. THE COST OF THE BUS WAS $9.00 PER ROUND TRIP. I CAN HONESTLY SAY THAT NEITHER ONE OF US COULD HAVE AFFORDED TO HAVE A RELATIONSHIP AT $150 PER WEEKEND. THE FACT THAT I AM HERE TODAY SPEAKS VOLUMES ABOUT THE NEED FOR THE AMERICANS WITH DISABILITIES ACT. TWO YOUNG PEOPLE USING BUSES TO CARRY ON THEIR ROMANCE SHOULDN'T BE NOTEWORTHY, BUT FOR THE DISABLED IN AMERICA OUR STORY IS QUITE UNIQUE.

DESPITE MY STORY, YOU WILL HEAR TODAY FROM OPPONENTS OF THIS BILL THAT THE BUSES ARE NOT UTILIZED VERY OFTEN. I WOULD LIKE TO TELL YOU SOME OF THE REASONS FOR THIS APPARENT LOW RIDERSHIP STATISTIC.

BEFORE 1988, THERE WAS NO COOPERATIVE AGREEMENT BETWEEN THE FIFTEEN TRANSIT AUTHORITIES IN MASSACHUSETTS. THAT IS TO SAY THAT EVEN IF A PERSON WAS ELIGIBLE TO USE THE PARATRANSIT (VAN) SERVICE IN THEIR OWN COMMUNITY, THEY COULD NOT USE THAT SERVICE TO TRAVEL TO ANOTHER PART OF THE STATE BECAUSE EACH INDIVIDUAL TRANSIT AUTHORITY HAD ITS OWN RESIDENCY REQUIREMENTS. THIS IS WHY JOY HAD TO WHEEL THE ONE MILE TO MY APARTMENT IN THE MIDDLE OF WINTER OR SUMMER AT 9:30 AT NIGHT.

BECAUSE OF THE LENGTH OF SOME OF THE ROUTES, BUSES ONLY MADE ONE ROUND TRIP PER DAY. A DISABLED PERSON HAD TO HAVE ACCESSIBLE LODGING FOR THE NIGHT.

THE NEW ACCESSIBLE BUS PROGRAM WAS NOT WELL PUBLICIZED. THIS WAS DELIBERATE SINCE THE LIFTS WERE OF AN EXPERIMENTAL NATURE. THERE WAS CONCERN THAT CONSUMERS MIGHT BE STRANDED.

THE LIFTS FOR THE FIRST YEAR HAD SEVERAL MECHANICAL PROBLEMS, AND WERE OUT OF SERVICE FREQUENTLY. THEY WERE EVENTUALLY REWIRED BY ONE OF THE BUS COMPANIES IN MASSACHUSETTS AND THOSE IDEAS WERE INCORPORATED INTO THE NEW LIFT DESIGNS.

LASTLY, IT MUST BE MENTIONED THAT ONE OF THE REASONS FOR THE RIDERSHIP FIGURES NOT BEING HIGH IS THE TIMIDITY OF PERSONS WITH DISABILITIES. DISABLED PEOPLE HAVE BEEN CONDITIONED TO THINK THAT THEY CANNOT RIDE INTERCITY BUSES. INDEED, THEY HAVE BEEN SO BEATEN DOWN ABOUT THIS POINT THAT THEY HAVE BECOME RELUCTANT TO TRY ANYTHING AT ALL THAT IS "NEW". THE OLD ADAGE "IF IT SEEMS TOO GOOD TO BE TRUE,, IT PROBABLY IS" IS ETCHED ON THE HEARTS OF MANY DISABLED PEOPLE.

WHAT IS KNOWN IS THAT AS TRANSPORTATION SYSTEMS BECOME MORE ACCESSIBLE, THE RIDERSHIP BY DISABLED CONSUMERS INCREASES DRAMATICALLY. THE MASSACHUSETTS BAY TRANSIT AUTHORITY HAS SEEN THE DEMAND FOR ACCESSIBLE BUSES INCREASE SIX-FOLD SINCE 1986. YOU HAVE ALSO SEEN THE RIDERSHIP ON THE METRO SYSTEM HERE IN WASHINGTON, D.C. INCREASE. I UNDERSTAND THAT WHEN THAT SYSTEM WAS BEING BUILT THERE WAS CONCERN THAT THE DISABLED WOULD NOT RIDE IT. YOU NOW KNOW THAT THIS IS NOT TRUE. YOU HAVE SEEN THAT, AS CONFIDENCE IN THE SYSTEM GROWS, THE NUMBER OF DISABLED PEOPLE USING THE SYSTEM GROWS. ACCESSIBLE INTERCITY BUS SERVICE IN MASSACHUSETTS IS ALSO NEW, BUT I FEEL CONFIDENT THAT THERE IS A DEMAND AND THAT THE SERVICE WILL BE USED AS THE BUGS ARE WORKED OUT, AS THE SERVICE IS PUBLICIZED, AND AS LOCAL TRANSPORTATION -- NEEDED TO COMPLETE THE TRIP -- BECOMES ACCESSIBLE. THIS SUMMER, MASSACHUSETTS PURCHASED 22 MORE ACCESSIBLE COACHES WHICH SHOULD GREATLY IMPROVE TRAVEL ALTERNATIVES.

IT SHOULD ALSO BE NOTED THAT IF THE AMERICANS WITH DISABILITIES ACT IS PASSED, IT WILL INCREASE EMPLOYMENT OPPORTUNITIES FOR THE DISABLED. THIS INCREASE IN EMPLOYMENT WOULD RESULT IN MORE PEOPLE USING INTERCITY BUSES TO COMMUTE TO WORK. MOST DISABLED PEOPLE, PARTICULARLY THOSE BEGINNING WORK, WILL NOT HAVE MONEY TO PURCHASE A VEHICLE AND THUS WILL HAVE TO RELY ON PUBLIC TRANSPORTATION.

WE MUST STRIVE TO MAKE ALL FORMS OF TRANSPORTATION, PUBLIC AND PRIVATE, ACCESSIBLE TO THE DISABLED. IT WOULD MAKE NO SENSE TO HAVE THE BUSES IN CITY "A" ACCESSIBLE AND THE BUSES IN CITY "B" ACCESSIBLE BUT THE INTERCITY COACH WHICH CONNECTS THEM INACCESSIBLE. IT IS ONLY WHEN ALL FORMS OF TRANSPORTATION ARE 100% ACCESSIBLE TO THE DISABLED THAT WE WILL SEE A DRAMATIC INCREASE IN RIDERSHIP BY DISABLED PEOPLE.

LET ME GIVE YOU AN EXAMPLE OF THE NEED FOR ACCESSIBILITY IN ALL FORMS OF TRANSPORTATION. I LEFT MY HOUSE AT 9:30 LAST NIGHT AND TOOK THE ORANGE LINE (WHICH IS A HEAVY RAIL LINE IN BOSTON) TO THE AMTRAK STATION. THERE, I WHEELED FROM A HIGH LEVEL PLATFORM ONTO ONE OF AMTRAK'S NEW ACCESSIBLE SLEEPER CARS. WHEN I ARRIVED IN WASHINGTON THIS MORNING, I BOARDED THE METRO AND CAME HERE. IF ANY ONE OF THESE PIECES WAS MISSING, I WOULD NOT BE ABLE TO BE HERE TODAY.

WHAT THE AMERICANS WITH DISABILITIES ACT IS ALL ABOUT IS FINALLY GRANTING THE DISABLED FULL CITIZENSHIP IN THIS NATION. IT IS A CLEAR AND CONCISE MESSAGE TO ALL AMERICANS THAT WE ALL BELONG. LAST YEAR JOY AND I PAID CLOSE TO $5,000 IN FEDERAL INCOME TAX. ALL WE ASK IS THAT WE BE ABLE TO WORK AT ANY JOB AT WHICH WE ARE QUALIFIED, RIDE ON ANY BUS FOR WHICH WE HAVE THE MONEY, LIVE IN ANY COMMUNITY OF OUR CHOOSING, AND ENJOY THE COMMERCIAL AND RECREATIONAL OFFERINGS PROVIDED IN THESE UNITED STATES.

PVA
PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF
RALPH MARKWARD
EXECUTIVE DIRECTOR, ZIA CHAPTER
PARALYZED VETERANS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
REGARDING THE
"AMERICANS WITH DISABILITIES ACT OF 1989"
SEPTEMBER 26, 1989

Mr. Ralph Markward
Executive Director
ZIA Chapter PVA
833 Gibson Boulevard, S.E.
Albuquerque, NM 87102

801 Eighteenth Street, N.W., Washington, D.C. 20006 (202) USA-1300 Fax: (202) 785-4452

Chairman Mineta and Members of the Subcommittee, my name is Ralph Markward. I am the Executive Director of the Zia Chapter of the Paralyzed Veterans of America in Albuquerque, New Mexico. I speak in favor of the private transportation requirements of the Americans with Disabilities Act from personal experience.

I am a veteran of World War II. I was a tailgunner and flew 30 missions over Germany. I am proud of my service to my country, but my country doesn't seem very proud of me. Because I and my fellow disabled veterans experience discrimination every day.

When I was in the US Army Air Corps, I was stationed in places like Pyote, Texas, St. Louis, Missouri, and Las Vegas, Nevada. In every station I took intercity Greyhound and Trailways buses from the base, to town, and sometimes, home to visit my family. With my duffel bag over my back, I and soldiers like me were a familiar sight.

Now the same ex-soldiers, like me, who are disabled, cannot take these buses. My wife and I would like to travel aboard Greyhound with senior citizen groups, because my wife is unable to drive a vehicle on highways. But we can't. When we reach a new city, we would like to take tour buses like thousands of other tourists. Our money, as the saying goes, is as green as theirs. But my business is not welcome. The buses cannot accommodate me. And sometimes, they refuse to accommodate me, even if, with help, I could get myself on the bus.

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My fellow disabled Americans who, like me, need access to private transportation, are likely to be poor, because disabled Americans are much poorer, as a group, than non-disabled Americans. In 1984, according to a Lou Harris poll, half of us had household incomes under $15,000, while only 25% of all Americans were that poor For the older disabled, the poverty rate is greater...fully one in three older disabled Americans has an income below $7500; twice as high as for the non-disabled. The more severe the disability, the statistically lower the income.

I don't have to tell you that private transit is the only choice available to poor Americans. What this means is that access to private transit is even more crucial for disabled persons than for the rest of the population. Yet we have none.

Let's look at my state, New Mexico. It's 46th or 47th in per capita income of all the states. Tourism is a big business in my state. Albuquerque is the only city in New Mexico served by major airlines, therefore Greyhound bus travel is absolutely essential. But it is not available to us.

Accessible airport transportation, also essential, is absolutely unavailable. All paratransit is available ONLY to certified handicapped persons, not tourists or business travelers, since certification requires a month. The "Shuttle Jack" bus service between Albuquerque and Santa Fe is also not lift equipped.

The enforced isolation of older disabled Americans is truly un-American. You may think that my age peers and I -- and I am 64 years young -- are taken care of by paratransit. But we are not. Paratransit is unsatisfactory as it is, around town. It would never work over long distances. Older disabled Americans need access to mainline transit as well as private transit. We may be older, but don't let us be forgotten. Please help restore our pride and our ability to be a part of our society, with your support of the Americans with Disabilities Act.

Mr. MINETA. I would like to ask the following members of the next panel to come before us: Ms. Wilson, Immediate Past President, Community Transportation Association of America here in Washington, D.C., as well as Executive Director of JAUNT, Charlottesville. We will have Mr. Payne doing the honors here.

I would like to have, also, Mr. Ray Mundy, Executive Director of the Airport Ground Transportation Association, Knoxville, come before us; Mr. Alfred B. LaGasse, III, Executive Vice President, International Taxicab Association, Kensington, Maryland; Mr. Rudolph H. Bruhns, Executive Vice President and General Manager, Greater Houston Transportation Company, and Mr. Robert M. Werth; President, Diamond Transportation Incorporated; Alexandria.

I would like to yield time to our very fine colleague, Mr. Payne.

Mr. PAYNE. Mr. Chairman, thank you very much. It is my honor and privilege to introduce our next witness, Linda Wilson, who is representing the Community Transportation Association of America. Linda is the Executive Director of the Jefferson Area United Transportation Corporation, which is known as JAUNT, which serves the rural counties outside of Charlottesville, Virginia.

Prior to being elected to Congress, I was involved in running a business and owning a business near Charlottesville, Virginia, and in that capacity had direct dealings with Linda and with JAUNT in arranging transportation for workers who, without JAUNT, would have been unable to have a job there or anywhere else in a rural setting.

In addition to working for JAUNT, Linda is the Immediate Past President of the Community Transportation of America. She is extremely knowledgeable about transportation issues, and I found her advice regarding even this bill before the committee to be very useful. Linda, thank you very much for joining us here today.

I look forward to hearing your remarks regarding the Americans with Disabilities Act. Thanks.

Mr. MINETA. Ms. Wilson, you may proceed.

TESTIMONY OF LINDA WILSON, IMMEDIATE PAST PRESIDENT, COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA, EXECUTIVE DIRECTOR, JAUNT, CHARLOTTESVILLE, VA; RAY MUNDY, EXECUTIVE DIRECTOR, AIRPORT GROUND TRANSPORTATION ASSOCIATION, KNOXVILLE, TN; ALFRED B. LaGASSE, II, EXECUTIVE VICE PRESIDENT, INTERNATIONAL TAXICAB ASSOCIATION, KENSINGTON, MD; RUDOLPH H. BRUHNS, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, GREATER HOUSTON TRANSPORTATION CO., HOUSTON, TX; AND ROBERT M. WERTH, PRESIDENT, DIAMOND TRANSPORTATION, INC., ALEXANDRIA, VA

Ms. WILSON. Thank you so much. You gentlemen are patient. You have waited a long time for this panel. I hope we can say you have left the best for last.

As Mr. Payne has introduced me, I am the Executive Director of JAUNT, Incorporated in Charlottesville and have been in that capacity since 1980. We are an agency providing primarily public transportation.

We are a public agency, and we provide public transportation services to residents of Virginia's Regional Planning District X, which includes Mr. Payne's home county of Nelson County, four other rural counties, and the small urbanized area of Charlottesville, Virginia.

We have a population of about 161,000 in that community and those rural counties. We operate a fleet of 32 vehicles and probably will be expanding that to about 34, all under 20 passenger. We offer demand response service, fixed route, commuter route service, and we run the regional ride sharing system in our area.

We do operate in a community where there is a fixed route system. In the city where the fixed route system exists, we provide the accessible transportation service. Our ridership this past year, that was for the 1987-1988 year, we provided 160,000 passenger trips, of which approximately half were for disabled persons, and about 23 percent of our total trips, or somewhere in the neighborhood of 37,000, were for persons in wheelchairs. So, we are experienced in transporting the disabled.

As for my own experience, in addition to operating this transportation system, I serve as a member of the executive committee of our local independent living center, I am on the Transportation Committee for the Virginia Board for the Rights of the Disabled, and I have served for the past three years, since 1986, and was one of the founders of the National Association for Transportation Alternatives, NASTA, which merged this summer with Rural America to form the Community Transportation Association of America.

We at CTAA are the advocacy and membership organization for what we always call the "significant others," but we basically serve the rural, small urban, human services and specialized transportation systems as a membership organization.

We have public entities as members, we have private non-profit members, and we have some private for profit members. We have about a 300-member membership, but we serve actually an industry of somewhere around four to five thousand providers.

About 1200 of those are small rural systems with Section 18 funds. And we have a number, I would say somewhere between four and five thousand out there of other kinds of systems, human services, HHS systems.

I am presently continuing as a member of the Board of CTAA, and I am here in my capacity as a member of the Board to present the CTAA Board's views.

We represent those folks who know what specialized and accessible transportation is all about. We know how difficult it is to provide, and we know how important it is. So I want to give you my views—remember that I am speaking for myself but mainly for my industry.

CTAA's statement of objectives pledges the organization to work to establish public policies that recognize individual mobility as a basic human right. That came out of our statement of purpose. So it follows logically that we subscribe to the central principle of the Americans With Disabilities Act, that this commitment to mobility cannot be discriminatory in character.

At a meeting of our Board last week, we agreed it was important that we establish a statement and a formal policy on accessibility, I am not going to read that. It's rather wordy, and we have a lot to accomplish. But it is attached to my written testimony, and I would ask that you take note of it because we worked hard to come up with a statement that we thought was fair and important.

The issue of accessible transportation has a special familiarity for our members. Most of us in this industry started out doing human services transportation. My own transit system began in 1975 as a consortium of several community agencies; probably at that time, only five or six.

We now serve 77 human service agencies in the 5-county area. We are the human service transportation provider. About half of our passengers are funded or paid for by human service agencies, and the other half pay out of their own pockets as public riders.

So, we know what we are talking about when we refer to the transit dependent. That includes persons with disabilities, and they continue to constitute the core of our ridership.

In many urban areas, it's interesting to note that CTAA members, and my own agency is one, are relied on at the present time to provide all the accessible transportation for the public transportation system.

In Charlottesville, Virginia, which is our central city, we have a very small fixed route bus system, and right now, the system is not life equipped or basically handicap accessible. It has kneeling buses that make it easy for elderly people to get on, but wheelchairs cannot be accommodated. So we provide the accessible system, all the accessible transportation in the urban area.

In many rural areas around the country, our members are human service transportation providers who receive no UMTA funding or no direct federal transit assistance. Many of these are human service agencies who get HHS funds, but there still may be in those rural communities—it was interesting this morning to hear Mr. Craig, for example, talking about his rural area because in many rural areas, only the human service agencies provide any transportation for the folks who live there.

We are particularly aware that the barriers to accessibility take many forms, and that removing those barriers requires a variety of responses. It's not going to take one response or another response to remove those barriers. That includes both accessible fixed route service and complimentary paratransit service.

The CTAA organization believes that this legislation should be put into the perspective of our members and the people we serve. I want to point out several concerns that we have. First of all, the national commitment to full accessibility for transit reflected by this bill—and I am going to say something that is unpopular with a lot of people—has to be accompanied by a national commitment to achieve it without making transit and those who depend on it bear the full cost.

There is no way that you can pass a bill like this and not have some accompanying appropriations bill. It is absolutely impossible. If enactment of ADA is not accompanied by appropriate financial support, it becomes a zero-sum game in which service will actually be diminished rather than made more equitable and adequate.

Just to point out a couple of things, currently the non-urban areas in the country receive about 3 percent of all the UMTA

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funds. This past fiscal year, non-urban areas received $64 million. The appropriations that have already been approved by the House for non-urban areas in 1990 is $52 million, so that is a $12 million dollar cut.

At the same time, it is being considered that we will have to increase the amount of transportation we are providing to the disabled. There is a definite contradiction here, because we already receive so little money that most of us aren't even able to buy new buses. This is significant because most of our vehicles are small vehicles. They are body on chassis vehicles or mini vans that have ramps. None of us have anything really fancy, no big buses. The most expensive vehicle in my fleet costs under $40,000.

You would think replacing a vehicle wouldn't be such an expensive proposition. We consider our vehicles worn out or depreciated at 90,000 miles, and about three years. But I just recently auctioned off some 1981 vehicles that were creeping up on 200,000 miles.

We have been, as we have been replacing vehicles, getting more and more wheelchair accessible vehicles. But it's an expensive proposition, because the money is not there to pay for them.

So what we are concerned about here is the fact that while we are talking about the program, in no way can you avoid discussing the costs.

One thing no one has mentioned today is insurance. If you are going to be handling persons who are disabled, you are going to expect your insurance to go up, believe me, take it from one who has to pay that insurance, and there are many hidden costs.

There just has to be accompanying money or this bill will never happen, no matter how much you want it to happen. It will never be a reality because the money won't be there.

Secondly, the equality of access to transit sought by this legislation is only a part of the equality of access to transit that our organization is working for. We want to stress that in many rural areas and in a surprising number of small urban areas, ADA is mandating equal access to non-existant or totally inadequate transit resources and services.

What we are saying here basically is that what ADA is mandating is that where transit exists, there be equal access, but no one is mentioning anywhere in this act that those areas that do not have any transit provide something for the disabled who do not have any way to get around.

We have heard people talking about the fact that when you are blind, you cannot drive. It's expensive to purchase a vehicle if you are disabled. People have different sorts of disabilities. There are some people who cannot even drive an equipped vehicle because of their type of disability.

What this basically means is that you have to live in the city. You cannot be disabled and live in a rural area. For instance, in Virginia, 77 percent of the state doesn't have any kind of public transportation. We have statistics showing that our recent analysis determined that one-fourth of all the urbanized areas of less than 100,000 population are unserved by federally assisted transit. 97 percent of the larger urbanized areas have public transit. The disparity is even greater in rural areas which represent 40 percent of the total population, an estimated one-third of those who could be classified as transit dependent, Rural areas only have 4 percent of federal transportation assistance, and a similar share of current transit services. So we are really looking here at a transit gap.

We do have, I think, a serious issue, and I will give you an example. I am trying to watch the time and have respect for my cohorts here, but I do want to give you one example.

Recently I dealt with an issue in a rural county in our service area that we currently don't serve. We don't provide any public transportation in that county because the local government wouldn't put up their share of the money, and you cannot get federal and state money without local money. I had a woman from that county come to me, she was really desperate. Her husband was diabetic and was on renal dialysis at the University Hospital, which is in Charlottesville, and she lived about 60 miles away. She wanted me to provide transportation for her husband. She had been able to get him in for his dialysis three days a week. He had one leg amputated, but even with one leg amputated, he could still get in and out of the car. Then he had his second leg amputated.

Suddenly the situation changed. Here's a very large man, a very small wife. They live far out in the country, no neighbors nearby, and she cannot get him in and out of the car, much less in and out of his wheelchair. So her doctors told her to call us. We couldn't help her. We cannot provide transportation in their county. They are not eligible for medicaid because they own property.

The result was that these folks had to give up their family home and move into the City of Charlottesville because it was the only way he could get access to medical treatment. So people in rural areas are really hurt by a lack of transportation, and the disabled in rural areas soon become the disabled in urban areas. That's where they go.

While this issue is probably most glaring for local transit services, it is also reflected in intercity service. Goodness knows we have heard enough about that today. Even before bus deregulation rural areas were losing intercity bus service. Since the 1982 legislation that loss has accelerated.

We feel this trend must be ended and reversed. We are working with Greyhound. As a matter of fact it was NASTA—that preceded CTAA—that worked with Mr. Currey to start the Rural Connector Program. My own system is a member of the Rural Connector system. We take people to the Greyhound bus. We have an arrangement with them. I told Mr. Currey this morning that it is an interesting fact that many of the people we transport to the Greyhound bus are disabled people, but they are not people in wheelchairs.

There are many disabled people using Greyhound but there is that one group of people, the people in wheelchairs, who cannot get up into the bus, who do not have this access.

We think that what Mr. Currey is proposing is an important initiative and that Greyhound deserves great credit for taking it. We are concerned that there is currently no accessible transportation outside the city limits.

Another brief story and I will close shortly: A year and a half ago, in January of 1988, we had our inaugural ceremony in Charlottesville for the Rural Connector program. We had a number of dignitaries there: people from UMTA, the state secretary of transportation, a vice-president from Greyhound. It was a very special ceremony to show the happy marriage between rural public transportation and the intercity bus service. The person who was master of ceremonies for that program was our board vice-president, a man, 28 years old, who is in a wheelchair because of a disease that caused him to have fragile, easily broken bones. It was almost impossible for him to get out of his wheelchair without injury.

He could not move around without injury outside of his wheelchair. He had a specially made motorized chair. The culmination of that ceremony was a ride on a brand new beautiful Greyhound bus. Everyone got to ride but the master of ceremonies. We had to bring a special van from our transit system that rode around behind the bus so that he could be part of the ceremony.

I think that this story is what we are all here about, folks. We would like to be able to see disabled people not always trailing around behind those who are able-bodied, but having their own entree to full accessibility. The problem is how do we do it and how do we afford it?

To summarize, we at CTAA believe enactment of the ADA is an important step toward our own goal of full accessibility and mobility regardless of where you live. Someone mentioned earlier the fact that, as you age you become more disabled. Remember that this is not someone else's problem, because all of us, if we live long enough, are going to begin to see our bodies go. I look at my own mother who is now 77 years old and still driving. A couple of weeks ago I was at a conference with a woman who told me about her mother in her 80's, who lived in a section of rural Iowa where there was no public transportation. I asked her if her mother was still driving and she said yes, illegally. She lost her license but she is out there, can't see, physically unable to get around, but, because she is determined to be independent and to live at home and to have that quality of life that we all want, she is still driving her car in spite of everything. She may end her years in jail, but by golly she will have her independence! We are all concerned about access to mobility, and the resulting quality of life.

Thank you for letting me testify.

Mr. **Mineta**. Thank you very, very much.

Mr. Ray Mundy, Executive Director, Airport Ground Transportation Association.

Mr. **Mundy**. Mr. Chairman and Members, I am gaining new respect for the durability of my elected representatives. I come today to make these remarks both as Executive Director of the Airport Ground Transportation Association and a professor of transportation at the University of Tennessee.

I am quite familiar with the users and the providers of transportation. In our association our operator members are people who run vans, people who run sedans, taxi cabs, mini-buses and over-the-road coaches. They run them on fixed routes, fixed schedules, in demand-responsive modes and mixed modes in many cases.

The predominant mode at the airport is demand-responsive from the airport and predominately fixed-route schedule from hotels to the airport. Does that make these services demand-responsive, fixed route services? It seems to me it is somewhat vague. The bill as presently constructed would severely impact the services we provide. A bullet to Greyhound would be a death blow to our fixed route operators. In many cases there are only three or four vans operating this kind of service.

For them to be responsible for putting a lift on each piece of equipment would be economically absurd. They could not afford the cost. It is not a matter of whether the cost is $5,000 per lift or $10,000 per lift, the cost would be prohibitive at any range to them. As has been stated by the bus representatives, it would be extremely difficult to equip a 47-passenger bus with a wheelchair lift and to provide enough aisle space to be able to make it back to a restroom facility.

You would have to take out at least 10 seats along the aisle in order to run a wheelchair down the aisle, or you could possibly make a 19 inch wheelchair, technically infeasible for people presently in wheelchairs. That is not to say we are not sympathetic to the plight of disabled or to their desires to be independent and free.

Most operators do provide access when asked. They are simply not asked a great deal. We tried to poll our membership and we got estimates like one rider in 25,000 trips or one in 100,000 trips. Drivers try to lift the individual, and to stow the wheelchair in the bus bay. As a matter of fact, providers are probably doing this in violation of the federal highway regulations which prohibit the transportation of acid batteries in over-the-road vehicles. They are doing this, though, because they are compassionate and trying to met the needs of the disabled.

There are some technical problems with the bill as we see it. When I say technical problems, I am not a lawyer but I do teach transportation law. I have been told by judges that I am not a lawyer and should not offer legal opinions. I am not certain therefore, what constitutes an automobile type body.

That is not defined. I teach transportation but we have no definition of what an over-the-road coach is nor what a demand responsive coach is. I don't recall any other piece of legislation where these terms have been defined. As to our operators in mini-bus service; are those over-the-road or demand responsive?

Thirty days after the act operators will all call themselves over-the-road coaches. Many that offer a schedule for downtown will probably offer more hotel schedules on a demand responsive basis so they can call themselves a demand responsive system and not be required to put a wheelchair lift on every vehicle.

Many of the points in our testimony have been touched upon. Many of our operators tell me they would be more compassionate and willing to provide service to the disabled and handicapped if their insurance permitted them to do so. Many are convinced by their insurance agencies that they are not covered when they try to assist anyone out of a wheelchair, so they are hesitant to provide that service.

The example was given earlier in testimony about some of our operators. Super Shuttle in California, for example, is a member. It does have wheelchair lift vehicles in its fleet. Out of about 200 vehicles it has four wheel chair equipped vans.

As that service is expanding, it would be ridiculous to require the fixed route operator serving the same community to put wheelchair lifts on their vehicles when their ridership is expected to be nil.

The alternative is the demand responsive van type operations and the fixed route carrier has a difficult time competing with that transportation.

Specifically, I think we would like to ask that the committee take three actions. One, we would like to ask that Section 304 of this bill be stricken until such time that the three-year study of private operator impacts is completed and the resulting recommendations are made known to Congress.

We would like to ask that consideration be given to other methods of wheelchair accessibility, i.e. ramps and others be studied as acceptable alternatives. As we read this bill we do not get that sort of understanding that other accessibility methods as such, are acceptable in place of wheelchair lifts. We would also like to suggest that other countries and their airports be studied to determine how they meet the needs of the disabled and maintain financial viability of their fixed route carriers.

In our remarks we gave an example of one carrier, Pearson International Airport in Toronto where they decided to take action to serve the handicapped. They allowed the next five permits for vehicles and limos only on the condition that they be wheelchair accessible. They are Chrysler mini-vans with a low floor. They have a ramp that comes out and they are easily accessible. Five vehicles are serving all the demands this major North American airport has for wheelchair accessibility.

There is a great demand for taxi cab and limo service at that airport. The entry is restricted. If one can get licensed at Pearson, then agreeing to have the vehicle equipped with the wheelchair device is very acceptable.

At no cost to the government, they are placed in service. These vehicles are called to go to the head of the line whenever a person in a wheelchair wants this service. People enjoy them because they are a more luxurious vehicle. They have solved the problem of wheelchair accessibility at that one airport. I use that example only to point out there are many ways to solve the accessibility problem, the real essence of the act, if you will, other than equipping every vehicle with a wheelchair lift. That provision of the bill would be extremely harsh.

It is discriminatory toward the fixed route industry and a lot of the service being provided by fixed route in rural areas would cease to exist. I don't know whether it would be 5,000 communities as Mr. Currey said, but it would be a large number. We in the airport ground transportation industry have empathy for the disabled. We are not disinterested in seeing that they are provided with equal access and service. It is a matter of who pays for it.

You cannot ask the isolated or present users to provide for the additional significant cost to provide this service. Comparing private and public transit and the financing of the two is like comparing apples and oranges. Public transit has provided access with public funds and society in general has supported that.

We are private operators. If you want these systems in fixed route service to have wheelchair accessibility, then you will have to provide some sort of fixed authorization bill in addition in order to pay for it. Otherwise, our operators simply cannot financially afford it and will cease to provide service.

Thank you.

Mr. **Mineta**. Thank you.

Mr. LaGasse.

Mr. **LaGasse**. I am Alfred LaGasse, Executive Vice-President of the International Taxicab Association. With me are Rudy Bruhns and Robert Werth.

The International Taxicab Association represents the owners and managers of taxicab, limousine, livery, van and minibus fleets. Our 696 member companies operate approximately 40,000 for-hire, demand-responsive vehicles.

In the United States, the private, for-hire vehicle fleet industry consists of over 6,300 companies, operating over 205,000 vehicles, providing over 355,000 jobs, transporting over 2 billion passengers and grossing approximately $6 billion annually.

No sector of public transportation is more experienced, more dedicated, or provides more mobility for disabled persons than does the demand-responsive, for-hire vehicle industry. With non-modified standard equipment, the 170,800 taxicabs and 16,600 limousines and liveries in the United States have long met the local public transportation needs of people with disabilities. Our industry also operates 10,900 vans, approximately 40 percent of which are equipped with lifts to serve passengers who use wheelchairs. The remaining 6,700 vehicles that are operated by our industry include minibuses, school buses, motor coaches, ambulances and supervisory vehicles.

A key indication of the for-hire vehicle industry's commitment and ability to transport people with disabilities is the degree to which public and private organizations contract with our industry for transportation service. Over 65 percent of all our industry's companies contract to provide transportation service to public and private organizations. Forty-six percent of all our companies contract to transport company employees, 45 percent contract to transport hospital and convalescent home patients, many of whom are disabled. Forty-four percent contract to transport senior citizens, a large proportion of whom are disabled. Forty-four percent contract to transport school children, particularly special education children who are disabled, and 44 percent contract specifically to provide transportation for those who have disabilities.

We are here to applaud H.R. 2273. However, we do see a few problems and a need for clarification.

The Senate and House bills were identical when introduced and remain generally similar. However, there are important distinctions between the two bills which we would like to bring to your attention.

First of all, the bills treat three types of transportation providers and we would like to review each one separately. Under public sector providers, all fixed route vehicles must be fully accessible, paratransit services must supplement fixed route service and general public demand-responsive service has an exception from the full accessibility requirement if the system, when viewed in its entirety, provides an equivalent level of service to those with disabilities.

The major difference between the two bills is that the Senate bill contains a potential loophole to the supplemental paratransit provision. Whether the House adopts the loophole or not, we urge this committee to adopt the six service criteria outlined in the Senate report which outlines what constitutes service to people with disabilities.

Both bills prohibit discrimination by public accommodations that provide transportation to their customers, guests, visitors and employees. These public accommodations will include hotels that provide shuttle service to the airport, major corporations providing van pool service, or retirement and nursing homes that provide transportation to the shopping malls.

The Senate bill exempts any vehicle carrying 16 or fewer passengers from the accessibility requirement. We urge the House to adopt the 16 or fewer passenger exception for public accommodation and private sector providers of public transportation service. Public accommodation providers are serious competitors to our industry and we believe that Congress should treat us equally.

The final category is private sector providers. Both bills permit the automobile to be exempt. We urge the committee to adopt a definition which states that any vehicle that carries 16 or fewer passengers be considered an automobile. This would provide for equal treatment of all private providers and it would recognize the real world situation that any vehicle that carries 16 or fewer passengers can be licensed as a taxicab and will be operated as a sedan.

Also, both bills provide an equivalent level of service exception to the full accessibility requirement for general public demand-responsive services to the public sector. The Senate bill provides this same exception to private operator providers of general public demand-response services. We urge this committee to accept the equivalent level of service exception for private providers.

Assuming your concurrence, we ask the committee to clarify the following three points under the term "equivalent level of service." One, equivalent level of service should not require service by the same type of vehicle. For example, if a company owns 10 sedan taxicabs and two minibuses and neither minibus is wheelchair accessible, it should be able to satisfy its requirements in the taxicabs.

Two, the equivalent of service can be achieved by one company making arrangements with another public transportation provider who has wheelchair accessible vehicles. Ms. Golden in her remarks says this is permitted. We have studied the bill and that is not clear.

Three, service delays to passengers with disabilities must take into consideration temporary service disruptions caused by extraordinary events such as extreme weather, wrecked equipment or even a convention of disabled persons in town. There are customers who are not disabled who often suffer disruptions of service due to extraordinary service disruptoins and we believe this should be taken into consideration along with our customers who may have disabilities.

Contracted services. We believe no organization, public or private, can contract away its responsibility under this act. We expect that public and private organizations will continue to contract with our industry for their transportation needs. However, we believe it should be made clear to those organizations that the responsibility for complying with the act is theirs alone.

In conclusion, the ITA believes that our recommendations will benefit both individuals with disabilities and the public transportation industry. We support an amended H.R. 2273 and we look forward to continuing our role as a major provider of transportation service to individuals who have disabilities.

Mr. Chairman, I would like to introduce two members of the International Taxicab Association who are here to tell you firsthand how they meet the needs of their passengers with disabilities and how they see this bill impacting their private, for-hire, demand-responsive companies.

On my right is Mr. Rudolph H. Bruhns. He is the Executive Vice President and General Manager of the Yellow Cab Service Corporation, which owns four taxicab companies, one of which is Yellow Cab of Houston. Yellow Cab of Houston is the third largest taxicab company in North America, operating 1,205 demand-responsive vehicles. They have recently begun to convert their fleet from four-door sedans to minivans. The company also operates 10 wheelchair-accessible vans to meet the transportation needs of its passengers who use wheelchairs.

On my left is Mr. Robert M. Werth. He is President of Diamond Transportation, Inc., which operates 11 wheelchair-accessible vans, five non-wheelchair-accessible vans and one wheelchair-accessible school bus. Mr. Werth's company is affiliated with both the Yellow Cab and Diamond Cab Companies in Alexandria, Virginia. Yellow Cab operates 166 taxicabs and Diamond operates 132 taxicabs. Mr. Werth is very committed to providing high quality, fully accessible public transportation service directly to the general public and through contracts with public agencies and private companies.

Following Mr. Bruhns' and Mr. Werth's brief statements, we would be happy to answer any questions the Members of the committee might have.

Thank you for the opportunity to address this important bill, and we hope that you will call on us for assistance.

Mr. **Bruhns**. Mr. Chairman and Members of the subcommittee, I want to thank you for the opportunity to testify this afternoon. As Mr. LaGasse said, my name is Rudolph Bruhns, Executive Vice President of Yellow Cab Service Corporation, headquartered in Houston, Texas.

Like the International Taxicab Association, Yellow Cab Service Corporation supports this legislation. We firmly believe that disabled Americans must have the same opportunities for employment and transportation that are available to all other Americans. At the same time, we are very concerned that this legislation not impose unnecessary costs on private providers of transportation for disabled persons that will raise the price of transportation for all, including the disabled.

I am here for one purpose, and one purpose only: to ask this committee to ensure that the definition of an automobile, for purposes of this act, includes standard vans and minivans which are now being introduced into taxicab service across the United States. The companies owned by Yellow Cab Service Corporation provide a good example of this trend.

Yellow Cab Service Corporation is a holding company that operates taxicab companies in Houston and Austin, Texas; Colorado Springs, Colorado; and Charlotte, North Carolina. The largest of these companies, Houston Yellow Cab, transports nearly 6 million passengers a year, including dispatch trips, airport trips, and passengers picked up on the street. Included in this number are over 100,000 trips made by elderly and handicapped passengers subsidized by the Houston Metropolitan Transit Authority. Over 14,000 of those subsidized trips were wheelchair trips, some of which were transported in one of ten wheelchair-accessible minivans operated by Houston Yellow Cab. The remainder of the wheelchair trips were transported in regular sedan taxicabs.

For many years, Houston Yellow Cab has used full-size sedans manufactured by the Chrysler Corporation, the Plymouth Gran Fury model. In November 1988, Chrysler Corporation built the last Gran Fury. After investigating the remaining two full-size vehicles available, the Chevrolet Caprice and the Ford Crown Victoria, incidentally there is no assurance that these two vehicles will continue to be produced by the manufacturers, and observing what other companies were doing with minivans, Yellow Cab Service Corporation decided to adopt the minivan as its taxicab vehicle for the future. As a result of that decision, we have already purchased 125 1989 Plymouth Voyager minivans that seat six passengers. By 1994, we expect to be operating 1,650 Plymouth Voyager minivans depending upon this legislation.

Why has Yellow Cab Service Corporation, and other taxicab companies across the country, begun to adopt minivans? There are six reasons why minivans are as good as or better than a regular sedan.

One, capacity. Minivans carry as many passengers as full-size taxicab sedans—usually six passengers including the driver.

Accessibility. Minivans are wheelchair-accessible. Houston Yellow Cab presently operates 10 minivans with lifts for wheelchairs. However, the expense of installing a wheelchair lift, nearly $6,000 per van, is 50 percent of the cost of the vehicle and makes it prohibitive to do so in every case. Ninety percent of our vehicles are owned by the drivers or are being purchased by the drivers.

Operating minivan conversion is also unnecessary in many cases, for the taxi drivers operating minivans are capable of lifting wheelchair users into the van in the same manner as they now lift wheelchair users into taxicab sedans. Thus, we do not expect any loss of quality of service for the disabled.

Increased passenger space. If General Motors or Ford discontinues building full-sized vehicles, if we don't have minivans, our only alternative will be to downsize the vehicles we are using, thus making it more inconvenient for the disabled. Minivans provide more leg and head room for the passengers, thus increasing the comfort of disabled passengers.

Increase luggage space. Minivans provide more luggage space than taxicab sedans, enabling disabled travelers to travel with more luggage and still accommodate their wheelchairs.

Safety. In operation, minivans appear to have 30 percent fewer accidents than taxicab sedans. We believe this is due to better visibility for the driver and the increased vehicle stability resulting from the front wheel drive configuration.

And very important, fuel economy. Minivans used by Houston Yellow Cab currently average 19 miles per gallon, compared to 15 miles per gallon for Gran Fury sedans. Assuming the average fleet mileage of Yellow Cab Service Corporation's four fleets, which is 100 million miles per year, this four-per-gallon difference would save approximately 1.4 million gallons of gasoline each year.

Mr. Chairman and Members of the subcommittee, for these reasons we ask that you amend the bill before you today to ensure that minivans are treated as automobiles, and are not subject to the requirement that they be equipped with wheelchair lifts. Houston Yellow Cab and the Yellow Cab Corporation are committed to providing accessible transportation for every disabled person that needs it. We believe that with a mix of standard and wheelchair-accessible minivans, we can do this conveniently, safely, and efficiently. We would ask your help to make it possible.

Thank you for the opportunity to testify today, and I would be happy to answer any questions you may have.

Mr. MINETA. Thank you, Mr. Bruhns.

Mr. Werth.

Mr. WERTH. My name is Robert Werth. I am the President of Diamond Transportation Services, Inc., which is located in Alexandria, Virginia.

I would like to thank the committee for having me before you today. My comments reflect experiences of a private paratransit operator. However, I am also the Vice President of the Virginia Taxicab Association which represents many small taxicab operators, as well as large ones, throughout the State of Virginia.

Our company's mission is fully consistent with the goals of the Americans with Disabilities Act of 1989: to provide a transportation system that permits the disabled persons to fully and independently participate in the economic and social life of this country.

It is my experience that privately operated taxicab and paratransit companies can and must play an important role in that system if this nation is to provide efficient, effective transportation to the disabled in a cost-efficient manner. I operate a lot of different services in Northern Virginia for children who are handicapped, beginning at age two-and-a-half up to the elderly disabled.

One of the services that we operate within the City of Alexandria whose population is 130,000, square mileage of 10, is called DOT, a specialized transportation service.

Mr. WERTH. This service began when the city decided to incorporate their own bus system, called DASH, and thus, DOT—that is the only meaning of DOT. The city worked through its local option with the Alexandria Commission on Disabled to come up with a demand-responsive door-to-door service to meet the needs of the disabled.

It is my feeling that DOT is a model specialized transportation service offering both taxicab and van services for trips wholly within the City of Alexandria. DOT operates seven days a week, during the same hours as the DASH bus service, 6 a.m. to 11:30 p.m, Monday through Friday, and the hours vary slightly on the weekend.

Any person living or visiting the City of Alexandria who has a disability preventing him or her from using the DASH bus service and who is certified for DOT transportation may use the service. Certification is obtained by applying and submitting a doctor's statement, which is included in a pamphlet concerning the disability.

Certification, I might add, can be made on a same day basis through the Alexandria Office of Transit Service, so there is no 30-day waiting period like many paratransit-services.

In addition, companions may ride with a disabled traveler at no cost. DOT service provides a two-tier level of service—bus stop to bus stop or bus stop to rail station for 65 cents, which is the same price as a bus, or a door-to-door service for a dollar and a quarter per trip.

Trips may be scheduled in advance, reservation, or on call. The on-call service just started through negotiations with the Alexandria Commission on Disabled, July 10th of this year, and this we feel removed another barrier to the provision of independent living for the disabled. Capacity has been added to accommodate increased demand without suppressing ridership, and new patrons have never been placed on an eligibility waiting list.

DOT is subsidized by the City of Alexandria, on a per-trip basis. Because the service is provided by Diamond Transportation and Alexandria Diamond Cab through a contract with the city, the city has to make the capital investment requirement in equipment and pays only for the service they actually use. The average cost to the city is about $7 per trip.

We began in November of 1984. The first month I had two wheelchair trips. Last month I think we did close to 800—789. Taxicab trips ranged in about the 1,300 range last month. Last year we did 20,000 total trips in the City of Alexandria for the disabled community, a total cost to the city of $140,000.

My personal experience is that there is a need for balance in the provision of transportation services to the disabled population. In order to provide complete independent living to all sections of the disabled community, transportation must be provided in the form of both lift buses and fixed routes and paratransit.

A large number of our DOT riders could not access fixed route buses if every bus had a lift. This population includes the severely disabled, dialysis patients, and an increasing number of elderly disabled. On the other hand, a great number of disabled are in need of the fixed bus accessibility. This group is fully capable of using fixed route, accessible transportation, as was previously evidenced by the panel that preceded us.

In speaking with a number of our DOT patrons, it becomes quite evident that some of the riders would used fixed route transportation if the routes were made accessible. On the other hand, many severely disabled riders can only use the door-to-door service. To many riders—a bus stop across a parking lot from their final destination is like being let out on the other side of the earth. Paratransit meets the needs of this constituency.

There are also people who need a combination or a multi-modal approach to transportation. This group would benefit from having access to both fixed route and paratransit. For example, we take a great number of riders from their homes to Metrorail, where they can access the accessible system.

Since I started this service, or was contracted to start this service in the City of Alexandria, I have observed a local phenomenon, and that is the complete integration of the disabled community into everyday life in the City of Alexandria.

When we first started, we would pull a van up to let out, and you couldn't do it because the cars would be blocking every entrance way. Doors were too heavy to open, curb cuts were not there, and there were many other barriers. Sometimes we would go to pick up somebody, there would be three or four steps going up to their door. Four or five years later, there are ramps built into those buildings. There are curb cuts. Electronic doors have been added.

The community has benefited from the economy that the disabled community has brought to the City of Alexandria. One barrier that we have in the city, however, is a lack of interjurisdictional travel. DOT goes up to the boundary, so somebody who lives in the city, for example, and works at Skyline, which is in Fairfax County, cannot ride DOT. They have to rely on the Metro on-call service, and this is just not workable sometimes. So that is one barrier that I must bring forth to you.

The DOT service is an example of government agencies contracting with private paratransit providers. It is very important that provisions of the ADA 1989 allow for transit agencies and public entities to contract for paratransit services.

Furthermore, where private priorities are required to provide comparable levels of service, such as the Super-Shuttle that was brought up, private paratransit providers such as myself should be allowed to contract for these services.

As a small businessman who is also a private transportation provider, I fully endorse the intent and futuristic vision of the Americans With Disabilities Act of 1989. However, it is extremely important for the subcommittee to recognize the role that can be played by a small private paratransit operator such as myself. I believe it is the intent of this legislation to provide opportunities and independent living for people with disabilities. Small, private providers like Diamond Transportation Services want to continue being a part of this effort.

I support the ITA's recommendations and improvements to this historic legislation and endorse the broad scope of the Senate bill 933 and the House bill 2733.

Thank you very much.

Mr. MINETA. Thank you very much, Mr. Werth.

Ms. Wilson, you mentioned that it is difficult to use the accessible fleets that are operated by CTAA members to feed inter-city fleets, such as Greyhounds, because the Greyhound fleet is not accessible. I am wondering if you could share with the subcommittee some specific examples of problems that you have encountered in this regard?

Ms. **Wilson**. I am not sure I understand. In getting people to Greyhound?

Mr. **Mineta**. That is it.

Ms. **Wilson**. Well, we have not had very many people in wheelchairs ask us to take them to Greyhound because they know that Greyhound doesn't provide wheelchair service. I think we have heard this earlier, that people know this, and they don't ask us to take them. We have not been able to do transportation for anyone in our transit system to Greyhound who would be able to go on beyond unless someone could take them up on the bus and someone can meet them at the other end.

We have transported a couple of folks who were in wheelchairs who took people along with them to get them on and off the bus. I don't know if that answers your question, but basically the people that we take to the Greyhound bus are people who know that they can get on it and go on to their destination.

Mr. **Mineta**. Now, Mr. Mundy, airport ground transportation providers operate services in various configurations, as you have mentioned, such as demand responsive, fixed route, and fixed schedule. How does the industry currently provide transportation services to individuals with disabilities?

Mr. **Mundy**. I asked the same question of many of our operators. They did not perceive it to be a problem. They were not asked to handle the disabled and wheelchair individuals, which I suppose was a rather naive response. Upon questioning them further and talking with our airport members, there are typically arrangements made. I must admit, these are not the best arrangements because they usually have to be made in advance. There is usually a local public provider who provides that service to their area. Pressed, these local private operators, usually know who to refer that caller to that provides handicapped wheelchair service in their particular area.

As a matter of fact, most of those are provided by 16(b)(2) vehicles. Many are provided by city transit systems. You have an unusual situation where, if they were required as fixed route operators to put wheelchair lifts on their vehicles, they would still probably recommend the alternative service, because it will be much cheaper.

Why would you pay $10 to $15 for a private operator's wheelchair lift and fixed route service when you could get a subsidized public operator for 80 cents? We, in essence, would require lifts on vehicles which would not be used. There have got to be better alternatives and accessibilities thought through than the rather vague references in this bill.

Mr. **Mineta**. Now, you have raised several concerns about the usage of such terms as "over-the-road coach" and "demand responsive" as used in the Senate passed bill. Can you provide the committee with any clarifying language that would conform with industry practices?

Mr. **Mundy**. I don't mean to be flippant, but the answer would be no, because we have no standard definitions. The terms are very loose when we refer to over-the-road coach. It could be anything from a minibus operating from one town to the next, or it could be a van which is running on a route maybe 80, 95 miles up into the areas of Connecticut.

For example, one of our largest operators, Connecticut Limousine, runs both buses and stretch limousines. Both vehicles would be considered to be over-the-road vehicles, so it is very difficult to specify over the road when you start talking about a size of vehicle. It is the type of service that it is used in.

There is one piece of legislation from UMTA which tries to specify "demand responsive," and it refers to demand responsive as a type of vehicle where an individual does not have the premium use of the vehicle. So even past legislative efforts to define these terms have not been entirely successful.

I don't feel that is an academic answer. I apologize. The answer is no, there are no simple terms and definitions that could be provided that try to cover all the areas that this bill is touching. That is one of its major problems. It is a net over a very broad range of services.

Mr. **Mineta**. Mr. Bruhns, in your testimony on the first page, you ask the committee to ensure that the definition of an automobile for purposes of this Act include standard vans and minivans. Then on page 4, you say amend the bill before you today to ensure that minivans are treated as automobiles. In both instances are you talking about standard vans and minivans?

Mr. **Bruhns**. Standard vans and minivans. They are both coming in usage. In our particular case, we have gone to minivans, but there are other operators, one in particular in Orlando, Florida, which is using standard sized vans as taxicabs, and that is because of the groups that come into Orlando to go to Disney World and so forth, vans are more convenient as a taxicab for larger groups.

Mr. **Mineta**. Families?

Mr. **Bruhns**. Yes.

Mr. **Mineta**. Now, in your testimony, you say that a for-hire driver must transport an orderly person unless the driver is otherwise unable or forbidden to do so. Can you give the subcommittee some examples of what you consider to be valid reasons for refusing to transport someone?

Mr. **Bruhns**. I think that was in Mr. LaGasse's testimony.

Mr. **LaGasse**. That was in my testimony. We are regulated at the municipal level, the taxicab industry, generally speaking. There are a few exceptions, but we are regulated by the City Council typically. They establish the regulations. There could be a provision that the taxicab industry is not allowed to go to a local airport. That happens sometimes because it is an exclusive franchise with someone else, and therefore, we would be prohibited from picking someone up at the airport, no matter who they are.

But generally speaking, we have to transport anyone except a falling down drunk, for example, or if there was an imminent sense of danger, and that is hard to qualify. But certainly a disabled person would meet the orderly person that we would have to transport unless he was carrying a gun or something.

But I mean, generally speaking, we are required by local ordinance, and earlier it was said some of the larger bus fleets are not accountable. I am not sure I accept that, but certainly in our case, where we are regulated at the local municipal level, we have city hearings all the time, we are very accountable to our passengers.

Mr. **Mineta**. You also stated that in a mixed transportation fleet, vans should not have to be lift equipped if the disabled could be transported alternatively by taxicab. How do our drivers presently handle heavy motorized wheelchairs and how would they handle them under the ADA?

Mr. **Bruhns**. Well, on those we have the wheelchair accessible vans. We have 11 of those, and those have ramps on them that they are accessible, and if somebody calls in, in our case, and particularly in Houston and Austin where we have a computerized dispatching system, we can assign attributes We can dispatch a trip to a particular cab, in that case the attribute is wheelchair accessible. So we can send that particular cab to pick up that particular person.

In other cases, where they have a foldup wheelchair and they can get into a cab with assistance from the driver, then we send a regular cab, and in most cases, they call for a regular taxicab, but in the case of a motorized wheelchair, then they do need, would need a wheelchair accessible vehicle.

Mr. **Mineta**. Thank you.

Mr. Hastert

Mr. **Hastert**. Thank you, Mr. Chairman.

Ms. Wilson, it was an interesting statement that you made that said that you certainly support the passage of this act, but only if there was financial support, and there needed to be federal dollars that went along with this, and you didn't think it was fair to try to pass the cost of this, increased cost of what this bill would cost, onto riders or onto the transportation companies. Is that what you meant, or would you want to clarify that?

Ms. **Wilson**. Well, of course, our transportation system, those represented by the Community Transit Association, receive federal, state, and local dollars, and also charge fares, and what has been happening over the last few years——

Mr. **Hastert**. What is the mix? Is it 50/50?

Ms. **Wilson**. I can only answer for my own system. About 40 percent of our income comes from fares.

Mr. **Hastert**. The rest of it comes from an assortment of state, local and federal governments?

Ms. **Wilson**. And that balance has been changing over the last few years, and is increasingly more local money, more state money, less federal money.

Mr. **Hastert**. The taxpayers, or the rate payers, or the fare payers pay for this?

Ms. **Wilson**. Exactly.

Mr. **Hastert**. What do you think an estimation—and this might be a big number or maybe you haven't thought it out—but you talked about the tremendous cost of this act on both rail and wheel vehicles? What would be the cost? Do you have any idea? Millions, billions?

Ms. **Wilson**. That is a good question, and I asked a couple of people about that before I came on to testify. I don't know that I have heard that there are people who would attempt to give that figure, but I don't have any idea. I think it is going to depend on each community. If you have a community that has a fixed route bus system that has no accessible vehicles and no paratransit, then that community, according to the way the act is presently written, is going to have to put lifts on their buses, and they are going to have to start a paratransit system. There are probably going to be other costs that are not obvious. If that community doesn't have curb cuts, they are going to have to put in curb cuts. They may have to change all of their bus stops if they have the little bus stop, and they are not accessible.

Each community's expenses are going to differ, and I don't think anyone in this community has done any kind of survey that would tell you the total cost.

Mr. Hastert. So you think probably the total cost—the Congressional Budget Office declines to make that estimate. So the total cost will be well in the multibillions of dollars?

Ms. Wilson. It could be. It could be. It is not—you know, it is not an easy thing to say, because just saying that all you have to do is put a lift on a bus is misleading.

Mr. Hastert. You said you think that there needs to be a parallel piece of legislation that would tie with this that not only would mandate these types of services and different opportunities, but would also mandate or furnish the price or the cost of the system.

How would you think that would be estimated?

Ms. Wilson. That is a good question. I don't think I can answer that. What I am saying is if Congress is going to mandate something and you know that there is going to be a cost, I think before you mandate it, you find out how much it is going to cost and make sure there is money there to pay for it. Otherwise, it is not going to happen.

Mr. Hastert. I mean, would you assume that we have to have an appropriations bill for multibillions of dollars—whatever the cost is?

Ms. Wilson. It could be.

Mr. Hastert. To parallel with this bill?

Ms. Wilson. The point is, I think if you are going to say that there has to be money, or that there has to be an accessible transportation system in every community that currently has transit, and you don't put any money out, then the entire burden falls on the locality.

Mr. Hastert. Then you are going to force us into debate where it is going to come out of the trust fund or not. There are a lot of questions here.

Mr. Mundy, you talked about insurance costs, and that prohibition of insurance today forces some people not to provide those services, is that correct?

Mr. Mundy. That is correct.

Mr. Hastert. What do you think in percentages? I am not asking you to put real dollars, I am not going to be mean to you like I was to Ms. Wilson, but in percentages of costs, what do you see in increased insurance? If all these services were mandated by everybody, what would they be?

Mr. Mundy. We have attempted to get insurance companies to give us some figures, to estimate what it would cost if we were to handle individuals with disabilities, severe disabilities. They have not given us those figures. They don't even want to estimate them at this point. They feel that our industry has lost so much in the last five years that there would be significant increases in premiums.

Mr. **Hastert**. To some people it might be obvious why the extra insurance is there. Could you elaborate why it would be?

Mr. **Mundy**. Primarily because of the increased risks when transporting someone in a wheelchair, and also physically assisting someone in a wheelchair. Often our industry has a lot of turnover in it. There are not people who are trained in being able to handle the handicapped, i.e., how to assist them properly, how to assist them onto the vehicle, if it were so equipped. In the case of an accident—and accidents are going to happen—there is great concern about the welfare of these individuals, especially near exits.

There is that kind of concern by the insurance industry of both the welfare of the individual within the wheelchair and other passengers on a vehicle if an exit is blocked. Typically, the favorable place for a wheelchair is near the exit door to eliminate the number of seats you would have to remove on a vehicle. In the case of an accident, which we know after so many hundred thousand miles, there is going to be, there is great concern that people will not be able to exit from this vehicle.

Mr. **Hastert**. And is there satisfactory ways to secure a wheelchair, for instance, in a bus or a van? I mean, are there floor——

Mr. **Mundy**. There are floor fasteners that are satisfactory. They are not as sound as you might have if you have got a bolted seat on the vehicle, but no one really knows yet. We have not tested those wheelchairs on vehicles in crash tests. We really do need to assess somehow what kind of expected liability the carriers are going to have.

Mr. **Hastert**. Do you think those insurance costs, say if they were increased 50 percent—I am not even sure what insurance costs on a carrier will be, I imagine significant—but if insurance costs were increased 50 percent or 75 percent, or 30 percent, would that be a significant amount to force different types of business decisions?

Mr. **Mundy**. Very much so. Behind labor and fuel, insurance is probably the greatest single cost of operating—save the vehicle. So it is a major cost in anyone's operation—a cost which has gone up four or fivefold, by the way—in the last years.

Mr. **Hastert**. I would like to ask Mr. Werth, and maybe you can comment. The feedback I have gotten back from my district—I have a lot of senior citizens that rely on paratransit—and they are literally very, very afraid, or there is a great deal of fear that if this bill is passed, all of a sudden the paratransits, people who provide that, wouldn't be able to provide it.

For instance, I have some senior citizens centers where senior citizens have bake sales, and these types of things. They have bought their own vans, and now if they are going to be required to have lifts and those types of things, that they can't afford it, and they are afraid that they will be forced to not have the services.

Is that a threat out there with this legislation?

Mr. **Werth**. According to the way I have read the legislation, if a jurisdiction had a bus system, they would have to offer the paratransit, but if you had a senior center, in other words, who went out and after this legislation was passed, had to buy a bus, would the bus have to have a lift on it, is that what you are asking?

Mr. Hastert. Yes.

Mr. Werth. I am going to have to yield to the floor on that. That is a question that I have as well, especially in a rural jurisdiction. In our area, almost everybody is operating bus service, so if you are not operating paratransit you are going to have to operate paratransit, and that should be a service to the senior centers.

The question is, who is going to pay for that service? The senior centers traditionally, even if they have fixed bus service, need the paratransit, and a great many of the disabled communities are elderly disabled. A great many of our riders are elderly who need to have the lift equipped service, and it needs to be door to door, and it needs to be passenger assistance, and we train all our drivers on passenger assistance techniques and everything.

So that is something that we do, but if a senior center was stuck out there in the middle of nowhere, and they had to have a bus to go to the grocery store and things of that nature, or if there was even a fixed route senior bus—I am reading this legislation that if they buy it, it has to have a lift or they have to have comparable services, and I am not sure, I am going to have to yield on that.

I think it is something that needs to be—maybe someone who testified before us can answer it. They are certainly I think capable.

Mr. Hastert. What do you see, for instance in your case—DOT and DASH—what happens if DASH has a mandate lift program, the service as law they have to have it, what happens to your service?

Mr. Werth. I contract, so when the contract is up, they can non-appropriate it, the city council can non-appropriate it, or this legislation they are going to have do—DASH is not lift equipped. They would have to lift equip under this new law into buses. They have an order in for 14 new buses, and their board has said lift equipment in anticipation of this legislation. Then they would come back and also have to provide the paratransit.

Now, would they have to—would they be allowed at that point to cut back on the hours of service, on the subsidy level, things of that nature? I am not sure about that. Also, we live in a very complex area in Washington, because Alexandria also has Metrobus that goes through it. So let's say in Arlington County, for example, that has no paratransit, door-to-door service, like Alexandria does. Metro would have to lift equip all of their new vehicles as they put them on the street, and Arlington County would have to have paratransit.

Now, Metro, I think, would be required to provide that paratransit in Arlington, and Alexandria might turn around and say, well, instead of doing our specialized service, we are going to latch onto Metro service, so the private—there are 13(c) requirements, you know, for labor, and they are not going to—Metro has to sue their labor, and that is very expensive. I mean, $7 a trip for paratransit within the City of Alexandria, I think is a pretty good rate. I don't know what the cost per trip will go up to.

It is a complex issue in multi-jurisdictional areas like Washington, and I personally need some clarification on it. I have asked—I have gotten opinions from different groups, so it is my understanding that Alexandria would have to continue to offer the paratransit in some form. Whether that be through Metro or a private contractor, I think is just up to the future to tell.

Mr. HASTERT. Thank you. So there is no real clear cut thing?

Mr. WERTH. They would have to continue the paratransit, that is clear. How they do it and what subsidy level, it is not.

Mr. HASTERT. Mr. Mundy, your final statement caught my attention. You said that some companies just won't be able to afford to put those programs in and still be profitable and will cease to provide service. Does that mean they will go out of business?

Mr. MUNDY. There are two ways that can happen. One they would go to demand responsive and because they are so small with three of four vehicles hope that the provisions of the bill about undue burden would apply and they would not have to equip their vehicles or they would cease to exist.

They are small operators. They don't make a lot of money. If they are faced with a situation where they have to equip their vehicles with wheelchair lifts they will make a prudent business decision and go elsewhere.

There are hundreds across the country. When I talk to them, they say, "They are going to do what? That is ridiculous. They will never pass such a bill." They don't realize that it can happen and it could happen very shortly to them. They would be the people affected by the 30-day provision, not the six years. They would be affected overnight.

Mr. HASTERT. That is part of my concern. I have a mixed district, a suburban district and also 130 miles of corn and bean fields with small towns where there is not much left there. It is the entrepreneurs that have gotten the van services that move seniors back and forth to the doctors and shopping that I am afraid are going to be wiped out and we will have a large group of people out there with no service because nobody will be the entrepreneurs because they can't afford it.

That is the real threat this bill has on small town America. It is going to wipe it off the map.

Thank you.

Mr. MINETA. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I would like to ask Linda Wilson to comment on your statement about the necessity of providing more funds.

I know when you and I were working on some transportation issues, we determined that the fares of the Federal Government, state government and all the local governments in the area, were not sufficient and we could not raise enough funds by increasing the riders' fares. We began looking at private sources and ultimately pieced something together that barely worked in order to continue to provide the necessary services. JAUNT, which I suspect like many other organizations is so thinly financed and capitalized that any more demands raises some questions about how they might be accommodated.

If they are accommodated, then it may be necessary to curtail certain services that are provided in order to provide those new services. Would you say that is an accurate assessment?

Ms. **WILSON**. Yes, I think what might happen, I can see the possibility in the city that I serve now in Charlottesville where we currently provide transportation to all the handicapped who can't use the city bus system. The city is very flexible about how they approve for that system. If they have to lift equip all their buses then they could very easily get by with saying only folks who are in motorized wheelchairs or in very severe condition can't ride the city buses and can use the paratransit.

They might become much stricter and more restrictive about who can use the paratransit system. In rural areas like the area that you are from there are not very many handicapped people out there using the system because the cost of the transportation is so high that we have very limited service.

We are not doing the kind of service we are doing in Charlottesville. The reason for that is money. Charlottesville puts close to $100,000 in our transportation system. The highest amount of money I get from any rural county is $9500 and that goes down to one that gives me $950 a year. The burden will fall on the local governments. Those local governments that have the money might be able to implement it but they have a lot of other priorities as well. It will become a local burden. Over the years more and more of the cost of transportation is falling on the local governments. They are the ones that are going to have to do the cuts and make the cities accessible as well.

It is going to be a big burden. It is very unclear to me, in this bill, I mean, I share Mr. Werth's concern about the problems with the definitions, it is unclear what this means. Are rural areas going to have to have curb cuts? Does it mean when I pull up to someone's dirt road on their farm that they will have to have a curb cut?

It sounds ridiculous but I have been living with federal regulations for a long time. After it is passed, all the bureaucrats get together and play, "Let's interpret" and we have to live with it. We live in a nightmare of having to face this down the road after the bill is passed.

Mr. **PAYNE**. Would you comment on one other Mr. Werth. I would appreciate your views as well because I think we are dealing with similar systems in Charlottesville and Alexandria. Both are medium sized cities which have bus systems and a paratransit system, neither of which have lift equipped buses. Under this act all buses will be required to be lift equipped.

You mentioned your concern that that might affect the funding for the paratransit system in a negative way. In your judgment what is the best way to meet the needs of the handicapped citizens and at the same time provide the best overall service for all passengers.

Ms. **WILSON**. Well, I would like to say that I really support the idea of having the buses lift equipped but I am concerned about the cost. I think the City of Charlottesville is probably ahead of the game because they do plan as they replace buses—and it is going to be a while before they do that—they do plan to lift equip the buses because the handicapped community in Charlottesville has been very vocal and has gotten that across. However, I do feel that there are going to be a lot of surprises when that happens because I don't think it is going to be used as much as people think it will be.

I know in Winchester, Virginia, all the buses in the small community of Winchester are lift equipped or they were when I talked to the manager a year or two ago and he told me that every now and then they have to work the lifts to be sure they still work.

They may have one or two trips a year. The people in Winchester are now begging for a paratransit system because they want door to door service. My feeling is that the people I serve want paratransit. Among the handicapped community and I am sure the folks who testified earlier would probably tell you this, there is a lot of disagreement about whether there should be lift equipped buses or paratransit.

Mr. **Payne**. But you do see in an era of scarce resources that those two groups will be vying against one another for those funds.

Ms. **Wilson**. It is not so much vying against each other as it is if the city's buses are lift equipped then that makes it easier for them to deny us funding because they say we would not have to serve as many people. Of the 37,000 trips a year in wheelchairs probably a number of those would be using the city system.

So it could eliminate funding for us. I don't know if Mr. Werth feels that is a problem for him.

Mr. **Werth**. Because Alexandria pays me on a per trip basis, if I lose ridership, they pay less money. They put the lifts in the buses and more people use the bus service then their payments to me will go down. I don't think it is going to. They are not looking at dropping the DOT service. In discussions with the disabled community I think they would be open to reducing. I also see the ridership going down because the people. It is my feeling that there is a large segment of the disabled community right now that doesn't use paratransit.

They are using what fixed route service is out there, Metro call, driving their own vehicles, using companions to drive their own vehicles. They want to be mobile and independent. You are talking about two different groups, those who need paratransit and those who need the fixed route for independent living.

For the city, I think when you spread the costs of the lifts over 10-year useful life and the maintenance cost over that same life that the payout to the community is going to be a good payout. Rural Virginia is a totally different story but inner-city Alexandria, I think it will be a workable system.

Mr. **Payne**. You mean the $7 they pay you per trip versus the capital cost, however much that is, over some period of time you think that is the difference?

Mr. **Werth**. The capital costs they would have would be only for the lifts and the buses in our system. That is a separate issue. If our ridership goes down, then the payments to the paratransit system will go down. I don't foresee that happening. We have had incremental growth, up and up and up as more people have joined the paratransit system. If the lifts are put on buses, will the ridership go down? I just don't foresee it.

We have an increasingly elderly population in this country, as you know, the baby boomers, you and me both Congressman Payne, we will be in the same category one day. I see a lot of disabled elderly people who need the door to door service. There is also a lot of young disabled and elderly disabled who need the fixed route.

The city will have to pay for the lifts which can be amortized over 10 years. You are talking about a wealthy community by the way. It is not the same as rural Virginia. I think that they will pay for it. That is the indication that I am getting.

Mr. PAYNE. Thank you very much. I don't have any further questions.

Mr. MINETA. Thank you very, very much for bringing to the subcommittee your combined experiences. We appreciate it very, very much. If there is no further business, the subcommittee is adjourned.

[Whereupon, at 6:15 p.m., the subcommittee was adjourned.]

[The prepared statements of Ms. Wilson, Mr. Mundy, Mr. LaGasse, Mr. Bruhns, and Mr. Werth follow:]

COMMUNITY
TRANSPORTATION
CTAA ASSOCIATION OF AMERICA
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STATEMENT OF
LINDA WILSON
EXECUTIVE DIRECTOR OF JAUNT, INC., CHARLOTTESVILLE, VIRGINIA
AND
IMMEDIATE PAST PRESIDENT, CTAA

ON BEHALF OF THE
COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA (CTAA)

ON THE PROPOSED
AMERICANS WITH DISABILITIES ACT

BEFORE THE
SURFACE TRANSPORTATION SUBCOMMITTEE
COMMITTEE ON PUBLIC WORKS
U. S. HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1989

Chairman Mineta and members of the committee, my name is Linda Wilson and I am the Executive Director of JAUNT, an agency providing public transportation services to residents of Virginia Regional Planning District Ten. Our agency operates a fleet of nearly three dozen vehicles and offers demand-response, fixed route, commuter and ride-sharing services in an area that reaches into six counties. Our ridership last year was 160,000 and half of those trips were for persons with disabilities.

I have also served for three years as president of the National Association for Transportation Alternatives (NASTA), which has now merged with Rural America to become the Community Transportation Association of America (CTAA). Ours is an organization of rural, small urban and specialized transportation agencies and we have a membership of more than 300 with representation from virtually every state. I continue as a member of the board of directors of CTAA and appreciate this opportunity to present our views on the proposed Americans with Disabilities Act (ADA) to your committee.

CTAA's statement of objectives pledges the organization to "work to establish public policies that recognize individual mobility as a basic human right." It follows logically that we subscribe to the central principle of the Americans with Disabilities Act -- that this commitment to mobility cannot be discriminatory in character.

At a meeting last week, CTAA's board approved a formal resolution on accessibility and I have attached a copy of that resolution to this statement.

The issue of accessible transportation has a special familiarity for many of our members because they began as human service transportation agencies, and the "transit dependent," including persons with disabilities, continue to constitute the core of their ridership. In many urban areas, CTAA members -- my own agency being one -- are relied on at the present time to provide the accessible component of public transportation. In many rural areas, our members are human service transportation providers who receive no direct federal transit assistance but are the only mobility resource available. We are particularly aware that the barriers to accessibility take many forms and that removing those barriers requires a variety of responses -- including both accessible fixed route service and complementary paratransit service.

CTAA believes, at the same time, that this legislation should be put into the perspective of our members and the people they serve.

First, the national commitment to full accessibility for transit reflected by this bill needs to be accompanied by a national commitment to achieve it without making transit and those who depend on it bear the full costs. If enactment of ADA is not accompanied by appropriate financial support, it becomes a zero-sum game in which service may be diminished rather than made more equitable and adequate.

Second, the equality of access to transit sought by this legislation is only a part of the equality of access to transit for which our organization is working. It needs to be stressed that in many rural areas and in a surprising number of small urban areas, ADA is mandating equal access to non-existent or completely inadequate transit resources and services. A recent analysis determined that more than one-fourth of all urbanized areas of less than 100,000 population are unserved by federally-assisted transit. The disparity is far, far greater in rural areas. With almost 40 percent of the total population and an estimated one-third of those who could be classified as "transit dependent" (lacking access to a private vehicle for regular transportation), rural areas receive only about 4 percent of total federal assistance and a similar share of current transit service. Put another way, the "transit gap" in rural areas is more than four times as great as that in large urbanized areas.

While this gap is probably most glaring for local transit services, it is also reflected in intercity service. Even before bus deregulation, rural areas were losing intercity bus service and since the 1982 legislation, that loss has accelerated. CTAA believes that this trend must be ended and reversed and we are working with Greyhound and other intercity carriers to try and have some impact through the provision of feeder services, making it possible to re-connect the intercity system with places it no longer serves directly. Again, my agency, JAUNT, is a part of this effort. We think it is an important initiative and that Greyhound deserves great credit for taking it. At the same time, since most of us in the feeder network operate accessible systems, we are acutely aware of the anomaly of connecting with an intercity network that has not yet become fully accessible.

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We look forward to the day when that will not have to be the case.

To summarize and close this statement, CTAA believes that enactment of the Americans with Disabilities Act is an important step, but only a step, toward our own goal of full accessibility to mobility regardless of who you are or where you live.

Thank you again for this opportunity to present our views and I will be happy to try and answer any questions you may have.

CTAA Board Resolution on Accessibility

(Approved September 18, 1989)

The Board of Directors of the Community Transportation Association of America believes there is an urgent need to take a fresh look at national transportation policies and priorities to determine their adequacy in assuring full mobility for all members of our society. As a nation, we should commit ourselves to specific, measurable and attainable goals of reducing individual and community isolation by the year 2000. It should be the objective of such a 10-year campaign to assure the right of access for all citizens to jobs, needed education and training, and to meet life's most basic needs --- without regard to place of residence, age, economic status or disability.

We therefore support the proposed Americans With Disabilities Act (ADA) to assure full accessibility of public transit services and to provide for individual mobility needs through the establishment of affordable paratransit services in urban and rural communities. However, if enactment of ADA is not accompanied by appropriate financial support, transportation services may be diminished rather than made more equitable and adequate. We therefore recognize that there is a public responsibility to pay for such accessible services as outlined in ADA.

STATEMENT OF RAY MUNDY

AGTA

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September 26, 1989

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Ray A Mundy, Ph D
Knoxville, Tennessee

To: House Public Works Committee
Re: Americans with Disabilities Act of 1989

I would like to share my deep concerns surrounding Senate Bill 933/H.R. 2273. I am making these remarks on behalf of the Airport Ground Transportation Association. The Airport Ground Transportation Association is a non-profit trade association composed of airport ground transportation providers, the major as well as many smaller airports, and industry suppliers. The one hundred twenty-seven operator members provide a range of services from taxi/sedan service through limo, van, and minibus service to large bus service. These services are provided in all configurations of demand - responsive, fixed route, fixed schedule and mixed combinations. The vast majority of these operations are small businesses, most with fewer than twenty-five vehicles, and many with only four or five vans.

As this Bill is presently constructed, it would severely impact our nation's intercity bus carriers; create economic chaos in the van and bus-type vehicle markets; displace the present services of many small airport ground transportation providers; and, perhaps worst of all, decrease the level of service now provided for the disabled in small urban and rural areas. I ask your assistance in attempting to reach a compromise on this Bill which would increase services to the disabled, yet maintain the economic survival of these services.

As has been stated in previous testimony by representatives of the bus industry, equipping a 47 passenger bus with a wheelchair lift, widening the aisles, and installing a wheelchair accessible restroom would require a reduction of between 10 and 17 seats and the loss of baggage area. While this may sound absurd, it is what would be necessary to make a standard coach "fully accessible" to individuals in wheelchairs.

Worse yet would be the plight of a small fixed route van operators serving our nation's airports. In order to equip a 9 passenger van with an acceptable lift, two bench seats would have to be removed - 2/3 of the seating capacity. Fold-down seats could be used to replace 2 or 3 of these seats when wheelchairs were not in the vehicle; however, such seats are not passenger acceptable for rides of any significant distance. It is clear and predictible that these van and minibus services, of which there are hundreds across the nation, would simply cease to exist. Operators would turn to the one option left, and that would be to change their services to "demand responsive". I am concerned further that fixed-route scheduled service to many of our nation's small urban and rural communities would also cease to exist. Our disabled would therefore be left with no, or fewer, alternatives to meet their very special needs.

We should not ask our nation's isolated citizens to pay for the unintended consequences of this bill. Rather, we might attempt to work with the small businessmen and women involved in the transportation industry to augment their present services through government grants for wheelchair-equipped vehicles. We might look also at new alternate solutions, perhaps some requiring no direct government intervention.

It is possible to provide service to our disabled without the ruinous expense and loss of capacity due to cumbersome wheelchair lifts on all fixed route bus and van-type vehicles. One such innovative solution can be found in Toronto, Canada. At Pearson International Airport, officials have permitted 5 additional vehicle permits for taxi/limo operators only if these vehicles are wheelchair compatible. The Toronto airport taxi/limo permits are attractive business ventures and operators willingly pay $5,000 or more per year for the privilege of operating at the airport. The 5 new vehicles are Chrysler minivans with adapted floors so wheelchairs can gain easy entry.

These new wheelchair vehicles wait in the taxi/limo line as others, but are called to the head of the line when a wheelchair vehicle is requested. Thus far, this disabled service experiment at Pearson International Airport has been a rousing success. A supply of vehicles is always available to the disabled at regular prices and the supplying operator earns as much or more than others in the system because the vehicle configuration may also be preferred by people travelling with a great deal of luggage. In addition, the back seat of the minivans are very comfortable, giving the passenger the feeling of riding in a limousine. I use this example to illustrate that there are innovative methods of accommodating the disabled at our airports. However, requiring wheelchair lift devices on all fixed route vehicles is plainly not economically feasible for anyone.

There are also several technical problems with the Bill as stated, which would probably jeopardize its eventual application. It would appear to me that the Bill could be construed as unconstitutionally vague and/or discriminitory against fixed route ground transportation services. The language of the Bill refers to "over-the-road" coach, and "demand responsive" services, but there is no clear definition of these terms. There is no definition in the Bill no are there generally accepted definitions for these terms in the industry. The Bill may be viewed as inherently discriminatory in that it singles out only fixed scheduled ground transportation operators. Many such operators compete with demand responsive services, which use the same type of vehicles, and commuter airlines - both of which are exempt from the provisions of this proposed bill.

Another problem relating to the Bill is its total reliance on current wheelchair lift technology. All such devices are not the same. Prices vary widely and not every kind of wheelchair can be accommodated by every model of lift. Many aspects of wheelchairs and lift devices have not been adequately considered. In fact, current Interstate Commerce Commission regulations prohibit the transportation of acid batteries, a component of most electric-powered wheelchairs, in over-the-road vehicles. Further research needs to be conducted on these devices and alternatives to wheelchair lifts, such as ramps.

Consideration needs also to be given to the safety and comfort all passengers on longer intercity trips. In the event of an accident, wheelchairs may pose a hazard to other passengers and the disabled, as they attempt to exit the vehicle. Furthermore, the wheelchair is much less comfortable than a reclining coach seat for a long trip. Clearly, these issues need examination and the preferences of the disabled taken into account.

A final hurdle not touched upon in the Bill is the matter of insurance for carriers when they do transport disabled passengers. Some insurance companies will not provide coverage or will do so only at extremely high premiums if disabled patrons are transported. Thus, enactment of this Bill would again mean the further loss of fixed route service. Clearly, this issue needs further study and amplification.

The airport ground transportation industry is not insensitive to the needs of our nation's disabled. Most operators provide service where practical and insurance coverage permits. However, the economic burdens posed by this Bill are simply insurmountable. We ask the committee's help in reshaping Senate Bill 933/H.R. 2273 in order to not unduly penalize the fixed scheduled segment of this industry. Specifically, we would ask the following:

1) That Section 304 of this Bill be stricken until such time that the three year study of private operator impacts recommended in the Bill is completed and their resultant recommendations made known to Congress.

2) That other methods of wheelchair accessability; i.e. vehicle ramps, be studied as acceptable alternatives.

3) That other countries and their airports be studied to determine how they meet the needs of the disabled, yet maintain the financial viability of their fixed route carriers.

These suggestions are broadly stated, but their accomplishment would insure the temporary survival of fixed route service while we address the needs of the disabled in a forthright manner. Your consideration of these issues and leadership in preventing serious harm to our transportation industry is greatly appreciated. The airport ground transportation industry is anxious to assist in meeting the needs of the disabled and looks forward to moving ahead with constructive proposals that would not seriously injure this industry.

Thank you for your interest. If I can provide any further assistance to you or to your staff, please do not hesitate to request it.

Respectfully submitted,

Ray Mundy

Ray A. Mundy, Ph.D.
Executive Director, AGTA

RAM/s

TESTIMONY

of

ALFRED B. LAGASSE III, EXECUTIVE VICE PRESIDENT
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and

RUDOLPH H. BRUHNS, EXECUTIVE VICE PRESIDENT & GENERAL MANAGER
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and

ROBERT M. WERTH, PRESIDENT
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on behalf of the

INTERNATIONAL TAXICAB ASSOCIATION

to the

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

concerning the

AMERICANS WITH DISABILITIES ACT OF 1989
H.R.2273

SEPTEMBER 26, 1989

Mr. Chairman, the International Taxicab Association (ITA) and its member companies thank you for the opportunity to appear here today. As the most experienced and dedicated providers of transportation to disabled persons, our members, demand-responsive, for-hire transportation providers, fully support the goals of the Americans with Disabilities Act of 1989 -- the full and complete inclusion of disabled persons in every facet of American life, whether it be work, recreation or transportation.

INDUSTRY OVERVIEW

The International Taxicab Association represents the owners and managers of taxicab, limousine, livery, van and minibus fleets. Our 696 member companies operate approximately 40,000 for-hire, demand-responsive vehicles.

In the United States, the private, for-hire vehicle fleet industry consists of over 6,300 companies, operating over 205,000 vehicles, providing over 355,000 jobs, transporting over 2 billion passengers and grossing approximately $6 billion annually.

No sector of public transportation is more experienced, more dedicated, or provides more mobility for disabled persons than does the demand-responsive, for-hire vehicle industry. With non-modified standard equipment, the 170,800 taxicabs and 16,600 limousines and liveries in the United States have long met the local public transportation needs of people with disabilities. Our industry also operates 10,900 vans, approximately 40% of which are equipped with lifts to serve passengers who use wheelchairs. The remaining 6,700 vehicles operated by our industry include minibuses, school buses, motor coaches, ambulances and supervisory vehicles.

A key indication of the for-hire vehicle industry's commitment and ability to transport people with disabilities is the degree to which public and private organizations contract with our industry for transportation service.① Nationally, over 65% of all private sector, demand-responsive transportation companies have contracts to provide transportation services for a wide array of groups, many of which include people with disabilities. Over 46% of all our industry's companies contract to transport company employees, such as airline or railroad crews; 45% contract to transport hospital patients and convalescents; 44% contract to transport senior citizens; 44% contract to transport school children; 44% contract to transport public aid recipients; 35% contract to transport other persons with disabilities; 14% contract to transport government employees; and 10% contract to provide community dial-a-ride service.

Further evidence of the for-hire vehicle industry's commitment to serve persons with disabilities is found in ITA's support for expansion of the regulations promulgated by the U.S. Department of Transportation under §504 of the Rehabilitation Act of 1973; our industry-wide educational sessions and published guidelines for assisting people with disabilities; our promotion of special service contracts with social service agencies and public transit authorities; our service on the Easter Seals steering committee that is examining transportation for persons with disabilities; and our development of model guidelines for taxicab driver training programs which include serving disabled passengers.

The demand-responsive, for-hire vehicle industry's commitment to serving disabled passengers is further reinforced by the overwhelming majority of taxicab ordinances in U.S. cities which prohibit taxicab drivers from refusing to convey any orderly person upon request, unless previously engaged or otherwise unable or forbidden to do so. Needless to say, "any orderly person" includes disabled persons.

For these reasons, the demand-responsive, for-hire vehicle industry does not need this legislation. Nevertheless, we welcome it so that our competitors and those organizations who hire our transportation services will become more sensitive and responsive to the needs of disabled passengers.

TRANSPORTATION PROVISIONS OF BILL

The Senate passed its version of the Americans with Disabilities Act of 1989 on September 6. Although S.933 and H.R.2273 were identical when introduced, and remain generally similar, ITA wants to highlight some important distinctions between the bills to which this Committee should give its attention.

These distinctions are important because unlike most employers, ITA's members will be subject to not only the employment and public services provisions of this legislation, but also the new rules prohibiting discrimination in the provision of public transportation.

Legislative Analysis

Both H.R.2273 and S.933 are structured to apply in different ways to public sector transportation providers, such as Washington's Metro bus and rail systems; private sector businesses that provide incidental transportation service, such as hotels and office buildings; and private sector transportation providers, including taxicabs and other paratransit providers.

Public Sector Providers

Both H.R.2273 and S.933 require public sector providers to: 1) purchase accessible, fixed route vehicles; 2) recognize the special operating style and opportunities available through demand-responsive systems by providing comparable service through paratransit supplements to disabled persons who cannot use accessible, fixed route vehicles; and 3) provide service to disabled persons equivalent to that provided to the general public when operating a demand-responsive system open to the general public. ITA supports these provisions.

However, the bills have two differences affecting demand-responsive paratransit providers. First, S.933 limits the requirement for public sector paratransit supplements to services that would not impose an "undue financial burden" on the public authority. The ITA believes that this standard could become a loophole enabling public transportation authorities to avoid their obligation to continue to provide existing supplemental services, which are highly effective in serving disabled persons, or to add new supplemental service when required to adequately serve disabled persons in the community.

To ensure that this does not occur, the Senate report specifies six factors -- eligibility, response time, restrictions or priorities based on trip purpose, fares, hours and days of service, and service area -- that are to be used to determine whether a supplemental paratransit system provides comparable service to disabled persons. The ITA strongly supports these criteria and urges this Committee to concur in them.

A second distinction regarding public transportation authorities is in the scope of the provisions governing supplemental or general purpose demand-responsive systems. S.933 applies those rules to any "public entity," while H.R.2273 applies them to any "individual or entity" operating a demand-responsive system. These rules, (§303(c) and (d) of H.R.2273) should apply only to public entities. Otherwise, private sector operators under contract to public transportation authorities will be subject to overlapping and perhaps conflicting rules -- one governing their direct provision of licensed services to the general public, and one governing their provision of services under contract to a public authority. In the latter case, the public authority should bear the legal responsibility for compliance, not the contractor.

Public Accommodations

Both H.R.2273 and S.933 also prohibit discrimination by public accommodations that provide incidental transportation to their customers, guests or visitors. These providers include, for example, hotels that provide airport or other intracity transportation service, and private companies, such as major corporations, apartment complexes, or retirement and nursing homes, that provide shuttle service to commuter rail stations or shopping malls.

H.R.2273 prohibits these operators from purchasing any vehicle capable of carrying more than 12 passengers that is not accessible to disabled persons unless they provide equivalent levels of service to disabled persons and the general public.

Although S.933 has nominally separate standards for fixed route and demand-responsive systems operated by such businesses, both standards effectively prohibit such operators from purchasing any vehicle carrying more than 16 passengers that is not accessible to disabled persons unless they provide equivalent levels of service.

ITA believes that the 16-passenger standard is more appropriate, and urges this Committee to adopt the Senate language on this point. In addition, because these providers of incidental transportation service compete directly with private providers of taxicab and other demand-responsive service, the standard adopted here -- whether it be 12 passengers or 16 -- must be identical to the standard applicable to private, demand-responsive providers.

ITA's second concern regarding public accommodations is the liability of private, for-hire, demand-responsive operators who provide services under contract to public accommodations, including a wide array of both private and public sector clients. These may include, for example, private companies, hotels, and welfare and rehabilitation agencies. In these cases, the client company or agency controls the type of vehicle and frequency of service. For this reason, we ask this Committee either to amend the bill or to include language in its report to clarify that when services are being provided under

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a contract between: 1) a public operator or a public accommodation, and 2) a private operator, accessible equipment need be used only to the extent required to ensure that the public operator or public accommodation is satisfying its duties under the Act.

Private Sector Providers

As applied to private sector providers of transportation service, such as taxicab and paratransit operators, H.R.2273 and S.933: 1) require private sector providers to reasonably accommodate disabled passengers through changes in policies and practices, including the addition of auxiliary services (other than hydraulic or other lifts); and 2) prohibit private providers from purchasing or leasing any new vehicle (other than an automobile or over-the-road bus) that is not wheelchair accessible. The Senate bill also would exempt providers from the full accessibility requirement if the provider is otherwise able to provide disabled persons with service equivalent to that provided to the general public.

ITA supports these rules, but requests that the Committee amend the bill to define an "automobile," which the Senate failed to do. Consistent with the Federal Highway Safety Act, ITA recommends that any vehicle whose capacity is 16 or fewer passengers should be treated as an automobile.

In addition, this Committee should adopt the Senate bill's "equivalent service" provision, which recognizes that demand-responsive providers should not be required to purchase more expensive equipment than is required to actually provide equivalent service to disabled persons. To require all non-automobile vehicles to be equipped to serve disabled persons who only require a small portion of the service would unnecessarily increase transportation costs for disabled persons and the general public alike.

This provision also would recognize the special opportunities and characteristics of the demand-responsive transportation provider. These providers are usually easily able to provide equivalent levels of service to disabled persons because the trip normally begins with a call from the passenger, who can notify the dispatcher of any special needs. Knowing this need, the dispatcher is then able to ensure that the driver who takes the call is equipped and able to provide the required service. Such a driver tends to be sensitive to and enthusiastic about serving disabled persons, and therefore provides better service than might otherwise be available.

Equivalent Level of Service

ITA has three concerns about the definition of the phrase, "equivalent level of service." First, even if the term "automobile" is appropriately defined, and if this Committee adopts a provision allowing private operators to purchase non-automobile vehicles if they provide equivalent levels of service to disabled persons, the bill or the Committee report should clarify that providing an "equivalent level of service" does not require that the operator use the same type of vehicle. Thus, for example, if a small operator has 15 taxicabs and 2 non-automobile vans, and neither of the vans is wheelchair equipped, the operator may satisfy his obligation to provide an "equivalent level of service" by providing transportation in a taxicab instead of a van.

Second, when a system is viewed in its "entirety" to determine whether it provides equivalent or comparable service, allowances should be made for unusual circumstances which temporarily prevent an operator from rendering equivalent or comparable service to any particular disabled person. Assume, for example, that an operator who ordinarily provides service to non-disabled persons in 15 minutes and to disabled persons in 30 minutes is treated as providing comparable service. If the service to disabled persons were ordinarily provided only after 60 minutes, ITA agrees that the service would not be comparable. However, unusual circumstances, such as a vehicle being out of service, extreme weather conditions, an unusually high demand in a short period of time or a local convention of disabled people, could increase waiting times for disabled persons during the extraordinary event. Likewise, a wrecked vehicle, extreme weather, high demand, or a local convention could create delays for non-disabled passengers. If service waiting periods for disabled persons are unusually long for the period of time that coincides with the disruptive event, the operator should not be considered to be discriminating against those disabled persons who, like other consumers, may on occasion be required to wait longer than usual for transportation service.

Third, some small, private operators may operate only non-automobile vans, none of which are wheelchair equipped. These operators should be permitted to satisfy their obligations to provide equivalent levels of service to disabled persons by contracting with other providers who either operate wheelchair-equipped vans or taxicabs. In such a case, the vehicles available under the contract would be treated as part of the small operator's "system."

EMPLOYMENT ISSUE

ITA also wishes to make the Committee aware of its concerns about the effect of the bill's prohibitions against employment discrimination in the for-hire vehicle industry, particularly in the case of applicants for positions as drivers. While both H.R.2273 and S.933 include provisions that permit employers to take into account qualification and performance standards that are both "necessary and substantially related to" an individual's ability to perform the tasks required in a job, these provisions or the Committee Report should be drafted to ensure that compliance with other state or municipal safety rules, such as state laws governing commercial drivers, should be sufficient to satisfy the operator's duty under the Act.

CONCLUSION

In conclusion, the private sector, demand-responsive, for-hire vehicle industry (taxicabs, limousines, liveries, vans and minibuses) fully endorses the intent and broad scope of the Americans with Disabilities Act of 1989. Taken together, H.R.2273 and S.933 provide an excellent framework for ensuring the inclusion of disabled persons in all parts of American life. The following recommendations are made not to change this historic legislation, but to improve it in a manner that will assure the equitable sharing of burdens by all parts of the public transportation industry.

1. Define the term "automobile," preferably to include any vehicle carrying 16 or fewer passengers.

2. Equalize treatment of public accommodation transportation providers and private transportation providers by excluding vehicles serving 16 or fewer passengers from the full accessibility requirements applicable to public accommodations and private transportation providers.

3. Clarify the definition and application of the term, "equivalent levels of service" by --
   a. Permitting private sector operators to purchase new, non-accessible, non-automobile vehicles if they provide equivalent levels of service by other means;
   b. Clarifying that unusual instances of disparate service to disabled persons will not, in themselves, support a finding that an operator has discriminated against disabled persons; and
   c. Permitting small fleet operators to fulfill their responsibilities by contracting with other providers for service to disabled persons.

4. Clarify the application of the employment nondiscrimination rules to the employment of commercial drivers.

5. Clarify that responsibility for satisfying the Act rests with the public authority or public accommodation when services are provided by a private operator under contract to a public authority or public accommodation.

6. Limit the scope of the "undue financial burden" exception to the requirement that public sector transportation providers provide supplemental paratransit service to individuals unable to use accessible, fixed route vehicles.

ITA believes that these improvements will benefit both individuals with disabilities and the public transportation industry alike, and stands ready to work with the Committee and its staff to this end.

PANEL MEMBERS

Mr. Chairman, I would like to introduce two members of the International Taxicab Association who are here to tell you firsthand how they meet the needs of their passengers with disabilities and how they see this bill impacting their private, for-hire, demand-responsive companies.

On my right is Mr. Rudolph H. Bruhns. He is the Executive Vice President and General Manager of Yellow Cab Service Corporation, which owns four taxicab companies, one of which is Yellow Cab of Houston. Yellow Cab of Houston is the third largest taxicab company in North America, operating 1,205 demand-responsive vehicles. They have recently begun to convert their fleet from four-door sedans to minivans. The company also operates 10 wheelchair-accessible vans to meet the transportation needs of its passengers who use wheelchairs.

On my left is Mr. Robert M. Werth. He is president of Diamond Transportation, Inc., which operates 11 wheelchair-accessible vans, five non-wheelchair-accessible vans and one wheelchair-accessible school bus. Mr. Werth's company is affiliated with both the Yellow Cab and Diamond Cab Companies in Alexandria, Virginia. Yellow Cab operates 166 taxicabs and Diamond operates 132 taxicabs. Mr. Werth is very committed to providing high quality, fully accessible public transportation service directly to the general public and through contracts with public agencies and private companies.

Following Mr. Bruhns' and Mr. Werth's brief statements, we would be happy to answer any questions the members of the Committee might have.

Thank you for the opportunity to address this important bill, and we hope that you will call on us for assistance.

TESTIMONY OF MR. RUDOLPH H. BRUHNS
EXECUTIVE VICE PRESIDENT
YELLOW CAB SERVICE CORPORATION
HOUSTON, TEXAS
H.R. 2733
AMERICANS WITH DISABILITIES ACT OF 1989

Mr. Chairman and members of the Subcommittee, I first want to thank you for the opportunity to testify here this morning. As Mr. LaGasse has said, my name is Rudolph H. Bruhns, and I am the Executive Vice President of Yellow Cab Service Corporation, in Houston, Texas.

Like the International Taxicab Association, Yellow Cab Service Corporation supports this legislation. We firmly believe that disabled Americans must have the same opportunities for employment and transportation that are available to all other Americans. At the same time, we are very concerned that this legislation not impose unnecessary costs on private providers of transportation for disabled persons that will raise the price of transportation for all, including the disabled.

I am here for one purpose, and one purpose only: To ask this committee to ensure that the definition of an automobile, for purposes of this act, includes standard vans and minivans which are now being introduced into taxicab service across the United States. The companies owned by Yellow Cab Service Corporation provide a good example of this trend.

Yellow Cab Service Corporation is a holding company that operates taxicab companies in Houston and Austin, Texas; Colorado

Springs, Colorado; and Charlotte, North Carolina. The largest of these companies, Houston Yellow Cab, transports nearly 6 million passengers a year, including dispatch trips, airport trips, and passengers picked up on the street. Included in this number are over 100,000 trips made by elderly and handicapped passengers subsidized by the Houston Metropolitan Transit Authority. Over 14,000 of those subsidized trips were wheelchair trips, some of which were transported in one of ten wheelchair - accessible minivans operated by Houston Yellow Cab. The remainder of the wheelchair trips were transported in regular sedan taxicabs.

For many years, Houston Yellow Cab has used full-size sedans manufactured by the Chrysler Corporation, the Plymouth Gran Fury model. In November, 1988, Chrysler Corporation built the last Gran Fury. After investigating the remaining two full-size vehicles available, the Chevolet Caprice and the Ford Crown Victoria, and observing what other companies were doing with minivans, Yellow Cab Service Corporation decided to adopt the minivan as its taxicab vehicle for the future. As a result of that decision, we have already purchased 125 1989 Plymouth Voyager minivans that seat six passengers. By 1994, we expect to be operating 1650 Plymouth Voyager minivans.

Why has Yellow Cab Service Corporation, and other taxicab companies across the country begun to adopt mini-vans? There are six reasons why minivans are as good as or better than a regular sedan.

1. Capacity. Mini vans carry as many passengers as full-size taxicab sedans - usually 6 passengers.

2. Accessibility. Minivans are wheelchair - accessible. Houston Yellow Cab presently operates ten minivans with lifts for wheelchairs. However, the expense of installing a wheelchair lift, nearly $6,000 per van, makes it prohibitive to do so in every case. Lifts are also unnecessary in many cases, for the taxi drivers operating minivans are capable of lifting wheelchair users into the van in the same manner as they now lift wheelchair users into taxicab sedans. Thus, we do not expect any loss of quality of service for the disabled.

3. Increased passenger space. Minivans provide more leg and head room for the passengers, thus increasing the comfort of disabled passengers.

4. Increase luggage space. Minivans provide more luggage space than taxicab sedans, enabling disabled travelers to travel with more luggage and still accomodate their wheelchairs.

5. Safety. In operation, minivans appear to have 30 percent fewer accidents than taxicab sedans. We believe this is due to better visibility for the driver and the increased vehicle stability resulting from the front wheel drive configuration.

6. Fuel economy. Minivans used by Houston Yellow Cab currently average 19 miles per gallon, compared to 15 miles per gallon for Gran Fury sedans. Assuming the average fleet mileage of Yellow Cab Service Corporation's four fleets, which is 100

million miles per year, this four mile per gallon difference would save approximately 1.4 million gallons of gasoline each year.

Mr. Chairman and members of the subcommitte, for these reasons we ask that you amend the bill before you today to ensure that minivans are treated as automobiles, and are not subject to the requirement that they be equipped with wheelchair lifts. Houston Yellow Cab and the Yellow Cab Corporation are committed to providing accessible transportation for every disabled person that needs it. We believe that with a mix of standard and wheelchair - accessible minivans, we can do this conveniently, safely, and efficiently. We would ask your help to make it possible.

Thank you for the opportunity to testify today, and I would be happy to answer any questions you may have.

TESTIMONY OF

ROBERT M. WERTH

PRESIDENT
DIAMOND TRANSPORTATION SERVICES, INC.
3025 MT. VERNON AVE.
ALEXANDRIA, VA 22305

BEFORE THE

COMMITTEE
ON

PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

concerning the

AMERICANS WITH DISABILITIES ACT OF 1989
H.R. 2273

SEPTEMBER 26, 1989

Good monring, Mr. Chairman and members of the committee. My name is Robert M. Werth. I appear before you today as President of Diamond Transportation Services, Inc. (DTS) located in Alexandria, Virginia. My comments today reflect the experiences of a private paratransit operator. A large majority of my firms business is contracting with local government for the provision of public and human service transportation for the disabled communities of Alexandria and Arlington, Virginia. I am currently the contract provider for DOT specialized public transportation service that operates within the city of Alexandria. This service is for persons who cannot use regular transit buses because of disabilities. Taxicabs and wheelchair accessible vans serve the patron.

The mission of our company is consitent with the goals and objectives of the Americans with Disabilities Act of 1989 (ADA) -- to provide a transportation system that allows for full participation and independent living for the nations disabled persons. It is my hope that by giving detailed testimony concerning the DOT service, the committee can develop a full understanding of the role paratransit can play in acheiving the goals of ADA and how a private taxicab/paratransit company has been able to provide such a service.

DOT: SPECIALIZED PUBLIC TRANSPORTATION SERVICE

Historically, the DOT service began following Alexandria's decession to provide their own bus service called **DASH**. DASH is not lift-equipped. The City worked with a special task force formed by the Alexandria Commission on Disabled to develop a specialized public transportation service. This system is a demand responsive door to door service.

Both taxicab and accessible van service are offered for trips wholly within the City of Alexandria. This service runs seven days a week during the same hours that the DASH bus service operates.

Any person living in or visiting Alexandria who has a certified disability which prevents him or her from using the regular transit bus may use the service. A physician's statement is required for certification.

If the rider is using another specialized transportation service, then the rider is encouraged to continue using that service. DOT is not available for group transportation requests or charter service.

DOT began with a two tier level of service. The first level was for a bus stop to bus stop, or bus stop to Metro service. The price for this service is the same price as the bus service, currently $.65. The second level of service is the door to door service for $1.25 per trip.

Trips are scheduled by calling a special number. Prior to July, 1989 trips were only made on an advance reservation basis. However, through negotiations with the City of Alexandria, the contract provider and the Alexandria Commission on Disabled, the advanced reservation requirement was lifted and **DOT On Call** service was implemented. This allowed for patrons to call the transportation companies directly if they were not able to make prior reservations.

As demand for this service has grown, capacity has been increased to accomodate this demand and ridership has not been suppressed. Trips are not limited to certain purposes and may be made for any reason whats so ever. There has never been an instance where service to new persons has been limited by placing applicants on a waiting list. Although there is permission to use the service by an application process, the City has the ability to same day certify potential riders. The service can accomodate visitors from out of town. In the cases were companions ride with the patrons, the companions ride for free.

The City pays the provider on a per trip basis. Neither the City or the Transit Agency has had to invest in any capital equipment. Alexandria Diamond Cab uses existing taxicabs on the street for the taxi portion of the service. Diamond Transportation Services, Inc. has made all the necessary investment for the capitalization of equipment in order to provide the City with the necessary vehicles in the provision of services. No guarantee or hourly fee is obligated by the City to the provider. The average cost to the City on a per trip basis is as follows:

	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
Cost per trip	$6.07	$8.00	$7.43	$6.82	$7.01
Ridership	3,264	10,514	14,357	17,393	19,907

Alexandria's DOT specialized transportation service is a model example of a public/private partnership, where a private company has contracted with the city to provide the service. This service demonstrates the ability of private industry in the form of the taxicab/paratransit industry to be the contractor of transportation services to the public.

BALANCE IN THE PROVISION OF SPECIALIZED TRANSPORTATION

My personal experience is that there is a need for a balance in the provision of transportation services to the disabled population. In order to provide complete independent living to all segments of the disabled community, transportation must be provided in the form of both lifts on buses and paratransit.

A large number of our DOT riders could not access the fixed bus routes, even if every bus had a lift. This population includes the severly disabled, dialysis patients and the increasing number of elderly disabled.

On the other hand, a great number of disabled are in need of fixed route bus accessiblity. This group is perfectly capable of using fixed route accessible transportation.

In speaking with a number of DOT patrons, it becomes quite evident that some of the riders would use fix route bus transportation if the routes were made accessible. On the other hand, many severly disabled riders can only use the door to door service. To many riders, a bus stop accross the parking lot, from their final destination, is the same as being let off on the other side of the earth. Paratransit, meets the needs of this constituency.

There are also people who need a combination or multi-modal approach to specialized transportation. This group will benifit from having access to both fixed route and paratransit. An example is a person who uses paratransit to link up with Metro.

MOBILIZATION WITHIN THE CITY OF ALEXANDRIA

Since the start of the DOT specialized transportation service, there has been a complete change in life and living styles in the City of Alexandria. When the service first began, we observed many barriers to complete mobility for the disabled. These barriers manifested themselves in the form of stairways to homes where DOT riders lived, lack of curb cuts, limited access for discharging riders and doorways that were impossible to manage for the disabled.

Over the past five years I have personally observed the breaking down of these physical barriers. Ramps have replace stairs, curb cuts have been added to inaccessible side walks and electronic doorways have been added to many buildings. These events have been tremendously benificial to the citizens of Alexandria, not only because of the mobility of the disabled, but because of the benifits to the remainder of the community. These benifits are the complete integration of the disabled into the Alexandria community which create economies that never existed before.

Recongnizing the need for a dichatomy of service, paratransit and fixed route, there still exists a service problem. This service problem is interjurisdicational travel for the disabled. DOT, for example does not go outside the city limits of Alexandria.

CONTRACTING FOR SERVICE

The DOT service is an example of governmental agencies contracting with private paratransit providers. It is very important that the provisions of ADA, 1989 allow for transit agencies and and public entities to contract for paratransit services.

Furthermore, where private operators are required to provide comparable levels of service to disabled riders, private paratransit providers should be allowed to contract for these services.

CONCLUSION

As a small business man, who is also a private transportation provider, I fully endorse the intent and futuristic vision of the Americans with Disabilities Act of 1989. However, it is extremely important for the subcommittee to recognize the role that can be played by small private paratransit operator. I believe it is the entent of this legislation to provide opportunities and independent living for people with disabilities. Small private providers like Diamond Transportation Services want to continue being part of this effort. I support the ITA's recommended improvements to this historic legislation and endorse the broad scope of S. 933.

American Foundation for the Blind, Inc.
Governmental Relations Department
1615 M Street, N.W. Suite 250 Washington, D.C. 20036
(202) 457-1487

September 20, 1989

Hon. Norman Mineta, Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, DC 20515

RE: Americans with Disabilities Act, H.R.2273,
Hearing Record Date September 20, 1989

Dear Chairman Mineta:

The undersigned disability organizations are pleased for this opportunity to comment upon the Americans with Disabilities Act (ADA). The purpose of this letter is to offer our recommendations concerning transportation aspects of the (ADA). The Governmental Relations Department of the American Foundation for the Blind has analyzed H.R. 2273, the Senate passed companion bill (S. 933), and the report of the Senate Committee on Labor and Human Resources (S.Rep.101-116). As more fully explained below, we believe that the ADA as passed by the full Senate and/or the accompanying Committee report require certain amendments in order to better address discrimination faced by blind or visually impaired people. We are hopeful that an amended version of H.R. 2273 and the legislative history of the ADA in the House will address our concerns. The recommendations contained in this letter relate primarily to the transportation provisions of the ADA. Statutory references are to the Senate passed bill and Committee Report.

Scope of Accessibility

We are concerned that Section 203(c) entitled ACTIONS APPLICABLE TO TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY seems to focus almost exclusively on issues facing persons who use wheelchairs. There are many transportation-related communication barriers faced by blind or visually impaired persons. Many of these barriers represent significant health or safety concerns to the user of public (or private) transportation services. Issues such as recognition of signage, adequate lighting, platform edging, or warning of dangerous conditions can benefit not only the blind or visually impaired traveler, but also members of the general public as well. Although some subway accidents have involved blind or visually impaired persons, many subway platform falls have involved fully sighted subway riders who, obviously, could also benefit from safer design considerations. Other transportation and communication barriers include the inaccessibility of printed schedule information, inconsistent locating of fare card or other equipment, unnecessary white noise which masks ambient sounds used for orientation clues, etc. Please note that most, if not all, of these barriers would *not* be costly to surmount.

In addition to including examples of transportation/communication barriers faced by blind or visually impaired persons in the statute and/or report, we recommend that the several references to "including individuals who use wheelchairs" are unnecessary and have the negative effect of seeming to focus exclusively on such individuals. This language, coupled with the absence of examples illustrating transportation/communication barriers as discussed above, creates a negative implication, which we trust was not intended, that the ADA is primarily targeted to elimination of discrimination faced by wheelchair users. Although we somewhat can appreciate the Senate Committee's reasoning for specifically mentioning wheelchair access and including several examples of physical barrier removal in the Act due to recent case law developments in the transportation area, we believe that the reiteration of this language raises an unnecessary scope of coverage question which may impact negatively upon blind or visually impaired people. Whether or not this language is dropped--and we think it should be--we recommend the addition of a new provision in Title V: MISCELLANEOUS PROVISIONS which we believe will help make clear the proper cross-disability construction of the Act, i.e., that the ADA is intended to address discrimination faced by all persons with disabilities, regardless of disability category or type. Proposed Section 501(a) follows.

Title V: Miscellaneous Provisions

Sec. 501. Construction

> (a) IN GENERAL. The requirements contained in Titles I through IV of this Act shall be construed in a manner to eliminate discrimination faced by all persons with disabilities, regardless of disability category or type.

Unwanted Accommodations

Proposed Section 501(a) (continued)

> Nothing in this Act shall be construed to require a person with a disability to accept an accommodation, auxiliary aid, service, opportunity, or benefit which is not appropriate to, or desired by, such individual.

The last sentence of this new subsection addresses the "unnecessary accommodation" issue. A blind or otherwise disabled person must be guaranteed the right to choose to accept or reject proffered accommodations, benefits, etc. It is not uncommon, for example, for a transportation provider to require a blind person to use a wheelchair in situations where the blind individual prefers to use a sighted guide or prefers no assistance at all. Attempts by service providers to offer a "one size fits all" accommodation or aid should, therefore, be reduced through this language.

Paratransit Services

Blind and other persons with disabilities must be guaranteed the right to use paratransit services if they choose to use them in preference to fixed-route transportation. Both accessible fixed-route and paratransit services must be available in order to meet individual need. A blind person with no other disabilities and good mobility skills would probably prefer to use accessible fixed-route transportation. On the other hand, if that same individual needed to cross a six lane highway to reach the fixed-route bus stop, or is unable to effectively or safely travel, even on a temporary basis because of illness for example, such a person may prefer to use paratransit services. An individual's personal choice whether to use paratransit services or not is essential, and is more feasible (and certainly less costly) than attempting to apply an arbitrary criterion or test to whether the individual can physically use fixed-route bus transportation. Under current law, some transportation authorities have attempted to exclude blind persons from paratransit services on the grounds that such individuals could use a fixed-route bus system.

The Senate Committee report (S.Rep.101-116 at p. 50) deals quite explicitly with the issue of paratransit services. Although the report language indicates that all disabilities must be served by a paratransit system as an interim step toward full fixed-route accessibility, the report does recognize that paratransit service will nevertheless be required by some disabled passengers.On the question of who cannot otherwise use a fixed-route accessible system, the report cites an example of a wheelchair user who cannot reach the bus stop due to the lack of curbcuts.

We believe that the ADA and its legislative history should clearly state that all disabled people are eligible to use paratransit services regardless of disability type. Comparability questions including fares, scheduling, routes, etc., can be worked out on the local level, as contemplated by the Senate Committee Report, in consultation with an advisory committee whose members represent the concerns of the entire disability community.

Therefore, section 203(c) should be amended as follows to accomplish the above stated objectives: (new text is indicated by brackets)

> If an individual or entity operates a fixed-route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this act and section 504 of the Rehabilitation Act of 1973 for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed-route public transportation to individuals with disabilities, including individuals who use wheelchairs, who [prefer not to or] cannot otherwise use fixed-route public transportation. [Nothing herein contained shall be construed to permit a transportation provider to deny paratransit services to an otherwise qualified person with a disability based solely upon the type or severity of such individual's disability.]

We hope that the above recommendation will be adopted by your Subcommittee during its consideration of the Americans with Disabilities Act. If you have any additional questions, please do not hesitate to contact me.

Please include this letter as part of the hearing record.

Very truly yours,

American Foundation for the Blind

Scott Marshall, Director, Governmental Relations Department, 202-457-1498

Disability Focus

Mary Jane Owen, 202-483-8582

GERALD D. KLECZKA
4TH DISTRICT, WISCONSIN

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September 27, 1989

Hon. Norman Y. Mineta, Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
Rm. B-376, Rayburn H.O.B.
Washington, D.C. 20515

Dear Chairman Mineta:

This letter is sent to share my thoughts with you and the Surface Transportation Subcommittee members about the public transportation sections of the "Americans with Disabilities Act" (H.R. 2273). I hope you will include it in the record of your subcommittee's hearings on this matter.

As an original cosponsor of this legislation, I strongly support its goal of mainstreaming our nation's largest minority group, the disabled, into everyday life. Access to reliable public transportation is a key part of this effort, which I also support.

However, the broad approach of this bill with respect to inner-city fixed-route buses is unsatisfactory. Lift-equipped buses are not the only answer to the disabled community's mobility problem. Even more importantly, mandating all newly acquired fixed-route buses to be lift-equipped would turn the clock back on serving the disabled in communities such as Milwaukee, Wisconsin.

The facts about Milwaukee County's experience with lift-equipped buses, and subsequent switch to a paratransit system, tell a compelling story about the county's commitment to providing mobility for the area's nearly 8,000 wheelchair-confined residents. Since June, 1978, the User Side Subsidy Program (USSP) has provided paratransit service to mobility-impaired people in Milwaukee County. The U.S. Department of Transportation's (DOT) 1979 regulations concerning Section 504 of the Rehabilitation Act mandated that recipients of federal mass transit funds make each mode of local mass transportation accessible to handicapped persons, including wheelchair users. The effect of these regulations in Milwaukee County was to require continuation of purchase of lift-equipped buses, regardless of availability, or use of other accessible transportation.

But the county's experience with these buses was frustrating and financially disastrous. The expensive lifts were plagued with mechanical problems, exacerbated by inclement winter weather conditions. Service delays were commonplace and usage was very low. In 1981, the last full year of universal lift-equipped bus service in Milwaukee County, the service averaged only 69 trips per month -- or just over 2 trips per day. No more than 15 individuals ever used these lifts at a time. Approximately 7,000 individuals confined to wheelchairs then lived within Milwaukee County.

Providing both paratransit and lift-equipped bus service to the county's mobility-impaired residents proved a costly duplication of transportation services. Usage patterns clearly demonstrated that handicapped persons preferred the USSP over lift-equipped buses. In a 1980 case with similar circumstances, the U.S. Court of Appeals for the District of Columbia found that Section 504 did not authorize the DOT to issue the extensive 1979 mass transit regulations.

Shortly afterward in 1982, a consent agreement permitting expansion of paratransit in Milwaukee County was signed by Judge Robert W. Warren of the U.S. District Court for Eastern Wisconsin. This agreement established a high minimum financial commitment to the USSP, and mandated regular assessments of USSP quality and use.

As of December, 1988, the USSP had enrolled 7,600 mobility-impaired county residents, and was providing over 29,500 one-way trips per month. While the average cost of these rides to the user was $2-$5, the door-to-door service is a substantial additional benefit accompanying this higher fare. Paratransit costs make up approximately 5% ($3.3 million in 1988) of Milwaukee County's regular transit system operating budget.

Mr. Henry Mayer, a transit consultant of Milwaukee, Wisconsin, has testified before your subcommittee about the impracticality of lift-equipped buses in northern climates. With this in mind, and the example of Milwaukee County's paratransit system before you, I urge subcommittee members to examine the possibility of involving communities in determining what type of service best serves their handicapped citizens.

Provision of accessible transit services for the mobility-handicapped is a sensitive issue, with many facets deserving careful examination. I appreciate you taking my views on this important matter into account.

Sincerely,

Gerald D. Kleczka

GERALD D. KLECZKA
Member of Congress

GDK/las

Statement for the Record

of

Laura Oftedahl

Before the Subcommittee on Surface Transportation

Committee on Public Works and Transportation

United States House of Representatives

101st Congress, First Session

September 20, 1989

regarding

Transportation, and Public Service Barriers Faced by Blind or Visually Impaired Persons

The Americans with Disabilities Act (H.R. 2273)

For further information contact:

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Scott Marshall, Director
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Good Afternoon Mr. Chairman and Members of the Subcommittee:

My name is Laura Oftedahl. I am presently employed as the Director for Public Affairs of the Columbia Lighthouse for the Blind here in Washington, DC. I speak to you today as a consumer: a professional woman who is visually impaired. My work experience has included jobs in sales, broadcasting, and public relations. I have also been involved in competitive sports programs for people with disabilities, and am proud to have won national and international medals in cross country skiing. Competitive sports activities provide people with disabilities the opportunity to prove what we can do. Too often we are told that we cannot compete effectively in all aspects of life. We Can!

You might be asking yourself at this point: "It sounds like this woman has her life together! Has she experienced discrimination? Does she need the ADA?" The answer to the last question is a definite "yes!" Although I try to lead a productive, active life despite my disability, I nevertheless face barriers which the Americans with Disabilities Act will address. I have been asked to discuss primarily transportation barriers and barriers to accessing public services faced by blind or visually-impaired people. I could also easily discuss employment discrimination because I have faced that, too. My bottom line message to you is that the accommodations I need as a visually-impaired person in order to effectively access transportation and public services do not cost a lot of money, and would, for the most part, be of great benefit to the public generally.

Let me give you some real life examples. I am a regular subway rider, but for me, as a visually-impaired person, each trip requires a great deal of extra concentration. Wayfinding for a blind or visually-impaired person is a task involving all one's remaining senses. I have frequently tried to ride an escalator in the wrong direction because I could not see the sign or direction indicator. I have been disoriented when embarking from a subway car because of variations in lighting from the car's interior to the platform. While on the platform, I cannot read the directional signs, and must rely upon information from other passengers. I must always be vigilant as to where the platform edge is located. A momentary distraction, or even a casual conversation with a fellow passenger might be deadly, since I must always be aware of every orientation cue available to me. The subway platform can be particularly hazardous during the jostling of rush hour. The station environment can also be confusing because equipment such as add-fare machines or transfer dispensers are not uniformly positioned in each station.

Bus transportation can also pose a problem. I, and many of my blind or visually-impaired friends, have been late for important appointments because a bus driver failed to announce a stop, even though asked to do so. Such occurrences can cause us great embarrassment, vis-a-vis employers or prospective employers, for example. Bus transfer points where many lines converge also can be a problem, particularly at night when no one is nearby to read the signs. Features such as adequate lighting, safety strips along platform edges, readable signage, and public address systems on buses coupled with better training of vehicle operators would greatly enhance my access to public transportation. These accommodations, which I understand may be required by the ADA, are not costly, and more importantly, benefit everyone. Some of the people who have unfortunately fallen from subway platforms here in Washington have not been blind, but have been careless fully sighted individuals. Thus, safety features such as platform edge markings and adequate lighting would help not only blind or visually-impaired people, but the general public as well.

Public transportation authorities have also attempted to exclude blind people from the use of paratransit or "dial-a-ride" systems. Such discrimination is predicated on the notion that blind people can physically mount a fixed route bus. Although a blind person without a secondary disability is perfectly capable of boarding a bus, a blind or visually-impaired person, depending upon his/her travel skills, may not be willing or able to cross a six-lane highway to reach the fixed-route bus stop. Finding the location of the fixed-route bus stop may also be difficult in some situations.

Turning to access to public services, many of the same barriers also apply. Wayfinding in public buildings can be a problem because of inadequate signage or lighting. Large open areas such as building atriums can pose significant orientation barriers. White noise created by a cascading fountain, which are popular in some new buildings may destroy the sound cues which blind and visually-impaired people rely upon for orientation and mobility.

The solution for the white noise problem is simple: building managers need only to turn the fountain's water pressure down.

Barriers to accessing public information also exist. Few agencies produce publicly distributed material in braille, large-print, recorded, or computer-accessible form. When public information is not available in special media, alternate access (such as personal assistance) is frequently not available. I recently experienced this problem when I applied for a nondriver's ID card. It was difficult for me to determine which line to stand in, and I had to rely upon another applicant to help me fill out the necessary forms. When I asked the woman who took the applications for help, she told me: "That's not my job!", and made no effort to locate a supervisor or other assistance.

Mr. Chairman, I believe that the barriers I have described above can be eliminated at minimal cost and with benefit to the general public if the ADA is enacted into law. I hope the Congress will recognize the barriers faced by all people with disabilities which impede our full participation in society. I urge you to promptly pass the Americans with Disabilities Act.

Mr. Chairman, this concludes my remarks.

(206) 241-1843

Paralyzed Veterans of America

Northwest Chapter
901 S.W. 152nd
Seattle, WA 98166

Chartered by the Congress
of the United States

September 18th, 1989

The Honorable Norman Y. Mineta, Chairman
Sub Committee on Surface Transportation
2350 Rayburn House Office Building
Washington, D.C 20515

Dear Representative Mineta;

We are writing to urge your quick and favorable action on the Americans with Disabilities Act (ADA). Your subcommittee will be considering the transportation provisions of the Act and we wish to call to your attention the tremendous success that the Municipality of Metropolitan Seattle has had with main line wheelchair accessible buses.

The ADA should contain a clear requirement that transit providers must begin with accessible mainline service. All new vehicles purchased should have wheelchair lifts. Subway and rail systems must also be able to accommodate passengers who use wheelchairs.

Intercity bus companies have long been exempted from requirements to provide service to disabled passengers and that oversight should also be addressed by your committee.

The technology to include disabled passengers in the mainstream of public transportation clearly is available, reliable and affordable. Your subcommittee can do its part by ensuring that the ADA requires public transit operators provide their services to all of their constituents.

The version of ADA passed by the Seante meets most of our needs and we urge you to see that it is not weakened in any way.

Sincerely,

George B. Turner
President

Jack Michaels
Board Member

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United States House of Representatives
Surface Transportation Sub-Committee
Norman Y. Mineta, Chairperson

RE: Americans with Disabilities Act

Dear Sir:

Our thanks to you and your committee for the opportunity to deliver our comments concerning the transportation issues contained in this important legislation. The Americans with Disabilities Act has the potential of freeing persons with disabilities from constraints that now limit employment and full participation in their communities. Fully accessible transportation is an essential link to all other community services and activities.

We ask you to examine the highly successful METRO transit system which has over a decade of experience in providing accessible mainline transit service. The community of persons with disabilities is well served at a much lower cost per rider than other transportation options. The cornerstone upon which this service is built, is a fleet of coaches fully equipped with lifts. The other essential ingredient is special service options for those persons who cannot use a fixed route service.

The version of the bill that has passed the Senate by an overwhelming margin and which is supported by the Administraton, would go a long way toward providing equal and integrated transportation services, without undue hardship on the part of public and private sector business. We urge you to recommend this version of the bill for House vote.

We now have available technology that is reliable and affordable, that will make both transit and intra-city transportation services accessible. We hope Congress has the will to make this dream a reality for our millions of disabled citizens.

Sincerely,

Anne Waltz

Anne. Waltz, President

○